

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT NUCLEAR INDUSTRIES SECURITY
(AMENDMENT) REGULATIONS 2016

Tuesday 12 July 2016

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The Committee consisted of the following Members:

Chair: MR ANDREW TURNER

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| † Allen, Mr Graham (<i>Nottingham North</i>) (Lab) | † Lee, Dr Phillip (<i>Bracknell</i>) (Con) |
| † Bruce, Fiona (<i>Congleton</i>) (Con) | † Lynch, Holly (<i>Halifax</i>) (Lab) |
| † Davies, Byron (<i>Gower</i>) (Con) | † McDonagh, Siobhain (<i>Mitcham and Morden</i>) (Lab) |
| † Gardiner, Barry (<i>Brent North</i>) (Lab) | † Murray, Mrs Sheryll (<i>South East Cornwall</i>) (Con) |
| † Garnier, Mark (<i>Wyre Forest</i>) (Con) | † Pickles, Sir Eric (<i>Brentwood and Ongar</i>) (Con) |
| † Gibson, Patricia (<i>North Ayrshire and Arran</i>) (SNP) | † Smith, Julian (<i>Skipton and Ripon</i>) (Con) |
| † Green, Chris (<i>Bolton West</i>) (Con) | † Thompson, Owen (<i>Midlothian</i>) (SNP) |
| † Jenkyns, Andrea (<i>Morley and Outwood</i>) (Con) | † Timms, Stephen (<i>East Ham</i>) (Lab) |
| † Jones, Mr Kevan (<i>North Durham</i>) (Lab) | Glenn McKee, <i>Committee Clerk</i> |
| † Leadsom, Andrea (<i>Minister of State, Department of Energy and Climate Change</i>) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 12 July 2016

[MR ANDREW TURNER *in the Chair*]

Draft Nuclear Industries Security (Amendment) Regulations 2016

2.30 pm

The Minister of State, Department of Energy and Climate Change (Andrea Leadson): I beg to move,

That the Committee has considered the draft Nuclear Industries Security (Amendment) Regulations 2016.

It is a great pleasure to serve under your chairmanship, Mr Turner.

The UK is highly regarded by the International Atomic Energy Agency and other key international partners in civil nuclear security. We take our international role in this field very seriously, including with regards to regulation. The draft regulations before the Committee will update the Nuclear Industries Security Regulations 2003. Specifically, regulation 2(1), in the definition of transport, removes sub-paragraph (i) and adds references to air transport to regulation 3(5)(b).

The effect of these amendments is to bring the transport of civil nuclear material by air within the same stringent regulatory framework for security that applies to the transport of such material by land or sea. That means that the independent Office for Nuclear Regulation will have the same oversight and approval function in relation to the security of civil nuclear material transported by air as it has in relation to the transport of such material by land or sea.

There are two main reasons for making these amendments to the regulations. The first is that the UK is a party to an international treaty, the convention on the physical protection of nuclear material, which came into force in 1991 and was amended in 2005. The convention requires signatories to have in place a legislative and regulatory regime to ensure the security of civil nuclear materials stored or transported in that state.

The Nuclear Industries Security Regulations 2003 are the primary means by which the UK has implemented that obligation under the convention. When those regulations were first written, the transportation of nuclear material by air was not considered to be an option, so air transport was excluded from the scope of the regulations. As our work on decommissioning has gathered pace, we revisited our legislative and regulatory regime for ensuring the security of civil nuclear materials, and determined that the regime should apply to all potential forms of transport. Making these amendments to the regulations, to extend the regulatory regime that exists in the 2003 regulations to cover the transport of nuclear materials by air, will help to ensure that the UK gives full effect to the convention.

That brings me to the second reason for making these changes: our domestic considerations. Amending the regulations will allow us to consider all credible options when planning moves of nuclear material to ensure that we make the right operational decision with regards to both safety and security. Nuclear material can be safely

and securely transported by air and it is right that our regulatory framework facilitates that. Air transport of nuclear material is already an established method of transport internationally. These amendments simply mean that civil nuclear material transported by air from or within the UK will now be subject to the same regulatory regime in relation to security as such transports by land or sea within the UK.

These regulations will also ensure that the independent Office for Nuclear Regulation will be involved with, and will oversee, the security arrangements for any air movements that take place. As such, the regulations will make the transportation of civil nuclear materials more secure. In practice, this means that the Office for Nuclear Regulation will be responsible for approving transport security statements and transport security plans for all carriers of civil nuclear material by air, as it does for carriers involved in the movement of civil nuclear material by road or rail that currently takes place. In drafting the regulations we have consulted the Office for Nuclear Regulation and it is content with them.

On a practical level, the regulations will let us better address the current challenges. In late 2015, we began a programme of moves to remove nuclear material from the Dounreay nuclear site in northern Scotland. The programme is of great importance and will help to ensure the long-term safe and secure management and treatment of that nuclear material, by storing it in the most appropriate place. As part of the programme, the Prime Minister announced earlier this year that the UK Government had reached a landmark agreement with the United States and the European Union on a multilateral swap of nuclear material. Under the terms of the agreement, the UK will transfer almost 700 kg of excess highly enriched uranium from Dounreay to the United States. In return, the US will send nuclear material to the European Atomic Energy Community, which will be used in the production of medical isotopes, for use in Britain and other European countries.

That agreement is groundbreaking. It will see nuclear material that we no longer need being exchanged for material that could save many lives. In order to complete the operation in the safest and most secure way, we need to be able to consider all transport options seriously. Without an appropriate regulatory regime, air transport may not be a legitimate option. While we cannot disclose timings or methods of transport that will be used in any future moves of civil nuclear material, the amendments made by these regulations will allow us to consider all potential options. I sincerely hope that the regulations will be approved, as they will help to ensure that any movement of nuclear material by air is regulated appropriately and carried out securely. I therefore commend the regulations to the Committee.

2.36 pm

Barry Gardiner (Brent North) (Lab): As always, Mr Turner, it is a great pleasure to serve under your chairmanship. The statutory instrument does exactly what the hon. Lady has said it does. A number of questions are raised by her comments, and I move to those straightaway.

The threshold for bringing the amendment to the CPPNM into force was reached on 8 April 2016. The amendment to the convention was secured on that date.

It is now 12 July. Will the hon. Lady confirm that we are in breach, and what the effect of that might be?

Since 2003, the Nuclear Industries Security Regulations, which this statutory instrument seeks to amend, have been the primary means under which we have kept to our obligations. The 2003 regulations should of course be updated to include transport by air. I am grateful for the hon. Lady's explanation that, in 2003, it was not envisaged that transport would be made by air and so the 2003 regulations did not include that provision—despite the fact that the convention, which we adopted in 1980 and which entered into force in 1987, did require security to be guaranteed for international transport, including air travel.

It is of concern that, since 8 May—when the amendment to the CPPNM took effect—we have been in breach of our duties to ensure a competent authority has fully implemented our obligations under the CPPNM. If we were legislating on a purely academic basis, to cover all the bases, that would be one thing, but I am even more concerned to read in the explanatory memorandum that the transport of civil nuclear material by air is “uncommon”. That means that it has actually happened.

The Department says that it cannot reveal—the hon. Lady was clear in her remarks—the timings or details of future moves of the transportation of civil nuclear material. I am glad that she put in the word “future”, because the question that I wish to ask her is whether such movements have taken place by air in the past. I do not need to know the specific details, but I ask whether they have already taken place and whether the UK was therefore in breach of its obligations. I ask in particular about a possible breach of article 4(1) of the CPPNMN, which states:

“Each State Party shall not export or authorise the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I”.

It is deeply troubling that it appears that this statutory instrument is being used to close the door after the horse has bolted. Of course, the exchange of materials to which the hon. Lady alluded will have value and import and be worth while. I do not think that any of us would wish to resile from that. However, none of us would wish to entertain those exchanges being carried out, whether by air or not, without the appropriate regulatory oversight, which this statutory instrument would appear now to be trying to put in place.

Many communities will be deeply troubled if the implications of the Minister's words and of my own surmise are in fact the case, and these transportations by air have taken place without the appropriate regulation and safeguards being in place. The hon. Lady said that security obligations are taken “very seriously”. I wrote it down; she said it. If my surmise is correct, it would appear that that statement is actually far from the truth.

2.42 pm

Mr Graham Allen (Nottingham North) (Lab): It is a great pleasure to serve under your chairmanship, Mr Turner. It does of course give you the opportunity to repay some of the generosity and the leeway that you received from the Chair of the Political and Constitutional Reform Committee for many years, of which you took full advantage. I will certainly attempt to do the same. It is also a great pleasure to see the Minister back in her

place. Conservative polity's loss is, I hope, early intervention's gain. I am of course very pleased to see my Whip in place, and thank her for giving me the honour of serving on this Committee. That is clearly because the Whips Office felt that it was important that established Members could make a serious contribution to this Committee, and I hope that we will do that. There are plenty of years' service on the Back Benches here.

My main concern as a layman, not knowing much about this technically, is public safety. The Minister has touched on that. Why would that be a particular concern in respect of aircraft movements rather than the other forms of transport? That is pretty obvious. It is because an accident involving an aircraft could be catastrophic in a way that one involving a road vehicle or even a sea container might not be. I quote one of the experts whom I dug out, a Mr John Large, who is an independent nuclear engineer. He said that an air crash could

“contaminate large tracts of land with potential radiological consequences for unprotected members of the public”.

We need to refer across from the civil, which this is about, to the military, where there have been many aircraft movements transporting military grade plutonium, tritium and enriched uranium. There have of course been exercises to see what might happen should something go wrong. I understand that in 2011 and 2012, “Astral Bend”, the code name for the exercise, imagined a leak of enriched uranium and plutonium spreading up to five kilometres across South Wales. Under questioning, a previous Minister of Defence revealed that 23 flights had carried defence nuclear materials in the last five years. My hon. Friend the Member for Brent North made an astute point about this, referring to the possibility of civil movements that may have already taken place and to civil uses of uranium. I urge him to press the Minister on that again, unless she can come up with an answer as to what has happened in respect of civil nuclear material transportation, because that is alarming. I have not found references to that happening before. If it does happen now—even in small numbers—it will be helpful for the Committee to know that before we make a decision on whether or not we note this statutory instrument.

Also, a stronger case needs to be made for the benefits of taking this extra risk. It was not envisaged when the regulations were first promulgated, so why now? Why do we need to have this extra risk by having the material flying around at high speeds above our heads and over built-up areas? Surely there is a greater risk carrying it in a plane. Is that not one of the reasons why there was no need for safeguards—it was regarded as unnecessary to transport such material by plane? The Government need to be clear with us on that.

My other concern is about the use of private companies to transport any nuclear materials by air. One assumes that that will be done under very tight regulations and that the flights will be strictly controlled by Government. Were we to see someone coming along and saying, “I can do this way cheaper than the Government aircraft, or possibly even military aircraft” because of some cost cutting or other, there would be an immense temptation in this era of austerity for people to have a bit of a punt, as they have done in a number of other areas, be it prisons or other sectors, where occasionally people do have lapses because they want to pursue the profit

[Mr Graham Allen]

motive rather than 100% focusing on the public sector. I give way to my hon. Friend, who has far more expertise in this area.

Mr Kevan Jones (North Durham) (Lab): Does my hon. Friend know that there is a grey area? The Ministry of Defence now routinely charters aircraft, especially for heavy lift capability, because there are some cargoes that cannot be transported even with the suite of aircraft that the MOD has. Does he think that, if the MOD were subcontracting or hiring in a transport aircraft, that could also be a concern or need clarifying?

Mr Allen: My hon. Friend has hit the nail on the head. We need to have these matters clarified and I hope that the Minister can tell us or find inspiration to tell us that that is in fact the case.

The Ministry of Defence itself, when talking about military grade nuclear materials being transported, actually said—and we have to listen to these words carefully:

“in over 50 years of transporting defence nuclear materials in the UK, there has never been an incident that has posed any radiation hazard to the public or to the environment.”

One is forced to ask, “What were the non-radiation hazard incidents that took place?” It is common knowledge that a US plane lost a couple of nuclear devices in Spain, or near the coast of Spain. We need to be reassured when we are looking at issues as important as this about what the real facts are. I think we could then relax a little bit more and understand the safety regime, rather than being anxious about things that may not yet be in the public domain. Transparency is one of the most important things that the Minister can bring today. To finish on the joint question from my hon. Friend the Member for North Durham and myself about the use of private firms, if private firms get engaged in this, is that the prelude to a further possible privatisation? If that is a possibility, it is important the Government come back here to explain the regime they wish to use—whether a private charter or a private company—to transport these materials. That way, the whole House can understand how that may happen.

No impact assessment has been carried out, as far as I can tell, on the use of private firms or on the transport of civil nuclear material. I feel the Government may have missed an opportunity to future-proof their legislation by not having an impact assessment in place. I urge the Minister to ask officials whether that can be done even at this point, without delaying the statutory instrument, so that there can be a clear impact assessment. That may yet still be assisted if the consultation goes wider than the ONR and the Civil Aviation Authority. Many other interested bodies would like to say their piece on the matter. A wider consultation would reassure the public that everything possible has been done to ensure that the essential movement of nuclear material has to be carried out with public safety as 100%, rather than 95%, of that driver.

2.51 pm

Owen Thompson (Midlothian) (SNP): My contribution will be relatively brief.

I share a number of the concerns of colleagues about safety. The regulations relate to civil materials, but a lot of comparisons can be drawn with the movement of

military materials. For that reason, we should be looking at this from a different perspective and there should be a larger review of the issues. That is why I will not be able to support the regulations today.

We are looking at this issue from the wrong perspective. The Scottish Government have a policy for storing nuclear materials on site or as near to site as possible and to do whatever is possible to minimise their movement, given the concerns regarding safety and security when this sort of material is moved.

We hear of some instances when there are accidents. Thankfully, none has led to fatalities, but is that just good fortune? The consequences of something going wrong in the movement of the sort of materials we are discussing are so grave that we cannot afford to take any chances and must do whatever we can to ensure the safety and security of our populations. The Government need to go back and look at the regulations as a whole regarding the movement of both civil and military nuclear materials, take these things off the roads and make sure our populations are safe. For those reasons, I cannot support this—

Mr Allen: Of course, these days, sadly, we have to factor in—God forbid—an act of terrorism. So far, we have been talking about accidents. We have heard of road vehicles spinning on black ice and so on. Accidents can also happen in the air, but releasing a dirty cargo over an urban area would be a terrorist’s dream. Will the hon. Gentleman also underline our anxieties, particularly if private firms get involved, about the catastrophic consequences of such an act?

Owen Thompson: I absolutely agree. It is no secret where this type of material comes from. It would not take a genius to sit outside and wait if they wanted to do so, to work out exactly when it was being moved. The best planning in the world can be put in place to maximise security around that, but anyone who wanted to could find a way of working out when this material was being moved. For those reasons, we need to take a completely new look at this and have an absolutely fresh start in how we move, monitor and deal with nuclear material.

2.55 pm

Mr Jones: May I begin by saying what a pleasure it is to serve under your chairmanship, Mr Turner?

I broadly welcome the regulations, because it is a fact of life that nuclear material is transported by air. Anything that provides independent oversight has to be welcome. However, some questions need to be asked.

In her opening statement, the Minister referred to nuclear material from Dounreay, which is material that has been decommissioned from the nuclear process. Then she referred to the transportation of isotopes. From my previous life working with the nuclear industry, I know that there is a big difference between radioactive isotopes used for medical purposes and, for example, fuel rods and other things that are the by-products of the nuclear power industry. In her reply, will she give some definition of what type of material the regulations cover? Do they cover everything in terms of nuclear, from radioactive isotopes used for medical purposes right up to parts that have been decommissioned from Dounreay and other nuclear power stations? If she could give us the broad range of what the regulations cover, that would be helpful.

On the question raised by my hon. Friend the Member for Nottingham North, the explanatory notes state that most of this material would be transported by the Ministry of Defence. Paragraph 10.1 states:

“There is no expected impact on business, charities or voluntary bodies as the Department anticipates that only government assets and not those of private firms will be used to transport nuclear material by air.”

I know from my previous life in the Ministry of Defence that there is military assistance for civil powers for the transportation not just of nuclear material, but other things, by military assets. The costs are then recovered back from the Departments that incur them. Is it a fact that only Ministry of Defence assets will be used? I am not aware of any other Department that has air assets that are able to transport this type of material. Is it just Ministry of Defence aircraft that will be used for the transportation of this material? It would be helpful to have clarity on that.

On the point I raised with my hon. Friend the Member for Nottingham North, there is the issue of how we define what is a military aircraft. We have some very capable aircraft, thanks to the last Labour Government, who purchased the C-17, Voyager and other aircraft after many years of neglect in the Ministry of Defence's investment in transport capability. However, the Ministry of Defence routinely leases aircraft from third parties, some of which are based in a variety of countries. For example, the main suppliers of heavy lift aircraft are Ukraine and some of the other former Soviet republics, because they have the Antonov and other aircraft, which are capable of carrying these large loads. If those are used, they do not have military pilots, navigators or crew. Do they come under the definition of a Ministry of Defence flight? What would happen in respect of the regulation covering those companies, which are hired on a case-by-case basis, and what would be their role? I may be wrong, and somebody may correct me, but I am not aware of any companies in this country that possess those large aircraft. They are mainly foreign companies, so it would be interesting to know what the relationship will be.

Mr Allen: I imagine that aircraft undertaking this particular task would have to be of a pretty high specification or possibly even purpose-built; this material cannot just be strapped into a passenger seat in a jumbo jet. Since there are relatively few movements of that nature, the financial temptation could be to have a private contractor that services many nations to keep such an item of kit airborne and to offer a competitive price, rather than each nation having its own military capability that would be barely or infrequently used. Is that not another reason to be careful, because privately owned aircraft, whether it is UPS or somebody else, could tailor-make a vehicle specifically for that purpose and trade it on a marked down price?

Mr Jones: That is a possibility. On the nature of the material that is going to be transported, I think my hon. Friend is right. I do not think we can strap things into seats in the back of commercial airliners; that is not the way it is done. From what I know, some of the flasks that are needed to protect this material from the impact of a crash need quite a large aircraft. Of the aircraft currently available to the Ministry of Defence, the only one that could possibly fit that would be the C-17, but I do not know whether even that could take it.

Are we going to allow private companies to hire in that type of aircraft, or is it—this might be a possibility—that we have a nation-to-nation agreement with, for example, the United States? It has things like the C-5 Galaxy, which can take larger loads than the C-17. It is a question of what that relationship would be. What discussions have there been with the Ministry of Defence about how the regulations will impact on its regulations in respect of carrying out this type of work? Those are areas that need to be explored.

Paragraph 10.3 of the explanatory notes states:

“The impact on the public sector is expected to be very limited.”

It is quite clear that, for security reasons, those aircraft will sometimes fly in and out of military bases that have security around them. On other occasions they will—and I know that they do—fly into civilian airports that are not run by the Ministry of Defence. For example, Newcastle airport, which I know well, is partly owned by the local authority in the area and partly by a private sector company. What effect will the regulations have on that airport in terms of how it handles the material once it lands? That is important. The explanatory notes say that there will be a “very limited” impact, but what discussions have taken place with civilian airports such as Newcastle if the material is going to be transported in and out of them? I personally see no reason why it should not be, but I would be interested to know what the impact on those airports will be in terms of knowing how to handle the material and how to handle the regulations.

The other issue, which is also in the explanatory notes, is the scope of the regulations. Clearly they cover Scotland, Northern Ireland, England and Wales. What discussions took place between the Government and the organisations that are responsible for environmental issues, such as the Scottish Environment Protection Agency and its equivalent in Wales, before the regulations were laid? Do they have concerns or are they content with the proposals? It would be interesting to know. If, heaven forbid, the situation that my hon. Friend the Member for Nottingham North raised did occur, the local response in Scotland would come from SEPA. I am sure that the Scottish Government would have an opinion on this issue, so what discussions have taken place with the Scottish Government? Are they content with the regulations? Clearly, with the decommissioning at Dounreay, there is a good chance that some of these flights will take off from Scottish soil, so again, what type of discussions have taken place and have any concerns been raised?

Finally, the regulations cover the home countries, but if we are talking about international travel, what is the position of our overseas territories? There may be the possibility of an emergency landing in Gibraltar or one of our other overseas territories—for example, the Isle of Man, especially given its close proximity to Sellafield, where some of this material will no doubt be coming in and going out of. What is the position of the regulations regarding other jurisdictions that are part of the United Kingdom but are not specifically laid out in the regulations? It would be interesting to know whether they cover those areas as well. I assume they do, but I would appreciate it if the Minister addressed that point.

In summary, I have no problem with the regulations. They are a sensible move forward, but my hon. Friend

[Mr Kevan Jones]

the Member for Brent North raises an interesting point in asking why they have not been introduced before. If the public are going to have confidence in the regulations, it is important that any concerns that are raised not just today, but in future, are dealt with publicly. I am aware of the steps that are taken when military nuclear material is transported, and I can say to my hon. Friend the Member for Nottingham North that it is not simply a case of putting it in a bucket or cardboard container and putting it on an aeroplane; measures are taken so that even if there is a crash, things are in place to ensure that there is not a leak of material, but I understand people's concerns. When we are doing this, we have to reassure not just our constituents, but the wider public. We do not want to breach security and the Minister is right not to go into that area, but I think some broader reassurance is needed.

3.7 pm

Patricia Gibson (North Ayrshire and Arran) (SNP): The public are deeply concerned about the transportation of nuclear material through residential streets by vehicles. We hear that and we understand it. How do we imagine the public would react to nuclear materials criss-crossing the skies over their towns and cities? I think we can all imagine that the public reaction would be one of great fear and alarm, quite understandably and justifiably.

The hon. Member for Brent North made an excellent point earlier. There is a question about the wording of the document. Perhaps it is just semantics and the way the document has been written, but there is a concern about whether this has already happened. If it has, why are we hearing about it now? Is there some national security reason why we cannot hear about it? I doubt that very much.

Mr Jones: That is the point I was making, in terms of where the regulations meet, for example, the Ministry of Defence's responsibilities. I do not think it is a great secret that the Ministry of Defence already transports nuclear material. The interface between the two will be important in knowing what the crossover is, and what the new future is. Who actually has supremacy regarding the regulations that govern that, whether it is civilian nuclear material or military nuclear material?

Patricia Gibson: If this stuff is going to be transported by air—I will say more about that in a minute—I think the public really have a right to know. They will be quite justifiably angry and will feel let down if this has been going on and they were not party to that information. We are talking about potentially extremely serious consequences if things go wrong. Sod's law is that eventually, no matter what regulations are put in place, things can go wrong, and quite often, they are not the things that are expected to go wrong.

I want to draw attention to a point my hon. Friend the Member for Midlothian made earlier. The Scottish Government's policy on the transportation of nuclear waste is that it should be near surface and near site, storage and/or disposal facilities, where the waste can be monitored and retrieved if required, and the need for transportation over long distances can be minimised.

I would imagine, although I do not know for sure, that if nuclear materials are transported by air, it will, by definition, be a long distance, otherwise they would not be transported that way. I am concerned about the length of these distances and why we are moving from the current system to try and include air travel, which is fraught with danger.

I also ask the Minister to what extent, if at all, the Scottish Government have been consulted on these points. Have they simply been notified or have they not been notified? What input have we had from SEPA? I would like answers to these questions, because we are talking about public safety, which is really important. The transportation of nuclear materials is already a cause of alarm among the public. This will do nothing to allay those fears; in fact, it can only increase them.

3.11 pm

Andrea Leadsom: I am grateful to all colleagues for their contributions. As they have all rightly pointed out, this is a matter of the utmost importance. Reassuring members of the public is absolutely vital, and I take this incredibly seriously.

It has been suggested—and rebutted—a number of times that nuclear materials would be strapped into a passenger seat. Can I reassure anybody listening that that could not be further from the truth? This is one of the most serious aspects of governance and security. The greatest precautions are taken.

All hon. Members were right to raise their concerns and I will try to whistle through the answers to all their questions. I think I have them all here and obviously I am happy to answer any further questions. Specifically, I can tell the hon. Member for Brent North that we brought forward the regulations as soon as we became aware not that there was a gap in what we were doing, but that there was the potential for a gap in the regulatory regime. There are no specific consequences set out in the convention for failing to comply fully by having these regulations, but we are committed to being in full compliance.

A number of Members asked whether we have ever moved civil nuclear material by air before. It has been moved once by air in the UK in 2010. Although there was no specific regulatory regime in place, the air movement in 2010 was conducted under the auspices of the Office for Nuclear Regulation, with all the appropriate safety and emergency response arrangements implemented. We recognise that a formal regulatory structure is necessary and that is exactly what we are legislating for.

Barry Gardiner: The hon. Lady has explained that this took place in 2010, and I am grateful for that clarification. The obvious question that follows is this: why has it taken five and a half years, given that she said the Government wanted to plug that gap as soon as they found out they were in breach? They must have known five and a half years ago that they were in breach. Again, the reassurances that the hon. Lady is giving us do not necessarily match up with the facts that she is telling us.

Andrea Leadsom: It was not understood at the time that a specific regulation—the actual writing of the rules—was required. Today's debate is a further look at the rules. My Department has looked again at the legislation and concluded that, for completeness, the

regulatory environment should be extended to include air transportation. However, I want to be very clear that the actual carrying out of the one movement in 2010 was done absolutely in accordance with all our regulatory and safety and security principles and supervised by the Office for Nuclear Regulation.

Barry Gardiner: Surely the point is that this statutory instrument, if passed, will give the authority the regulatory powers. The hon. Lady gives us a partial reassurance that it supervised what happened, but the point remains that it did not have regulatory powers at that stage, because that is what is being granted here today—if it is. Therefore, I am indeed surprised that it has taken five and a half years for the Government to wake up to the fact that they conducted this transportation of civil nuclear material and were known to have done so by an authority, but not by a competent authority. In knowing that it was not a competent authority, why were those regulations not then put in place?

Andrea Leadsom: Just to be very clear for the hon. Gentleman, at that time it was not believed that this regulation was identified as necessary. It is from a more recent look at the regulation that the Department has decided that this regulation should be put in place in order to be completely in line with the convention. It is not that there was some sweeping under the carpet or whatever; it was only identified more recently that this regulation should be put in place. That is what the Department has done: to act as quickly as possible to put that in place. At no time was there any sense, in reality or otherwise, that the one air movement was not carried out under the auspices, guidance and absolute control of the Office for Nuclear Regulation. The hon. Gentleman is talking about the interpretation of whether the regulations needed to be updated then, and the understanding was that they did not, but a more recent look has suggested that in fact it would be appropriate for the regulations to be updated.

Barry Gardiner *rose*—

Andrea Leadsom: I will give way one final time. I think I have answered the hon. Gentleman.

Barry Gardiner: It is indeed the case that the convention, when it entered into force in 1987, stipulated that it required security to be guaranteed for international transport, including air travel. Therefore, will the hon. Lady do two things? Will she enlighten us as to whether the movement that took place in 2010 was international travel and will she tell us—I think she owes us this at least—the date upon which it was realised that these regulations needed to be updated in this way? That is so that the Committee can make a judgment for itself as to whether the Government acted in a timely fashion.

Andrea Leadsom: In answer to the hon. Gentleman's first point, I am afraid I will not give him the answer he seeks about where material was transported to, because that would not—

Barry Gardiner: I did not ask that. I asked whether it was—

Andrea Leadsom: I will not answer the hon. Gentleman, because the fact is that we keep all issues of specific operations absolutely confidential.

Barry Gardiner *rose*—

Andrea Leadsom: No, I am sorry, I will not give way to the hon. Gentleman again. I have answered his questions absolutely openly and transparently. What I am saying to him is that it is not a matter of realising we were in breach; it is a matter of a more recent look that has decided that, for completeness, these regulations should be updated. He is trying to suggest that there has been some sort of coming to the game late, and that is not the case. This is a case of a more recent review of the regulations suggesting that this should be carried out for completeness. That is the end. That is all I am prepared to say on the matter. I will now move on to the other questions.

Mr Jones: Will the hon. Lady give way on that point?

Andrea Leadsom: No, I am sorry. I have completely answered the question.

The hon. Member for Nottingham North asked about the safety of moving nuclear material by air. The Office for Nuclear Regulation would always need to be assured of the robustness of not just the packaging, but all safety arrangements, before any movement by air could take place. All these amendments do is change the regulation of security. The existing safety framework remains completely unchanged. Nothing is changing other than the regulation of security.

The hon. Member for Nottingham North also raised the question of the Ministry of Defence moving material by air, and asked how that differs and whether it has been breaking the international convention. What I can say is that the transportation of nuclear materials for the purposes of the Ministry of Defence is not covered by the convention on the physical protection of nuclear material or the nuclear industry's security regulations; it is an entirely separate matter, and outside the remit of this piece of legislation.

Mr Jones: If the Minister does not know the answer to this question, perhaps she can write to us afterwards. At Dounreay, for example, where there is plutonium, there is a difficulty in determining whether it is a by-product of the civilian nuclear process or whether it will go down the other stream and into our nuclear weapons programme. Is the Minister saying that if this material is deemed to be military it would therefore fall under one regulation, but for this purpose it would go down the other route if it was for civilian use? That would affect what she just told us about the regulations on the transportation of this material. It could be the same material but possibly have different owners.

Andrea Leadsom: The hon. Gentleman's interpretation is correct. First of all, material is identified as being under the auspices of either the MOD or the civil nuclear programme, and the regulation is dealt with accordingly. As I have said, the Ministry of Defence is not covered by either the convention or the Nuclear Industries Security Regulations 2003—it has its own regime—so the definition of which material comes under which regime is something that needs to be identified.

The hon. Member for Nottingham North also asked who moves the material. The amendments to the regulations bring the transport of civil nuclear materials by air clearly under the regulation of the Office for Nuclear

[*Andrea Leadsom*]

Regulation. They do not state what specific organisations will move material. As I say, for security reasons we do not comment on operational decisions made for the specific transport of material, but any organisation carrying out the transportation of nuclear material to, from or within UK airspace would need to be approved as a carrier by the Office for Nuclear Regulation and regulated accordingly.

Mr Jones: Will the hon. Lady give way?

Andrea Leadsom: No, I am going to answer the question about who transports nuclear material, and then the hon. Gentleman may intervene. The hon. Member for Nottingham North asked whether civilian airlines could transport nuclear material. The Office for Nuclear Regulation would be entirely responsible for approving the transport security statement and plans, so no one would be able to fly material without the approval of the Office for Nuclear Regulation. We do not believe that there are any commercial carriers that are capable of securely carrying civil nuclear material, or that currently do so.

Mr Jones: I am a bit perplexed by that, because the explanatory memorandum states that:

“There is no expected impact on business, charities or voluntary bodies as the Department anticipates that only government assets and not those of private firms will be used to transport nuclear material by air”.

Is the Minister saying that the only people who will transport nuclear material will be the Ministry of Defence? I am not aware that her Department, or anyone else, has the transport assets to do that. Perhaps the Minister will come on to this, but could she also answer the point I raised about the MOD subcontracting to private firms?

Andrea Leadsom: As I have already mentioned a couple of times, for security reasons we cannot comment or speculate on different methods of transport, other than to say that the Office for Nuclear Regulation is entirely responsible for the transport plans. As I have already made clear, we do not believe that any commercial transportation group is capable of transferring civil nuclear material, but it is for the Office for Nuclear Regulation to determine all those plans, including the regulation of those who are authorised to carry out the transportation. That includes the vetting of the individuals, the security of the personnel, the security of the vehicles used and the training regimes that are in place.

Mr Allen: I thank the Minister for her answers to my questions. Of course, right now there will not be a civil aviation market for transporting this material, because this has not been going on very much. If air traffic increases, not least because of these regulations, it may start to be an attractive proposition to some people in the civil aviation market. My question becomes relevant at that point. Are we absolutely confident that those people will be held to account and regulated in such a way that in the worst possible case they will as far as possible be terrorist-proof against people who might want to explode one of these things? That is why we have not done this before; it is an enormous risk. Are we

absolutely certain that the risk will be minimised as much as humanly possible if civil airlines undertake this traffic?

Andrea Leadsom: Again, I absolutely respect the hon. Gentleman’s concern and I absolutely share it. First, this is not something that would happen every day. Having looked as a Minister at some of these transportations, I know that the amount of planning is vast, as can be imagined. It is extremely carefully and rigorously carried out by the Office for Nuclear Regulation, which exists to regulate nuclear matters—nothing else. I can absolutely assure him that the safety of the public, the transportation, the staff involved and so on would be completely uppermost in its thoughts.

The hon. Member for North Durham asked exactly what categories of material would be transported. The regulations will apply to a broad range of nuclear materials, as set out in regulation 3 of the 2003 regulations and the schedule to it. Quite a broad range of possible waste is being transported.

Mr Jones: Would that include, for example, medical isotopes? They are perhaps not as great a concern as large radioactive materials from Dounreay and elsewhere, but are isotopes for medical use covered by the regulations?

Andrea Leadsom: Yes, civil nuclear products, which could include a wide range as set out in the 2003 regulations, would potentially all be included. Likewise, the hon. Member for Nottingham North raised the matter of terrorist risk. Again, for security reasons we do not comment on operational security issues, but very robust safety and security measures are in place for all movements of nuclear materials. That is absolutely key.

One hon. Member, possibly the hon. Member for North Durham, asked whether the regulations extend to overseas territories. The answer is no. If there was an operational need, we would discuss putting appropriate regulations in place with the overseas territory.

The hon. Member for Midlothian asked about safety and what happens if there is an accident. Appropriate emergency response arrangements exist at nuclear sites and for all civil nuclear transports across the country. All relevant parties are made aware in advance of any movements and are of course ready to respond in the case of an emergency.

Owen Thompson: On that point, are the relevant agencies police, fire and local authorities? When it comes to nuclear weapons, I know that it is not the case that the fire and rescue services are routinely informed in the local area. The police are not always told locally and the local authority is certainly not told. When the Minister says that all the relevant authorities are told, can she be clear about who they are?

Andrea Leadsom: The hon. Gentleman will appreciate that there is always a balance between telling everyone what is going on, precisely because of the importance of security, and ensuring that the most robust steps are taken to ensure the safety of the public and those involved with transportation.

Mr Jones: I may be wrong, but I understand that gold command in an area is usually informed of those types of transportation.

Andrea Leadsom: Again, I will not comment on specific operational measures. All Members will appreciate that there is a balance between telling everybody and making sure robust steps are in place. The latter is absolutely the case. Clear and careful steps are always taken, just in case, but for security reasons we do not disclose them.

As the hon. Member for North Ayrshire and Arran mentioned, in the event of a movement by air, routes will be carefully planned. Obviously they would not be discussed in advance with members of the public, but the overflight would be carefully considered to minimise any impact on the population. I can also assure her that all appropriate Governments are aware of the proposed changes to the regulations and will be kept involved in discussions of any planned movements; indeed, that is the case today.

Patricia Gibson: On that point, I heard the Minister say earlier that the planning for such operations would be a vast, complicated and security-minded procedure. She also suggested that it would be a commonplace occurrence, or words to that effect. In light of that, I am still not clear. That said, can she enlighten us as to why the change is considered necessary?

Andrea Leadsom: I think that I have been clear about that. The change is merely to ensure that any air movements, rare though they may be, come under the same official regulatory regime as road and rail transport. It is not a change; it is merely an update to ensure that the regulation is complete for all potential modes of transport. It is not changing any policy.

Barry Gardiner: Will the Minister give way?

Andrea Leadsom: I have given way a lot. I would like to move on to my conclusion now.

Finally, the hon. Member for North Ayrshire and Arran asked why we move radioactive waste over long distances. I reassure her that the swap announced by the Prime Minister in March 2016 is not a movement of radioactive waste; it is a movement of high-value nuclear material, as I explained in my opening remarks, in exchange for medical isotopes, which are important right across Europe for use in things such as scanners and so on. We are not moving radioactive waste long distances.

In closing, it has been a useful discussion. I absolutely understand and endorse the concerns of all Members. They are quite right to raise questions about safety and

so on. It is absolutely vital. As I said in my opening remarks, the effect of the amendment is to bring the transport of civil nuclear material by air within the same stringent regulatory framework for security as the transport of such material by land or sea. This means that the independent Office for Nuclear Regulation will have the same oversight and approval function in relation to the security of civil nuclear material transported by air as it has in relation to the transport of such material by land or sea.

The regulations will help ensure that the UK gives full effect to the convention on the physical protection of nuclear material, and they will allow us to consider all credible options when planning moves of nuclear material to ensure that we make the right decision in terms of safety and security. Nuclear material can be safely and securely transported by air, and it is right that our regulatory framework facilitates that. Any future movement of civil nuclear material by air will be subject to regulation and oversight by the independent nuclear regulator, the Office for Nuclear Regulation. I therefore commend the regulations to the Committee.

Question put.

The Committee divided: Ayes 11, Noes 6.

Division No. 1]

AYES

Bruce, Fiona	Leadsom, Andrea
Davies, Byron	Lee, Dr Phillip
Garnier, Mark	Murray, Mrs Sheryll
Green, Chris	Pickles, rh Sir Eric
Jenkyns, Andrea	Smith, Julian
Jones, Mr Kevan	

NOES

Allen, Mr Graham	Lynch, Holly
Gardiner, Barry	McDonagh, Siobhain
Gibson, Patricia	Thompson, Owen

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Nuclear Industries Security (Amendment) Regulations 2016.

3.35 pm

Committee rose.

