

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT NUCLEAR SAFEGUARDS (FISSIONABLE  
MATERIAL AND RELEVANT INTERNATIONAL  
AGREEMENTS) (EU EXIT) REGULATIONS 2018

*Monday 14 January 2019*

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**The Committee consisted of the following Members:**

*Chair:* MR VIRENDRA SHARMA

- |  |   |
|--|---|
| † Beckett, Margaret ( <i>Derby South</i> ) (Lab)   | Hepburn, Mr Stephen ( <i>Jarrow</i> ) (Lab)                 |
| † Davies, Chris ( <i>Brecon and Radnorshire</i> ) (Con)  | † Jenkyns, Andrea ( <i>Morley and Outwood</i> ) (Con)       |
| † Docherty-Hughes, Martin ( <i>West Dunbartonshire</i> ) (SNP)   | † Kawczynski, Daniel ( <i>Shrewsbury and Atcham</i> ) (Con) |
| † Elliott, Julie ( <i>Sunderland Central</i> ) (Lab)   | † Kerr, Stephen ( <i>Stirling</i> ) (Con)                   |
| † Ellman, Dame Louise ( <i>Liverpool, Riverside</i> ) (Lab/Co-op)  | † Leigh, Sir Edward ( <i>Gainsborough</i> ) (Con)           |
| † Grant, Bill ( <i>Ayr, Carrick and Cumnock</i> ) (Con)  | † O'Brien, Neil ( <i>Harborough</i> ) (Con)                 |
| † Harrington, Richard ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) | Reeves, Ellie ( <i>Lewisham West and Penge</i> ) (Lab)      |
| † Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> )   | † Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)                |
|  | † Whitehead, Dr Alan ( <i>Southampton, Test</i> ) (Lab)     |
|  | Sarah Rees, <i>Committee Clerk</i>                          |
|  | † <b>attended the Committee</b>                             |

## Third Delegated Legislation Committee

Monday 14 January 2019

[MR VIRENDRA SHARMA *in the Chair*]

### Draft Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018

6 pm

**The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Richard Harrington):** I beg to move,

That the Committee has considered the draft Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018.

I am honoured, Mr Sharma, to serve under your chairmanship for the first time on a Delegated Legislation Committee. If *Hansard* is not listening, I would like to ask the Whips what their secret agenda is in providing us with sweets. I will not go into that, but I thank them very much.

The regulations define the terms “fissionable material” and “relevant international agreement” for the purpose of sections of the Energy Act 2013, as amended by the Nuclear Safeguards Act 2018. They are linked to the Nuclear Safeguards (EU Exit) Regulations 2018, which will be considered in the Commons tomorrow and in the Lords very shortly afterwards.

I shall begin by emphasising that the two sets of regulations are essential to establishing our domestic regime, whether we leave the EU with a deal or not—their effect will be exactly the same in either outcome. The powers to make this secondary legislation are found in the 2013 Act, which we amended with the 2018 Act. The territorial extent and application of the regulations is to England and Wales, Scotland and Northern Ireland. A second set of affirmative resolution regulations will be debated tomorrow, after Parliament has considered these regulations. Those regulations will set out the detail of the legal framework for our new domestic safeguards regime and, in certain places, use the terms defined in the regulations before us.

To remind hon. Members who are perhaps less familiar with the matter than I or the Opposition spokesman, the hon. Member for Southampton, Test, nuclear safeguards are accounting, reporting and verification processes designed to assure and demonstrate to the international community that civil nuclear material is not diverted unlawfully into military or weapons programmes. That is not to do with nuclear safety and nuclear security.

We have a very good record as a responsible nuclear state and were a founding member of the International Atomic Energy Agency in 1957. The IAEA ensures that states honour their international legal nuclear safeguards obligations in connection with the non-proliferation treaty, and basically stops civil nuclear being used for military purposes.

We have always voluntarily accepted two safeguards agreements with the IAEA: a voluntary offer agreement and an additional protocol, which is defined in the regulations. Those bilateral agreements will replace the trilateral

safeguards agreements between the UK, the IAEA and Euratom that have been in place since 1978. We need that to enable the continuity of civil nuclear trade with our international trading partners.

The Government have prioritised putting agreements in place with key countries—Australia, Canada, Japan and the US—that require nuclear co-operation agreements, unlike others. NCAs are legally binding treaties that allow states to formally recognise their willingness to co-operate with each other on civil nuclear matters. We have now concluded—and Parliament has now approved—the ratification of replacement bilateral NCAs with Australia, Canada and the US. We already have a bilateral NCA with Japan.

I reiterate the Government’s commitment to establishing, by December 2020, a regime that is equivalent in effectiveness and coverage to that currently provided by Euratom, and that will exceed the commitments that the international community expects us to meet. I am confident that the fissionable regulations and nuclear safeguards regulations do that. We want to establish a regime that will operate in a similar way to the existing arrangements, taking account of best practice in our regulation making and considering the need to minimise disruption to industry, which were undertakings I gave during the passage of the Nuclear Safeguards Bill.

These regulations and the nuclear safeguards regulations are structured to require information concerning nuclear safeguards to be supplied to the relevant entity, whether that is the Commission or the Office for Nuclear Regulation. The regulator may then forward that, as appropriate, to the IAEA.

Turning to the regulator, the ONR, Members will be pleased to hear of the significant progress it has made in the set-up of the domestic regime since I last updated Parliament in October. From this month—in the past couple of weeks—our domestic regime has commenced parallel running alongside Euratom, processing and checking reports received from industry through our IT system—the safeguards information management and reporting system—and producing the declarations required to enable the UK to meet its international obligations. We have been running the scheme in parallel so that we have time in the next few weeks, if we need it before the end of March, to see whether any adjustments need to be made.

Another point made during the passage of the Bill was about recruitment of suitable inspectors. I am pleased to report that the ONR’s recruitment target for the first phase has been met: 16 safeguards officers are in place, which is seven more than the minimum of nine required to deliver the regime at the end of March; and four nuclear material accountants have been appointed, so 20 are in post.

Between July and September last year, my Department held a consultation on the content of these draft regulations and the nuclear safeguards regulations. In total, 28 formal responses were received. At the end of November we published our response. No major changes to these regulations were suggested.

I feel that I ought to go through the detail of the draft regulations, if hon. Members will bear with me for a few hours—*[Interruption.]* I am just checking whether anyone is listening, Mr Sharma, and I am pleased that you were. I will not be a few hours, but I feel it is important to set out the detail for the record.

The 2013 Act defines various elements of qualifying nuclear material and provides that “fissionable material” and “relevant international agreement” be defined in regulation. Fissionable material forms a component of “qualifying nuclear material”, which is defined in section 76A(6) of the Act, as amended by the Nuclear Safeguards Act. Fissionable material is therefore to be defined as: plutonium-239; uranium-233; uranium containing the isotopes 235 or 233, or both, in an amount such that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; and any material containing one or more of those. Basically, we use the definitions in the IAEA statute.

The second definition in the draft regulations is of a “relevant international agreement”, again under the amendments made by the Nuclear Safeguards Act. There are six agreements. The first two were signed on 7 June last year, and are between the UK and the IAEA. The other four are with other states: new bilateral agreements between the UK and the US, Canada and Australia were signed in 2018, and the existing one with Japan was signed in 1998. Parliament approved the ratification of the new bilateral agreements on 19 December last year.

The definitions contained in the draft regulations are of importance, as the nuclear safeguards regulations, which the House will consider tomorrow, will apply to qualifying nuclear material, including fissionable material. The nuclear safeguards regulations will also require operators to provide additional nuclear safeguards information to the ONR on qualifying nuclear material, and to the Secretary of State on certain non-nuclear materials, which are subject to a relevant international agreement, as defined in these draft regulations. I look forward to contributions of right hon. and hon. Members on the proposed definitions.

6.9 pm

**Dr Alan Whitehead** (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma. It is sort of a pleasure to continue with our most cordial debate about the process of nuclear safeguards as they concern exiting the European Union, and what sort of regime we should have in place if we are no longer a member of Euratom.

We clearly need to put several things in place relating to nuclear safeguards. I will not repeat what the Minister said about the scope and coverage of nuclear safeguards, of which we became fully aware during the passage of the Bill, other than to say that we may both have become a little proof to the acronyms and obscure sayings that peppered that Bill Committee, so I apologise if any hon. Members who were not present have no idea what I am talking about—we got well into the legislation.

The statutory instrument is pretty simple. As the Minister said, it sets the stage for the wider statutory instrument that will be considered tomorrow. I am pleased that they are being considered the right way round; we could not do one without having done the other. This statutory instrument puts into legislation two important terms, about which it will be vital to be clear when we discuss the statutory instrument tomorrow afternoon.

The first term, as the Minister said, is fissionable material. Although it has quite a long definition attached, as far as I can see, it is a pretty straight transposition of what was previously the case as part of our membership of Euratom and what we had to deal with there, and therefore, what will be applicable for the discussion that should proceed afterwards.

The second definition concerns a relevant international agreement. We had some discussion during the passage of the Bill about relevant international agreements and what had to be done. As the Minister has outlined, a number of treaties were made with third party countries and the IAEA through Euratom, of which we were a member, on our behalf. Therefore, if we leave Euratom and we are still technically dealing with what was treated in the Bill as a contingency, but which we are now close to, we will no longer be covered by those international treaties and we will effectively have to negotiate them anew.

At the time of the Bill Committee, I thought that would be quite a task, and I think the Minister concurred that there was a fair amount of work to be done, but I see in October’s “Report to Parliament on the Government’s Progress on the UK’s Exit from the Euratom Treaty” that we have negotiated those international treaties with Australia, Canada and the United States, and that the voluntary agreement with the IAEA is in place. It is on the record that those agreements were laid before Parliament and ratified on 17 December, so they are done and dusted.

What is missing, however, is a possible treaty with Japan. That is puzzling, because during the passage of the Bill, the Minister said to me:

“The Government have the power to conclude international treaties under their prerogative powers. Of course, that cannot automatically change domestic law or rights and cannot make major changes to the UK’s constitutional arrangements without parliamentary authority. That remains the case for international agreements relating to safeguards that are currently under negotiation—for example, the nuclear co-operation agreements currently being negotiated with the US, Canada, Japan and Australia, and the new safeguards agreements with the IAEA. Parliament will therefore have the opportunity to consider those agreements before they come into force.”—[*Official Report, Nuclear Safeguards Public Bill Committee*, 2 November 2017; c. 56.]

I think the progress document came about as a result of an amendment that was agreed to the Bill, so I am grateful for that. It says:

“Good progress has also been made in discussions with Canada and Japan...The UK has had”—

I emphasise the tense—

“a bilateral NCA in place with Japan since 1998. The UK and Japan have had detailed discussions on this, and have now commenced negotiations formally to put in place arrangements to ensure that this NCA remains operable following the UK’s withdrawal from Euratom. Given this progress, we are confident that all priority NCA arrangements will be in place to enable international cooperation in the civil nuclear sector.”

Although there appears to have been an NCA in place with Japan, it is clear, both from what the Minister said at the time of the Nuclear Safeguards Act 2018 and from what has been said in the progress document, that there are negotiations and that those negotiations are intended to end in arrangements being in place so that this NCA remains operable. There may be a very good reason why the NCA that was originally in place, but has been a subject of negotiations, is not before us now and has not gone through the process that, as I just mentioned, has now been completed for those other agreements, but it is certainly the case that there is no

[*Dr Alan Whitehead*]

new treaty with Japan in place at the time of this SI discussion. Therefore, in principle, the definition of international agreements is not fully completed in time for the discussion tomorrow.

**Stephen Kerr** (Stirling) (Con): Given the fact that the Minister has fulfilled every single one of the commitments he has given to the House and to the Business, Energy and Industrial Strategy Committee, of which I am grateful to be a member, should we not put some trust in the stated intentions that the Minister has given us in his speech in this Committee?

**Dr Whitehead:** Yes, I fully concur with the hon. Gentleman's point; in overall terms, what was said would be done, has been done. I appreciate that it was quite a difficult effort to get that done, but it has been done and I am delighted to see that it is all there in the very obscure Journal Office book of treaties that I had to go and find in a corner somewhere to ensure that they were there.

I do not for a moment want to say that this is a dereliction by the Minister or that the sky will fall in because this is not complete, but I want to draw attention to the fact that there appears to be some doubt about whether the NCA we previously had in place with Japan is sufficient to get us over the line, or whether a new treaty needs to be sorted out in time for these new arrangements to come into place and to be within the definition of international treaties. I merely want to hear from the Minister which of those positions is the correct one, or whether there is some ambiguity between the two.

I do not intend to delay the Committee to any great extent—I think I have spoken beyond five minutes, but I have tried my hardest not to—nor do I think we need to divide the Committee on this particular point, but I want to hear clearly what the position is on Japan, why it is not there and what the circumstances are under which we can reasonably safely proceed, assuming that the previous NCA is good enough for our future purposes, or, if it is not good enough, what is being done to make it better.

6.19 pm

**Martin Docherty-Hughes** (West Dunbartonshire) (SNP): It is nice to see you in the Chair, Mr Sharma. I will not keep the Committee long. From the Government's

approach, especially given this legislation was announced in the Queen's Speech, I recognise the importance that everyone gives the issue of leaving Euratom. I am sure the Minister appreciates that, from my perspective, that is not a good step. Nevertheless, it is a step that has to be made.

I recognise that the Government included specific stakeholder group workshops for the devolved Administrations. As that process continues in the implementation, whether the legislation is agreed tomorrow or we leave the European Union without an agreement, I hope the Minister will commit to continuing that discussion and engagement.

6.20 pm

**Richard Harrington:** I will be brief for two reasons: first, I would like not to ruin further the Labour Whip's birthday; secondly, I would not like to keep Labour Members from attending the parliamentary Labour party meeting that I understand is going on. I am sure the leader of the Labour party will be delighted if you, Mr Sharma, attend in a different capacity from your chairmanship, and I am sure the hon. Member for Southampton, Test will be able to speak for longer than five minutes in that meeting.

Of the two points raised, I will deal with the Japan issue first. A bilateral NCA between the UK and Japan is already in place. It is not like the other one. I confirm that it will remain in place following the UK's departure from the EU. It is not necessary to conclude a new NCA with Japan. We are having detailed discussions with the Japanese on this issue and negotiations to make sure that if any adjustments are needed, they will be made. Without doubt, that the agreements remain operable after our exit from Euratom is very important, but I really am not concerned about that.

In response to the hon. Member for West Dunbartonshire, we have every intention of continuing discussions with the Scottish Government. I thank him for saying that, but we have a series of meetings not just with the devolved Assemblies and Governments but with all interested stakeholders. That continues on a regular basis.

*Question put and agreed to.*

6.22 pm

*Committee rose.*