

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT NUCLEAR SAFEGUARDS (EU EXIT)  
REGULATIONS 2018

*Tuesday 15 January 2019*

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

*Chair:* MR VIRENDRA SHARMA

- |  |   |
|--|---|
| † Braverman, Suella ( <i>Fareham</i> ) (Con)   | † Lucas, Ian C. ( <i>Wrexham</i> ) (Lab)                |
| † Brown, Alan ( <i>Kilmarnock and Loudoun</i> ) (SNP)  | † Mann, Scott ( <i>North Cornwall</i> ) (Con)           |
| † Courts, Robert ( <i>Witney</i> ) (Con)   | † Morris, Anne Marie ( <i>Newton Abbot</i> ) (Con)      |
| Creasy, Stella ( <i>Walthamstow</i> ) (Lab/Co-op)  | Murray, Ian ( <i>Edinburgh South</i> ) (Lab)            |
| † Davies, Glyn ( <i>Montgomeryshire</i> ) (Con)  | † Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)            |
| † Harrington, Richard ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) | Twist, Liz ( <i>Blaydon</i> ) (Lab)                     |
| † Harris, Rebecca ( <i>Lord Commissioner of Her Majesty's Treasury</i> )   | Western, Matt ( <i>Warwick and Leamington</i> ) (Lab)   |
| † Harrison, Trudy ( <i>Copeland</i> ) (Con)  | † Whitehead, Dr Alan ( <i>Southampton, Test</i> ) (Lab) |
| † Latham, Mrs Pauline ( <i>Mid Derbyshire</i> ) (Con)  |   |
|  | Ben Sneddon, <i>Committee Clerk</i>                     |
|  | † <b>attended the Committee</b>                         |

# Fifth Delegated Legislation Committee

Tuesday 15 January 2019

[MR VIRENDRA SHARMA *in the Chair*]

## Draft Nuclear Safeguards (EU Exit) Regulations 2018

2.30 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 (EU Exit) Regulations 2018.

I repeat my sentiment of yesterday that it is a pleasure to serve under your chairmanship, Mr Sharma. It is even more of a pleasure because yesterday's Committee was chaired with such brilliant style and dignity that my shadow, the hon. Member for Southampton, Test, was kept to record brevity. It will not help his reputation, but I thank him for his co-operation—and everybody else for theirs. I expect that today's proceedings will be rather longer, but I will try to curtail my own contribution.

The regulations, which were laid before the House on 29 November last year, set out the legal framework of our new domestic civil nuclear safeguards regime after we withdraw from Euratom—the European Atomic Energy Community, for those unfamiliar with the body. The regulations are made under powers set out in the Nuclear Safeguards Act 2018, which amended the Energy Act 2013. They replace the current legal framework, which is provided principally by our membership of Euratom.

I emphasise that the two sets of regulations dealt with yesterday and today are essential to establishing our domestic regime whether we leave the EU with a deal or without one. They are linked to the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018, which set out the definitions of fissionable material and relevant international agreements. I am sure that Members who were in yesterday's Committee will remember them in full, and I will test them later to see whether they were listening—

**Nick Smith** (Blaenau Gwent) (Lab): Bring it on.

**Richard Harrington:** —with the exception of the Opposition Whip. I remind everybody who has not wished the hon. Gentleman a happy birthday that it was his birthday yesterday. I think I have milked that one enough, but I will try to be nice to him in the hope that there will not be several votes this afternoon.

As I said, for the purpose of the regulations, the terms are defined under the 2013 Act, as amended. If it is acceptable to the Committee, I will not repeat what nuclear safeguards are. If anybody would like me to, I am very happy to go over that, but I went over it yesterday and at various points during the passage of the 2018 Act, pointing out that they are distinct from safety and security and are to do with non-proliferation.

The regulations are essential for two reasons. First, they will show the international community that we honour international legal nuclear safeguards, and that we are a responsible nuclear state. Secondly, the detail in the regulations and in yesterday's will, we hope, retain public, industry and international trading partner confidence and enable the continuity of civil nuclear trade. We have to ensure that our civil nuclear ambitions continue and are not diminished when Euratom safeguards no longer apply to the UK.

The 2018 Act empowers the Office for Nuclear Regulation to be the regulator for safeguards. It did not do that before; the ONR regulated safety and security. The Act gives the Secretary of State powers to make regulations giving effect to our nuclear domestic regime when we leave Euratom. The regulations perform that function.

The regulations establish requirements on operators of qualifying nuclear facilities. They establish provisions for the ONR to be the new safeguards regulator when it takes over the roles and responsibilities currently with Euratom. Regulations 3 to 33, together with schedule 1, set out the requirements for operators, which include, for example, the record that an operator is required to keep, together with the forms that the operator must send to the ONR. Regulations 7 to 9 set out the requirements for an accountancy and control plan. Regulations 39 to 42 set out the provisions dealing with the ONR as safeguards regulator. Regulation 43 sets out the offences, with regulations 44 to 49 setting out the provisions dealing with notifications of the Secretary of State. Schedule 4 sets out the transitional provisions.

Our Department held an extensive consultation about the regulations; there were 28 responses, and we ourselves responded at the end of November last year. I thank those who contributed, because the comments on the regulations assisted our final policy deliberations. In response, we introduced a specific commencement date of 1 January 2021 for the accountancy and control plans, which gives operators further time to produce the plans, as they requested. We have introduced a new exemption for certain educational establishments holding very small quantities of qualifying nuclear material. We listened to comments on the transitional provisions in schedule 4 and further developed this to support operators and ensure a smooth move from Euratom to our safeguards regime. As part of the consultation we published an impact assessment for the regulations. A final fit-for-purpose nuclear safeguards impact assessment was published on 29 November 2018.

I am pleased to report that there has been good progress on many of the steps required to ensure delivery of a new domestic safeguards regime in the UK. We have signed our bilateral safeguards agreements—we discussed Japan extensively in yesterday's Committee—and they were approved by Parliament on 19 December. The ONR is ready to take on the role and responsibility of the UK safeguards regime. It has been enhancing its capabilities. Several members of the Nuclear Safeguards Public Bill Committee expressed fear about that during the Bill's passage. We heard evidence from Mina Golshan of the ONR explaining possible concerns that the posts would not be recruited and filled. We took those concerns on board, and I am pleased to say that the fears have not been realised. That is not because she was advising incorrectly; until a role is advertised and recruited it is almost impossible to tell what is going to happen.

From January 2019, the domestic regime commenced parallel running alongside Euratom, processing and checking reports received from industry through a system of safeguards managing and reporting. While it is running in parallel, we will have an opportunity to identify any adjustments necessary. We have time to do that before 29 March. On recruitment, which has been of interest to the House, the first phase of recruitment has been fulfilled, with 16 new safeguard officers in place—seven more than the minimum of nine that we felt were required to deliver the regime. Four nuclear material accountants have been appointed, giving a total of 20 in post.

These regulations, together with our international agreements, allow the ONR to deliver a safeguards regime that meets our international obligations from day one after exit. I believe the ONR's capacity and expertise will build over time to be, by December 2020, equivalent in effectiveness and coverage to that currently provided by Euratom. That was our policy intent. It is the means by which the UK will exceed the commitments that we need to give the international community. The entire purpose of this is not to do the minimum required, but to do what we have done since all this started, showing leadership in the world. That is the regime we are aiming for.

I believe the draft regulations, together with the ones approved yesterday are vital to enable us to operate our domestic civil nuclear industry. They will deliver the Government's commitments to establish a new regime by December 2020 that is equivalent in effectiveness and coverage to that currently provided by Euratom, and to meet international obligations from day one of exit. In certain respects the safeguards commitments set out in the new bilateral safeguards agreed between ourselves and the International Atomic Energy Agency will be exceeded. I very much look forward to hearing what hon. Members have to say.

2.39 pm

**Dr Alan Whitehead** (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship for the second day running, Mr Sharma. As the Minister says, clearly your presence instilled in me a modicum of brevity, which I hope I can continue this afternoon.

**Ian C. Lucas** (Wrexham) (Lab): Hear, hear.

**Dr Whitehead:** I knew I would get support for that.

This statutory instrument is really about two things: first, getting in place the regulations that will govern the process of nuclear safeguarding—inspections and all the other activities that go with it—and secondly, placing regulation into the hands of the Office for Nuclear Regulation. The draft regulations before us are pretty extensive and obviously it is not possible to go through them line by line—certainly it has not been possible for me, although it may have been possible for other Committee members.

I take it—it would be helpful if the Minister confirmed this—that according to the explanatory memorandum to the SI, some of the changes made are minor and consequential amendments to legislation, and the regulations as drafted a pretty exact parallel to what was the case under Euratom, and therefore enable that full range of inspection to take place to Euratom standards. Is that the Minister's understanding?

**Richard Harrington:** That is my understanding, and I am very pleased to put that on the record.

**Dr Whitehead:** The second part of the question before us is the position of the ONR in this matter. As I am sure hon. Members will know, the ONR has a large number of functions. The nuclear safeguards function is being added to the ONR's overall set of responsibilities, where previously it was undertaken separately by inspectors appointed by, working for and embedded with Euratom. The inspectors who will undertake the work will now be within the purview of the ONR. As the Minister noted, questions were raised during the passage of the Nuclear Safeguards Bill about the recruitment of inspectors in the number required to carry out the function and how that would be done between the time of the Bill's passing and now. The Minister made some comments both yesterday and today about the recruiting process undertaken by the ONR.

It is sort of good news that the recruiting process seems to have gone well. Certainly we raised some concerns during the passage of the Bill about how that would be done and whether it would be possible in the time available. The Minister said at the start of the Bill process that the aim of the inspection regime was to carry out an inspection regime as good as that under Euratom from the word go. Indeed, the impact assessment accompanying the SI states that 30 to 35 staff will be needed,

“to be able to deliver its functions”—

that is, the ONR's functions—

“to a standard equivalent in effectiveness and coverage as that currently provided by Euratom”.

That is the gold standard as far as staffing is concerned. The Minister said both yesterday and today that additional inspectors had indeed been appointed and that the ONR's recruitment target for the first phase has been met: 16 safeguards officers are in place, he said, which is seven more than the minimum of nine required to deliver the regime at the end of March. As I understand the position, we have inspectors in place to carry out inspection to an international standard, but not to the level previously set out in the regime overseen by Euratom.

The explanatory memorandum for today's SI states:

“It is intended that these agreements”—

the international agreements mentioned yesterday and today—

“combined with these Regulations, will allow ONR to establish a new regime which will deliver international standards from day one of exit, building, over time, to be equivalent in effectiveness and coverage to that currently provided by Euratom, and which will exceed international standards.”

The reality is that as far as the ONR is concerned, our present level of recruitment of inspectors allows us to get by, but does not allow us to reach Euratom standards. Although that seems to be a satisfactory recruitment process in terms of getting to those international standards, it falls fairly well short of the aim of the ONR's operation, as indicated at the time of the Bill.

It may be that since the SI deals with a potential abrupt and total EU exit on 29 March, being able to carry out inspections that meet an international standard on 1 April is all that is required, but I would be interested to hear from the Minister how quickly it is proposed that we can get up to those Euratom standards, perhaps during

[Dr Whitehead]

a transition period. That inspection regime was set out as the gold standard at the time of the Bill, and meeting its standards appears to still be the intention of the Government. I hope the Minister will be able to assure me on that point, and perhaps add a few points about the further recruiting process necessary to get us to that position.

The second issue I will raise is the cost of setting up the ONR to carry out its new functions. As Members who sat on the Nuclear Safeguards Public Bill Committee will recall, we were informed by—among other things—the explanatory notes to the Bill that the cost of setting up the ONR, its computer systems and so on was potentially up to £10 million. Now, we see in the explanatory memorandum for this piece of legislation that the cost of that task will be something like £28 million.

I wonder why there is that substantial variation between what we were told at the time of the Bill and what is before us today. Is it just that the estimates were wrong at the time of the Bill? Is it that additional costs have been added on to the setting up of the ONR? Is it perhaps that, given the situation we find ourselves in, we will technically still be within the Euratom orbit for 20 months should there be a transition period following Brexit? Presumably, those Euratom inspectors would continue their work for that period of time while the newly recruited inspectors work alongside them. Is it that additional cost that is creating those very inflated figures? On its face, it looks like the estimates that we were given at the time of the Bill were way out, and while the running costs appear to be about the same as was suggested at the time of the Bill, that figure looks very different. I ask the Minister to enlighten me about why there is such a difference, and whether he himself is happy with it, since I think that money will come out of Departmental funds. In any event, that substantial difference can be happily passed through as we move towards implementing this new regime.

Subject to the answers to those two questions, we do not intend to oppose the statutory instrument, because we think that it is very important that the regulations, and proper running of the system under the ONR, are fully in place as soon as possible. We therefore welcome the fact that the regulations are, as far as I can see, clearly in place and that we will be able to get up and running with an inspection regime from a very early stage.

2.50 pm

**Richard Harrington:** I thank the shadow Minister for his two very interesting and significant points. First, on the matter of staffing and ONR recruitment, 30 to 35 staff

was an estimate, including administrators, that the ONR made for the number of staff that it required. It now has a team of 20 in place—that is 16 and four—including inspectors and nuclear material accountants. The ONR is satisfied with progress to date. That is all I can say. That was the estimate in the first place, but it is very satisfied that what it has will provide the ability to deal with international standards, but not yet the gold standards to which the hon. Gentleman referred. At this stage, the ONR is satisfied and believes that it may require fewer people in total than it first thought. It is not because of a lack of recruitment or of suitable people. It knows the legal duty it has to fulfil; its legal brief is to get to Euratom standards as quickly as it can. I would not like it to be thought that this is a failure of recruitment or anything like that. However, we rely on the ONR, because it is the regulator.

**Dr Whitehead:** I thank the Minister for that information. It may well be the case that there will be a period of parallel running during a transitional period. After all, the regulations are essentially designed to start us off in a no-deal Brexit. If there is another form of Brexit, there will be a transition period. Is the Minister's intention to continue with the reporting arrangements that he set out for the House at the time of the passing of the Bill, to give a regular update on those sort of changes as the new regime gets under way?

**Richard Harrington:** Yes, it is our intention to do so, exactly as we have been doing up to now. I know that the hon. Gentleman, and I hope many people, will read such updates. They will certainly be provided, as we said.

The second point concerned the financial side—the increase in costs between the original estimates and the impact assessment produced today. The hon. Gentleman is correct. The transitional costs have increased since the ONR has had more information and we have had a better understanding of its activities. The difference in cost is based on what we estimate to be higher costs during an implementation period to get to Euratom standards. They reflect the fact that the ONR will be able to deliver an international standard safeguards regime from 1 April 2019, and that we will develop the regime to achieve Euratom equivalents by 2021. The hon. Gentleman is correct that that is an increase in cost. Best endeavours were used to do the estimate but, as it has become reality, the costs have come out higher.

*Question put and agreed to.*

2.54 pm

*Committee rose.*