EXPLANATORY MEMORANDUM TO

THE NUCLEAR INDUSTRIES SECURITY (AMENDMENT) REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Nuclear Industries Security Regulations 2003 ("the 2003 Regulations"), which require the civil nuclear industry to make detailed security arrangements, subject to oversight and approval by the independent Office of Nuclear Regulation ("the ONR"), to ensure the security of civil nuclear premises, material, and sensitive information and technology. Part 3 of the 2003 Regulations makes provision for the security of civil nuclear material in transport, but expressly excludes air transport, so there is no requirement for detailed security arrangements to be made if such material is transported by air (and accordingly the ONR has no oversight role). These Regulations bring the transport of civil nuclear material by air within the regulatory framework that applies to the transport of such material by land or sea, and gives the ONR the same oversight and approval function in relation to the air transport of civil nuclear material that it has in relation to transport by land or sea.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland so in the Department's view, the territorial application of the instrument is such that the instrument will not be subject to certification for English votes purposes.

4. Legislative Context

4.1 The 2003 Regulations were made under powers in the Health and Safety at Work etc Act 1974 and the Anti-terrorism, Crime and Security Act 2001. By virtue of article 4(a) of, and paragraph 1 of Schedule 1 to, S.I. 2014/469, the 2003 Regulations are to be treated as regulations made under the Energy Act 2013 ("the 2013 Act"). Accordingly, to amend the 2003 Regulations the Department relied on powers in the 2013 Act.

4.2 These Regulations are 'nuclear regulations' for the purposes of section 74 of the 2013 Act. In accordance with section 113(3) of that Act, they are being made under the affirmative procedure, as they are both the first nuclear regulations to be made under the 2013 Act, and because they include provision creating a new criminal offence (by expanding the scope of the offences under regulation 25 of the 2003 Regulations).

4.3 The UK is a party to an international treaty, the Convention on the Physical Protection of Nuclear Material ("the CPPNM"), which requires signatories to have in place a legislative and regulatory regime to ensure the security of civil nuclear materials stored or in transport in that state. The 2003 Regulations are the primary means by which the UK has implemented this obligation under the CPPNM. These Regulations will help ensure that the UK gives full effect to the CPPNM.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for the Department of Energy and Climate Change, Andrea Leadsom, has made the following statement regarding Human Rights:

"In my view the provisions of the Nuclear Industries Security (Amendment) Regulations 2016 are compatible with the Convention rights".

7. Policy background

What is being done and why

7.1 Ensuring the security of civil nuclear material in transport is both a key policy priority of the Department and an obligation of the UK under the CPPNM. The UK is considered to be a global leader in the field of civil nuclear security, so the Department aims to demonstrate best practice in our domestic security arrangements. As noted in paragraph 2.1 above, the 2003 Regulations provide a detailed regulatory framework, subject to oversight and approval by the independent nuclear regulator, that makes specific provision to ensure the security of civil nuclear material transported by land and sea.

7.2 The first key element of this regulatory framework is that any carrier of such material must be approved by the ONR. To become an approved carrier, the carrier must submit, and have approved by the ONR, a transport security statement ("a TSS") that the carrier undertakes to comply with. For the ONR to be able to approve a TSS, the TSS must describe the carrier's standards, procedures and arrangements relating to the suitability of its personnel, how temporary storage of nuclear material during the course of or incidental to its transport will be provided (including the security of premises used for such storage), and what the steps will be taken by the carrier if an emergency occurs (including how it proposes to regularly practice its emergency procedures).

7.3 The second key element of this regulatory framework is that any time an approved carrier proposes to transport the most proliferation sensitive materials (Category I and II civil nuclear material as set out in the Schedule to the 2003 Regulations – slightly different arrangements apply to the transport of Category III civil nuclear material), it must have in place and comply with a bespoke Transport Plan approved by the ONR. The Transport Plan must describe in writing the measures to be adopted to ensure the security of the nuclear material during the course of the transport, whilst the material is loaded or unloaded, and during any period of temporary storage during the course of or incidental to its transport. The carrier must also comply with any direction made

by the ONR in relation to the transport and will be liable to criminal sanctions if it does not.

7.4 The transport of civil nuclear material by air is uncommon. The Department considers however that even so, such transports should still be subject to oversight by the independent nuclear regulator. The ONR's involvement will ensure that best practice is followed and an appropriately high level of security is maintained in relation to the transports. Bringing the air transport of civil nuclear material within the comprehensive regulatory framework that applies to the transport of such material by land or sea will also ensure that the UK fully complies with its obligations under the CPPNM and maintains its standing as a global leader in the field of nuclear security.

8. Consultation outcome

8.1 The Department can confirm that that the ONR were consulted as required under s.74(7)(a) of the 2013 Act during the drafting process for these Regulations. Given the subject matter of these Regulations the Department also considered it to be appropriate to consult the Civil Aviation Authority.

9. Guidance

9.1 The ONR issues detailed guidance as to how to comply with the requirements of the 2003 Regulations. We are liaising with them to consider how best to reflect the amendment made by these Regulations in that guidance. It should be noted that this guidance is not placed in the public domain for security reasons.

10. Impact

10.1 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. We are not aware of any private sector or civilian transport providers interested in or capable of securely transporting civil nuclear material by air.

10.2 Accordingly, the common commencement date has not been used in relation to this instrument because there is no expected impact on business.

10.3 The impact on the public sector is expected to be very limited. These Regulations increase the scope of the ONR's regulatory responsibilities and places new obligations on public sector bodies wishing to transport civil nuclear material by air. However as such new responsibilities and obligations mirror existing responsibilities and obligations in relation to the transport of civil nuclear material by land and sea, and as the Department does not anticipate that there will be significant numbers of air transports, impact on the public sector should be very limited.

10.4 An Impact Assessment has not been prepared for this instrument, given that there is no expected impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 There is no requirement to impose a review under the Small Business, Enterprise and Employment Act 2015, as this regulatory provision does not relate to a qualifying activity.

13. Contact

13.1 Andrew Clark at the Department of Energy and Climate Change Telephone: 0300 068 2952 or email: andrew.clark@decc.gsi.gov.uk can answer any queries regarding the instrument.