EXPLANATORY MEMORANDUM TO

THE NUCLEAR SAFEGUARDS (EU EXIT) REGULATIONS

2018 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Nuclear Safeguards (EU Exit) Regulations ("these Regulations") set out the detailed legal framework for the United Kingdom's new domestic civil nuclear safeguards regime, after withdrawal from the European Atomic Energy Community ("Euratom"). These Regulations are made under powers set out in the Nuclear Safeguards Act 2018[a] and in the Energy Act 2013[b], as amended by that Act. They will replace the current legal framework provided principally by the UK's membership of the European Atomic Energy Community ("Euratom"). These Regulations are linked to the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018[c] ("Fissionable Regulations") which will be debated in Parliament at the same time.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

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5. European Convention on Human Rights

5.1 The Parliamentary Under-Secretary of State for the Department of Business, Energy and Industrial Strategy, Richard Harrington MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Nuclear Safeguards (EU Exit) Regulations 2018 are compatible with the Convention rights."

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[a] 2018 c.2.
[b] 2013 c.32.
[c] S.I. 2018/XXXX.

6. Legislative Context

6.1 As part of the UK's plans for withdrawal from the European Union, the Nuclear Safeguards Act 2018 was made on 26th June 2018. Certain sections of the Act were commenced on 26th October 2018 and provide for the creation of a domestic nuclear safeguards regime following the UK's withdrawal from the European Atomic Energy Community (Euratom). These Regulations set out the detailed framework for the domestic safeguards regime, with the existing UK regulator for nuclear safety and security, the Office for Nuclear Regulation ("ONR"), taking on this regulatory responsibility.

6.2 The majority of these Regulations commence on exit day. This is to provide for the possibility that the United Kingdom may leave Euratom on that date. In the event that the Withdrawal Agreement provides for an Implementation Period, it is proposed that the EU (Withdrawal Agreement) Bill will provide for the deferral of commencement to the "IP completion day", which is "31st December 2020 at 11pm".

6.3 In addition, these Regulations provide for a later commencement date of 1st January 2021 in the case of regulations 7 to 9, which require an operator to produce an Accountancy and Control Plan.

6.4 Part 1 of Schedule 3 to these Regulations make minor consequential amendments to the Nuclear Safeguards and Electricity (Finance) Act 1978[a], Nuclear Safeguards Act 2000[b] and the Nuclear Safeguards (Notification) Regulations 2004[c] to reflect the fact that on 7th June 2018, the United Kingdom signed a bilateral Voluntary Offer Agreement and an Additional Protocol with the International Atomic Energy Agency ("IAEA"), which will replace the previous trilateral agreement between the United Kingdom, the Commission and the IAEA.

6.5 Part 2 of Schedule 3 to these Regulations repeal that part of retained EU law which comprises Commission Regulation (EURATOM) 302/2005, together with those Commission Decisions, which were made under those Regulations and their predecessor. The Commission Decisions relate to particular safeguard provisions which were directed to a person in the United Kingdom and in force on the commencement date.

6.6 These Regulations are laid before Parliament at the same time as the Fissionable Regulations. It is proposed that the two sets of Regulations will be debated together and that the Fissionable Regulations will be voted on first.

7. Policy background

What is being done and why?

7.1 In a speech made at Lancaster House in January 2017, the Prime Minister, Theresa May, announced that following the vote to leave the European Union in June 2016, the UK will also be withdrawing from Euratom. The UK formally notified the European Commission of its intention to withdraw from Euratom under Article 106a of the Euratom Treaty on 29th March 2017.

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[a] 1978, c.25.
[b] 2000, c.5.
[c] S.I. 2004/1255.

7.2 As the UK's withdrawal from Euratom would also result in Euratom's ceasing to apply safeguards in the UK, these Regulations set out the detailed framework for a new domestic safeguards regime. The ONR will assume the role and responsibilities required to ensure compliance with nuclear safeguards obligations contained in a relevant international agreement, whether with the IAEA, or with a third country. The ONR already regulates nuclear safety and security. In addition, the Regulations require operators to report to the Secretary of State on non-nuclear material under Part 13, in connection with specified Nuclear Co-operation Agreements.

7.3 As a result of the withdrawal from Euratom, the UK's current trilateral safeguards agreements between the IAEA, the UK and Euratom, will become ineffective. Therefore, a new bilateral Voluntary Offer Agreement and Additional Protocol between the UK and the IAEA was signed in June 2018. In addition, new Nuclear Co-operation Agreements have been signed with the United States, Canada and Australia. The UK has had a bilateral Nuclear Co-operation Agreement in place with Japan since 1998 and arrangements are being put in place to ensure that it remains operable following the UK's withdrawal from Euratom. It is intended that these agreements, 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.

7.4 The texts of the new Nuclear Co-operation Agreements and IAEA safeguards agreements have been published and laid before Parliament under the Constitutional Reform and Governance Act 2010[a]. The text of the UK-Japan 1998 NCA is available from FCO Treaties Online.[b]

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the Regulations repeal that part of retained European Union law which comprises European Commission Regulation (EURATOM) 302/2005, which sets out the Euratom system for nuclear safeguards. These Regulations set out the new domestic provisions on nuclear safeguards for the United Kingdom, the majority of which will commence in the United Kingdom on exit day, as set out in the European Union (Withdrawal) Act, which is when the United Kingdom will leave Euratom, unless the withdrawal date is deferred by the EU (Withdrawal Agreement) Bill to the end of the Implementation Period.

[a] CS Australia No.1/2018.
CS Canada No.1/2018.
CS USA No.1/2018.
MS No.13/2018.
MS No.12/2018.

[b] CS Japan 001/1998.

9. Consolidation

9.1 We are not proposing to consolidate. The consequential amendments to existing primary and secondary legislation are not extensive.

10. Consultation outcome

10.1 In January 2018, pre-consultation drafts of these Regulations, and of the accompanying Fissionable Regulations, were published. Following publication, a number of meetings with nuclear operators and trade bodies took place, which contributed towards further development of the Regulations in advance of public consultation.

10.2 A formal public consultation on both sets of Regulations took place between July and September 2018. Two workshops were held with stakeholders during August, which were attended by representatives across various stakeholder groups including trade bodies, universities and the Devolved Administrations. Twenty-eight formal responses to this consultation were received from industry, representative organisations, the ONR, local authorities, universities and independent individuals. The consultation has resulted in a number of amendments to these Regulations, including:

(1) a commencement date of 1st January 2021 for regulations 7 to 9, which require the preparation and submission of an accountancy and control plan, giving operators time to prepare following withdrawal from Euratom.

(2) regulation 32(2) provides a new exemption for certain educational establishments[a] which hold very small quantities of qualifying nuclear material;

(3) regulation 43 on offences has been adjusted, so that some regulations will no longer be subject to an offence, whilst others have been added. The aim is to focus on those parts of these Regulations which directly relate to the UK's international obligations as applied by the IAEA and required by nuclear co-operation agreements. These Regulations will not contain any express provision setting out a regulatory sanction which falls short of an offence, since the Energy Act 2013 does not provide a power to do this. The Energy Act contains additional provisions on enforcement by the ONR;

(4) Part 13 has been developed further and sets out the requirement for operators to report to the Secretary of State on qualifying nuclear material and other items, in respect of certain specified international agreements;

(5) Part 2 of Schedule 3 repeals the historic European Commission decisions setting out particular safeguards provisions; and

(6) Schedule 4 sets out transitional provisions which are designed to smooth the transition between the Euratom regime and the new domestic regime.

10.3 While these Regulations exercise a reserved power, the Devolved Administrations have engaged with the consultation process and have been included in the various write round processes during development of the regulations.

[a] A primary or a secondary school, as defined in section 5(1) and (2) of the Education Act 1996; a 16 to 19 Academy, as defined in section 1B of the Academies Act 2010; or a sixth form college, as defined in section 91(3A) of the Further and Higher Education Act 1992.

10.4 A Government response to the consultation, which summarises the comments received and the changes made to these Regulations, will be available on the gov.uk website, once the regulations have been laid in Parliament.

11. Guidance

11.1 Draft guidance is not being laid with these Regulations

11.2 In line with its approach to guidance in the areas of nuclear safety and security, the ONR is developing assessment principles on regulatory approaches to specific nuclear material accountancy and control matters for ONR nuclear material accountants. ONR will also produce technical assessment guidance on carrying out inspections for ONR inspectors. This guidance will be published in 2019. High level guidance on the Accountancy and Control Plans is also being developed, and will be shared with operators for comment to enable further development, before being incorporated into published versions of the technical assessment principles and technical guidance.

11.3 It is anticipated that this guidance will be in line with international and national relevant good practice. While the guidance will be primarily for ONR inspectors and nuclear material accountants, it will be publicly available for operators to use to develop their compliance with these Regulations. We understand that the ONR will continue to engage closely with operators to assist them in understanding the expectations of them. An ONR industry day is planned for January 2019, where guidance will be discussed.

12. Impact

12.1 The impact on business, charities or voluntary bodies is £0.1m. Operators will face transitional costs as they adapt to the new regime. We estimate these to be between £500,000 and £800,000 in total across all existing operators. There will also be additional compliance costs faced by nuclear operators associated with resource required to carry out their operations at qualifying nuclear facilities in accordance with the new accountancy and control plan. Across all existing operators, we expect these additional costs to be between £60,000 and £100,000 per year.

12.2 The impact on the public sector will involve increased costs to the Office for Nuclear Regulation and to the Secretary of State in setting up and administering the scheme. Transitional costs until December 2020 are estimated to be around £28m, which include the procurement and development of a new IT system and the recruitment and training of new inspectors. The ONR will also incur ongoing costs relating to regulating a domestic safeguards regime, including the cost of preparing for and carrying out inspections, as well as monitoring information provided by operators and reporting to the IAEA. The costs associated with the administration of the domestic safeguards regime is estimated to be between £8.6m and £10.5m per year.

12.3 Some schools and hospitals hold small amounts of nuclear material for educational, research and medical purposes. Regulation 32(2) provides an exemption for primary and secondary schools, 16 to 19 Academies and Sixth form colleges.

12.4 Subject to satisfying the relevant conditions, some hospitals may apply to the ONR for a derogation under regulation 31. We anticipate that hospitals would produce a proportionate Accountancy and Control Plan in accordance with the amount of

qualifying nuclear material in their possession. Across all hospitals we estimate transitional costs to be between £20,000 and £500,000, and ongoing costs to be between £10,000 and £22,000 a year.

12.5 Further funding to the ONR, for costs associated with implementing the new regime, will be provided through to December 2020. The Government recognises the importance of providing clarity on future funding arrangements beyond this date as soon as possible, and work continues to deliver this.

12.6 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses, Regulation 31 provides a derogation, or lesser regime, for qualifying nuclear facilities with limited operation. Although the definition of "qualifying nuclear facility with limited operation", in regulation 2, is based on the amount of qualifying nuclear material used and its purpose, rather than the number of employees, we anticipate that many small businesses with fewer than 50 employees, may satisfy the requirements for a qualifying nuclear facility with limited operation.

13.3 Regulation 32(1) provides an exemption from the Regulations for a person who holds only end products which are used for non-nuclear purposes and which incorporate qualifying nuclear material that is in practice irrecoverable. This regulation is likely to be helpful to some small businesses.

13.4 As mentioned above, the draft Regulations feature an additional exemption for certain educational establishments holding very small quantities of qualifying nuclear material (regulation 32(2). Again, this exemption is likely to be of help to some educational establishments with fewer than 50 employees.

14. Monitoring & review

14.1 The Secretary of State must publish a report setting out the conclusions of the first review of these Regulations before 1st January 2024. Subsequent reports about these Regulations and the Fissionable Regulations, must be published at intervals not exceeding five years.

14.2 The Government, with the ONR, will keep the regime under review to ensure that it is meeting the UK Government's objectives and our international commitments.

15. Contact

15.1 Dr Katrina McLeay, Deputy Director for Euratom Exit at the Department for Business, Energy and Industrial Strategy (Telephone: 0300 068 6208 or email:

katrina.mcleay@beis.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Helen Shirley-Quirk, Director for Nuclear at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Richard Harrington MP at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.