EXPLANATORY MEMORANDUM TO

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

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 (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018 ("these Regulations") define "fissionable material" and "relevant international agreement" for the purpose of sections 76A(6) and 112(1A) of the Energy Act 2013 as amended by the Nuclear Safeguards Act 2018. These Regulations are linked to the Nuclear Safeguards (EU Exit) Regulations 2018 ("NS Regulations") which will be debated in Parliament at the same time as these Regulations.

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. Territorial Extent and Application

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

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

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 (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 As part of the UK's plans for withdrawal from the European Union, the Nuclear Safeguards Act 2018[a] was made on 26th June 2018. Certain sections of the Nuclear Safeguards Act were commenced on 26th October and insert new sections 76A(6) and 112(1A) into the Energy Act 2013. Section 76A(6) defines 'qualifying nuclear material' and section 76A(7) provides that the Secretary of State may by regulation define "fissionable material" which forms a component of "qualifying nuclear material". These Regulations define "fissionable material" as "(a) plutonium -239, (b) uranium 233, (c) uranium containing the isotopes 235 or 233 or both, in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature, and (d) any material containing one or more of the materials described in sub-paragraphs (a) to (c)".

6.2 Section 112(1A) provides for the Secretary of State to specify 'relevant international agreements' in regulations. These Regulations specify six international agreements that constitute a "relevant international agreement" for this purpose. These are a Voluntary Offer Agreement and an Additional Protocol between the UK and the International Atomic Energy Agency ("IAEA"), dated 7th June 2018, together with agreements for the peaceful uses of nuclear energy between the UK and Australia, Canada, Japan and the US.

6.3 These Regulations commence on exit day. This is to provide for the possibility that the UK may leave the European Atomic Energy Agency ("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".

6.4 The content of these Regulations was consulted on at the same time as the linked draft NS Regulations. The definitions of "fissionable material" and "relevant international agreements" have now been placed in these Regulations in order to provide Parliament with the opportunity to vote on them before they vote on the NS Regulations.

6.5 It is proposed that these Regulations will be debated at the same time as the NS Regulations and that the vote on these Regulations will takes place 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 the European Atomic Energy Agency (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.

7.2 As the UK's withdrawal from Euratom would result in withdrawal from EU-wide standards for Nuclear Safeguards, the draft NS Regulations, which accompany these Regulations, set out the detailed framework for a new domestic safeguards regime. The Office for Nuclear Regulation ("ONR") will take on the role and responsibilities required to ensure compliance with nuclear safeguards obligations contained in a

[a] 2018 c.15.

relevant international agreement, whether with the International Atomic Energy Agency or with a third country. The ONR already regulates nuclear safety and security.

7.3 A 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 new domestic regulations, will establish a new regime which will be equivalent in effectiveness and coverage to that currently provided by Euratom, and which will exceed expected 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 Nuclear Co-operation Agreement is available from FCO Treaties Online.[b]

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

8.1 These Regulations are not being made under the European Union (Withdrawal) Act but relate to the withdrawal of the UK from the European Union because these Regulations define two terms which are of importance in the development of the domestic nuclear safeguards regime, which will apply in the UK from exit day.

9. Consolidation

9.1 Not applicable as these Regulations do not amend existing domestic legislation.

10. Consultation outcome

10.1 In January 2018 pre-consultation drafts of these Regulations and of the accompanying NS Regulations were published. Following publication, a meeting with stakeholders took place on 9th February 2018 which contributed towards further development of both sets of regulations in advance of public consultation.

10.2 A formal public consultation on the content of 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 nuclear operators, 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 responses did not suggest major changes to the Fissionable Regulations, which have had no substantive changes.

10.3 While these Regulations exercise a reserved power, there has been interaction with the Devolved Administrations who have engaged with the consultation process and

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[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.

included in the various write round processes during development of both sets of Regulations.

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

11. Guidance

11.1 Separate guidance will not be published for these Regulations.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment was conducted on the NS Regulations when they included the definitions which are now set out in these Regulations. The definitions were found to have no impact on operators.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses since it contains two definitions of general application.

13.2 No specific action is proposed in these Regulations to minimise regulatory burdens on small businesses.

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 NS 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 of 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.