

2021 No. 1406

NUCLEAR SAFEGUARDS

The Nuclear Safeguards (Fees) Regulations 2021

<i>Made</i>	- - - -	<i>9th December 2021</i>
<i>Laid before Parliament</i>		<i>10th December 2021</i>
<i>Coming into force</i>	- -	<i>1st April 2022</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 101(1), (2) and (3) and 113(6) and (7) of the Energy Act 2013(a).

In accordance with section 101(6) of the Energy Act 2013, the Secretary of State has consulted the Office for Nuclear Regulation and such other persons as the Secretary of State considers it appropriate to consult.

Citation and commencement

- 1.—(1) These Regulations may be cited as the Nuclear Safeguards (Fees) Regulations 2021.
- (2) These Regulations come into force on 1st April 2022.

Interpretation

2. In these Regulations—

- “2000 Act” means the Nuclear Safeguards Act 2000(b);
- “2013 Act” means the Energy Act 2013;
- “Nuclear Safeguards Regulations” means the Nuclear Safeguards (EU Exit) Regulations 2019(c);
- “Agency” means the International Atomic Energy Agency;
- “authorised officer” has the meaning set out in section 1 of the 2000 Act;
- “operator” has the meaning set out in regulation 2 of the Nuclear Safeguards Regulations;
- “qualifying nuclear facility” has the meaning set out in section 76A(6) of the 2013 Act(d);
- “qualifying nuclear facility with limited operation” has the meaning set out in regulation 2 of the Nuclear Safeguards Regulations; and

(a) 2013 c. 32. Part 3 of the Act, which relates to Nuclear Regulation, was amended by the Nuclear Safeguards Act 2018 (c. 15). Part 3 contains other amendments which are not relevant to these Regulations.

(b) 2000 c. 5.

(c) S.I. 2019/196.

(d) Section 76A was inserted by section 1(2) of the Nuclear Safeguards Act 2018.

“qualifying nuclear material” has the meaning set out in section 76A(6) of the 2013 Act and includes the “fissionable material” specified in regulation 2(2) of the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019(a).

Fees payable by the operator to the ONR in connection with functions carried out under the 2000 Act, the Nuclear Safeguards Regulations and the 2013 Act

3.—(1) The operator must pay a fee to the ONR where the ONR carries out a function described in column 2 of Schedule 1, under or in connection with the provision of the 2000 Act set out in column 1 of that Schedule.

(2) The operator must pay a fee to the ONR where the ONR carries out a function described in column 2 of Schedule 2, under or in connection with the provision of the Nuclear Safeguards Regulations set out in column 1 of that Schedule.

(3) Where an inspector carries out functions in connection with nuclear safeguards in exercise of their powers under section 83 of, and Schedule 8 to, the 2013 Act, in connection with the 2000 Act, the Nuclear Safeguards Regulations or Part 3 of the 2013 Act, the operator must pay a fee to the ONR to the extent that such function is performed in relation to the operator for the purpose of putting into effect the 2000 Act, the Nuclear Safeguards Regulations or Part 3 of the 2013 Act.

(4) The operator must pay a fee to the ONR where—

(a) the ONR carries out functions in connection with nuclear safeguards to monitor and ensure compliance with the 2000 Act, the Nuclear Safeguards Regulations or Part 3 of the 2013 Act, or pursuant to arrangements made in accordance with section 82 of the 2013 Act, and

(b) no fee is payable under paragraphs (1) to (3).

(5) No fee is payable for the carrying out of functions under paragraphs (1) to (4) where the functions relate to a qualifying nuclear facility with limited operation.

Regulation 3 supplementary provisions

4.—(1) The fees referred to in regulation 3 must be determined by the ONR and must not exceed the costs reasonably incurred by the ONR in performing the functions for which the fees are payable.

(2) The ONR must send an invoice to the person who must pay the fee, and such invoice must state the functions performed and the costs incurred during the period to which the statement relates.

(3) The fees must be paid within 30 days of the date of the invoice.

(4) The ONR may apportion fees between different persons for a function performed by the ONR or an inspector (as the case may be), where such function is reasonably attributable to those different persons.

(5) The fees referred to in regulation 3 must not include any costs connected with—

(a) in England and Wales and Northern Ireland, criminal investigation or prosecution incurred (in either case) from the date any summons is obtained from a Magistrates Court, or

(b) in Scotland, criminal investigation or prosecution incurred (in either case) after such time as—

(i) the inspector undertaking the investigation submits a report to the Procurator Fiscal for his decision as to whether a prosecution should be brought; or

(ii) the Procurator Fiscal intervenes in the investigation, whichever is sooner.

(a) S.I. 2019/195.

Review

- 5.—(1) The Secretary of State must from time to time—
- (a) carry out a review of the regulatory provisions contained in these Regulations, and
 - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before 1st April 2027.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.
- (4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015^(a) requires that a report published under this regulation must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
 - (b) assess the extent to which those objectives are achieved,
 - (c) assess whether those objectives remain appropriate, and
 - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

9th December 2021

Greg Hands
Minister of State for Energy, Clean Growth and Climate Change
Department for Business, Energy and Industrial Strategy

SCHEDULE 1

Regulation 3(1)

Fees payable by the operator to the ONR in respect of functions carried out by the ONR in connection with the 2000 Act

Column 1 Provision of the 2000 Act	Column 2 Function of the ONR
Section 5(4)	An authorised officer accompanying an Agency inspector while he is exercising a power under section 5 of the 2000 Act.

SCHEDULE 2

Regulation 3(2)

Fees payable by the operator to the ONR in respect of functions carried out by the ONR in connection with the Nuclear Safeguards Regulations

Column 1 Provision of the Nuclear Safeguards Regulations	Column 2 Function of the ONR
Regulation 3(2), (3) and (5): Declaration of basic technical characteristics	Receipt and consideration of the basic technical characteristics of a qualifying nuclear facility together with any changes in basic technical

(a) 2015 c. 26.

	characteristics, or request for, receipt and consideration of any further details, explanations, amplifications or clarifications of information forming part of the basic technical characteristics under regulation 3(5).
Regulation 4(1) to (4): Programme of activities	Receipt and consideration of an annual outline programme of activities, including for the taking of a physical inventory together with any change which affects or may affect the outline programme of activities or the taking of a physical inventory.
Regulation 5(1) and (2): Particular safeguard provisions	Consideration and imposition of particular safeguard provisions on an operator in respect of a qualifying nuclear facility. Provision of written notice of the particular safeguard provisions to the operator under regulation 5(2).
Regulation 6(5): Accountancy and control	Request and consideration of the operating records referred to in regulation 10 and of the accounting records referred to in regulation 11.
Regulation 7(3) and (5): Accountancy and control plan	Receipt, consideration and approval of the whole or part of an accountancy and control plan.
Regulation 8(1) to (4): Replacement, amendment and revocation of accountancy and control plan	Receipt, consideration and approval of an amendment to an accountancy and control plan.
Regulation 9(2): Operation of an accountancy and control plan	Consideration and notification to an operator of whether a matter is, in the opinion of the ONR, unlikely to be prejudicial to the maintenance of the system of safeguards in respect of qualifying nuclear material at a qualifying nuclear facility.
Regulation 10(2): Operating records	Request, receipt and consideration of the operating records which set out the information described in regulation 10(1).
Regulation 11(5): Accounting records	Request, receipt and consideration of the accounting records for a material balance area which show— (a) all inventory changes so that the book inventory can be determined at any time; (b) all measurement and counting results used to determine the physical inventory; and (c) all adjustments and corrections that have been made in respect of inventory changes, book inventories and physical inventories.
Regulation 12(3): Accounting reports	Request, receipt and consideration of further details, explanations, amplifications or clarifications of any of the information provided by an operator to the ONR in an accounting report submitted in accordance with regulations 14 to 20.
Regulation 14(1) to (4): Inventory change report	Receipt and consideration of an inventory change report in respect of all qualifying nuclear material for each material balance area.
Regulation 15(1): Material balance report and physical inventory listing	Receipt and consideration of a material balance report and physical inventory listing.

Regulation 16(1) and (2): Special report	Request, receipt and consideration of a special report in the case of an unusual occurrence, as described in regulation 17(1) or loss or delay during transport as described in regulation 23. Request and consideration of further details or explanations in connection with a special report.
Regulation 17(2) and (3): Unusual occurrences	Receipt and consideration of a special report concerning an increase in or loss of qualifying nuclear material or a sudden change in containment conditions or anything that leads to an unusual occurrence. Receipt and consideration of a statement of the causes of an unusual occurrence.
Regulation 18(2): Reporting of nuclear transformations	Consideration of whether the particular safeguard provisions, imposed under regulation 5, should specify alternative procedures for recording and reporting nuclear transformations and consideration of what alternative procedures should be specified.
Regulation 21(1) and (3): Exports	Receipt and consideration of a notification of the export of any qualifying nuclear material outside the United Kingdom where the consignment exceeds one effective kilogram or where a qualifying nuclear facility transfers a total quantity of materials to the same State that could exceed one effective kilogram in any consecutive period of twelve months, even though no single consignment exceeds one effective kilogram. Consideration and agreement of special arrangements concerning the form and transmission of notifications under regulation 21(3), required for reasons of physical protection.
Regulation 22(1) and (3): Imports	Receipt and consideration of a notification of the import of any qualifying nuclear material into the United Kingdom where the consignment exceeds one effective kilogram or where a qualifying nuclear facility transfers a total quantity of materials from the same State that could exceed one effective kilogram in any consecutive period of twelve months, even though no single consignment exceeds one effective kilogram. Consideration and agreement of special arrangements concerning the form and transmission of the notification under regulation 22(3), required for reasons of physical protection.
Regulation 24: Communication of change of date	Receipt and consideration of a notification of any change of dates for packing before transfer, transport or unpacking of qualifying nuclear material which have been given in a notification of export or import of qualifying nuclear material under regulations 21 or 22.
Regulation 28(2): Ore shipment and export reports	Receipt and consideration of reports and information on the amount of material dispatched from each qualifying nuclear facility and exports of ores outside the United Kingdom.
Regulation 29(4): Stock list	Specification of requirements for reporting the

and accounting records for conditioned and retained waste	processing of retained waste if specified in the particular safeguard provisions imposed by the ONR under regulation 5.
Regulation 30(1): Transfers of conditioned waste	Receipt and consideration of reports/information on shipments or exports of conditioned waste to a qualifying nuclear facility or outside the United Kingdom or of receipts or imports of conditioned waste from a qualifying nuclear facility or installation without a material balance area code or which is located outside the United Kingdom.
Regulation 35(c): Communication with the ONR	Agreement with an operator of the method of communication with the ONR.
Regulation 36(1) and (2): Safeguards Equipment	Consultation with an operator on what safeguards equipment is appropriate for a qualifying nuclear facility and notification of additional safeguards required.
Regulation 38: Interference with safeguards equipment	Provision of permission to a person to take action in connection with the operation of any safeguards equipment in a qualifying nuclear facility which results in the safeguards equipment providing information on qualifying nuclear material that is significantly different from the information which the equipment would have provided had the action not occurred.
Regulation 39(1), (2), (3) and (4): Inspections by the ONR	<p>For the purpose of ensuring compliance with the requirements of the Nuclear Safeguards Regulations—</p> <ul style="list-style-type: none"> (a) examination of the records kept by an operator in accordance with the requirements of the Nuclear Safeguards Regulations; (b) the making of independent measurements of any qualifying nuclear material; (c) the application and making use of surveillance and containment measures together with any other objective methods of monitoring which the ONR considers to be reasonable; (d) the observation that samples of qualifying nuclear material at key measurement points for accounting purposes are taken in accordance with procedures which produce representative samples; (e) the observation of the treatment and analysis of the samples and the obtaining of duplicates of such samples; (f) the verification of the functioning and calibration of an operator's instruments used to measure or control qualifying nuclear material, including observation of calibration activities and assessing whether the measurements of qualifying nuclear material at key measurement points are representative; (g) making such observations or measurements necessary to verify the accuracy of basic technical characteristics and any changes to them declared under regulation 3 or 31. Writing to an operator to require the operator to—

	<p>(a) take additional measurements or samples of the qualifying nuclear material for the ONR’s use;</p> <p>(b) analyse the ONR’s standard analytical samples;</p> <p>(c) use appropriate absolute standards in the operator’s equipment and calibrating instruments;</p> <p>(d) carry out additional calibrations to the relevant equipment or instruments.</p> <p>Application of the ONR seals and other identifying and tamper-indicating devices to containments of qualifying nuclear material.</p> <p>Writing to an operator to require the operator to send, within a reasonable timescale specified by the ONR, any samples of qualifying nuclear material which have been taken for the ONR’s use to a location specified by the ONR.</p>
Regulation 42(1): Provision of information to the Agency	Providing to the Agency information supplied by an operator to the ONR under the Regulations, and which the United Kingdom is required to supply to the Agency.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Prior to IP Completion Day, nuclear safeguards in the United Kingdom were regulated by the EURATOM treaty as amended by the Treaty of Lisbon, which was signed on 13th December 2007, and by Commission Regulation (EURATOM) 302/2005 (OJ L 54 28.2.2005 p1 – 71). With effect from IP Completion Day, the United Kingdom’s domestic provisions on nuclear safeguards are contained in the Energy Act 2013 (c. 32) (“the 2013 Act”), as amended by the Nuclear Safeguards Act 2018 (c. 15), the Nuclear Safeguards (EU Exit) Regulations 2019 (S.I. 2019/196) (“the Nuclear Safeguards Regulations”) and the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) (Regulations 2019 (S.I. 2019/195).

The Nuclear Safeguards Act 2000 (c. 5) (“the 2000 Act”), the Energy Act 2013 and the Nuclear Safeguards Regulations provide for the ONR to carry out various functions in relation to nuclear safeguards.

These Regulations come into force on 1st April 2022 and provide details of when and by whom fees are payable in relation to the functions performed by or on behalf of the ONR in connection with nuclear safeguards under or in connection with the 2000 Act, the Nuclear Safeguards Regulations and the 2013 Act on or after this date. Prior to this date, no fees have been charged for the work carried out by the ONR in relation to nuclear safeguards.

Regulation 3(1) of these Regulations requires an operator to pay a fee to the ONR when it performs a function listed in Schedule 1 to these Regulations.

Regulation 3(2) requires an operator to pay a fee to the ONR when it performs a function listed in Schedule 2 to these Regulations.

Regulation 3(3) requires an operator to pay a fee to the ONR where an inspector performs specified functions in connection with the 2000 Act, the Nuclear Safeguards Regulations or Part 3 of the 2013 Act.

In addition, regulation 3(4) requires an operator to pay a fee to the ONR when it performs a function in connection with nuclear safeguards in relation to monitoring and ensuring compliance

with the 2000 Act, the Nuclear Safeguards Regulations and the 2013 Act not already covered by the other provisions of regulation 3.

Regulation 3(5) provides that no fee is payable where the performance of functions relates to a qualifying nuclear facility with limited operation (the term “qualifying nuclear facility with limited operation” is defined in regulation 2 of the Nuclear Safeguards Regulations).

Regulation 4 sets out that the fees required to be paid under regulation 3 must be reasonable and not exceed the costs of performing the function to which they relate. Regulation 4(3) sets out when the fee must be paid. The costs of criminal proceedings are excluded from the calculation of fees.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.