



Department for
Business, Energy
& Industrial Strategy

Nuclear Safeguards Regulations Consultation: summary of responses received and government response

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Department for Business, Energy and Industrial Strategy

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Introduction

- 1.1 The draft Nuclear Safeguards Regulations ('the Regulations') will enable a new domestic safeguards regime to operate in the United Kingdom, following the UK's withdrawal from the European Atomic Energy Community ('Euratom') which will occur as a consequence of leaving the European Union. This domestic regime will replace the current arrangements provided by the UK's membership of Euratom, and by the European Commission's role in the trilateral agreements between the International Atomic Energy Agency, the UK and Euratom.
- 1.2 The Regulations will be made under the powers contained in the Nuclear Safeguards Act 2018 and the Energy Act 2013 (as amended). The Nuclear Safeguards Act 2018 inserted various sections into the Energy Act 2013. New sections 76A(8) and 112(1D) require the Secretary of State to consult the Office for Nuclear Regulation (ONR) and other appropriate persons when making regulations. Responses were invited to a ten-week consultation on the Regulations, which was published on 9 July 2018 and concluded on 14 September 2018.
- 1.3 The consultation posed 35 detailed questions to stakeholders, to consider the regulations' operability and effectiveness. The version of the regulations published alongside the consultation document and draft impact assessment, was developed from - and built upon - a pre-consultation draft version of the regulations published in January 2018.
- 1.4 This document provides an overview of the responses received to the consultation, highlighting some of the key emerging themes and the main changes that have been made to the regulations as a result. Next steps are also outlined.

Background on Nuclear Safeguards

- 1.5 Nuclear safeguards consist of reporting and verification processes which assure and demonstrate that civil nuclear material is not diverted unlawfully into military or weapons programmes. Nuclear safeguards are distinct from nuclear safety and nuclear security.
- 1.6 The Nuclear Safeguards Act provides for a new domestic safeguards regime to replace the regime currently provided by the UK's membership of Euratom, and specifically set out in EURATOM Regulation 302/2005. The Office for Nuclear Regulation (ONR) will take on the responsibility of applying safeguards

in the UK, alongside its existing responsibilities for nuclear safety and security. BEIS has worked closely with ONR in preparation for this.

- 1.7 The Regulations will deliver the Government's objective to put in place safeguards arrangements offering equivalent effectiveness and coverage to that currently provided by Euratom. In the event a deal is not reached on the UK's withdrawal from the European Union, the ONR will deliver international standards from day one of exit, building over time to Euratom equivalence. If the Withdrawal Agreement is agreed, under the terms of the proposed implementation period, the current Euratom arrangements would continue in respect of the UK until December 2020, at which ONR will deliver the regime to Euratom equivalence.
- 1.8 The Regulations will enable the UK to deliver the commitments made in the new bilateral safeguards agreements between the UK and International Energy Atomic Agency (IAEA) – the Voluntary Offer Agreement and Additional Protocol – signed by the UK and IAEA on 7 June 2018.
- 1.9 The Regulations will also allow the UK to discharge the commitments that it has made in other international agreements, by requiring operators to provide additional notifications to the Office for Nuclear Regulation (ONR) or to the Secretary of State about specific types of materials or equipment to which the agreements apply.

Consulting with Stakeholders

- 2.1 The Nuclear Safeguards Act 2018 specifically requires the BEIS Secretary of State to consult ONR, as well as other appropriate persons. This provision was addressed through the public consultation and close working with ONR throughout the development of the Regulations. ONR has confirmed this consultation has taken place and responded to the consultation.
- 2.2 During the consultation period, we held two public workshops on the draft Regulations on 2 August in London and 15 August in Manchester.
- 2.3 In addition to the dedicated workshops, engagement took place with stakeholders in industry, academia and civil society through both the July 2018 Euratom Industry Forum, which covered all aspects of the United Kingdom's withdrawal from Euratom, including the Regulations, and the June UK State System of Accountancy and Control Industry Event, organised by the ONR, which provided an opportunity for industry to discuss the forthcoming Regulations in detail. BEIS officials also engaged stakeholders through

attendance at various events organised by relevant trade bodies. BEIS officials engaged with Devolved Administrations before, during and after the consultation period.

High Level Summary of Responses

3.1 The consultation set out 35 detailed questions. Formal responses on these questions were received from 28 respondents. In addition, the two workshops held during the consultation period had a total of more than 60 participants, and views from these events have been taken into account.

3.2 Responses were received from stakeholders including nuclear sector companies, trade bodies, local government, educational establishments, non-government organisations and independent individuals. There was broad acceptance of what Government has proposed and some valuable insights from stakeholders that have allowed us to make some changes to the Regulations. A large number of respondents asked for details of their responses not to be released, so respondent names are not listed in this document.

Sector	Responses
Education	3
Industry - Large Business	12
Industry - Medium Business	2
Regulator	1
Industry - Trade Body	1
Local Government	3
NGO	3
Individuals	3
TOTAL	28

Analysis of Responses

4.1 The Government is grateful to all those who took the time to respond to the consultation. The responses received, as well as other engagement activities with stakeholders, have informed the Government's decisions on finalising the Regulations.

4.2 Respondents variously addressed some, or all, of the questions set out in the consultation document and offered comments on particular elements of the draft Regulations, as well as the Impact Assessment. Each question received

at least 3 responses, and the highest number of responses to an individual question was 18 responses.

4.3 The analysis is in two parts. The first section covers in detail the main areas that respondents provided contributions on and/or where further policy development of the Regulations has taken place since the publication of the consultation. The second section, Analysis of Responses by Chapter Headings in Consultation Document provides a full overview of engagement with all the consultation questions.

Government Response and Further Development of the Regulations

5.1 This section sets out the government's response to the key areas of the consultation where either respondents raised questions and made comments, or where further policy development of the Regulations has taken place since the publication of the consultation.

Accountancy and Control Plans

5.2 There were a high number of responses to the questions in relation to the introduction of Accountancy and Control Plans (Q10a-b). These require operators to develop and submit to the ONR a written accountancy and control plan for the qualifying nuclear material which is held in a qualifying nuclear facility. This requirement builds on European Commission Recommendation (2009/120/Euratom), but EU Regulation 302/2005 does not require that a plan be produced.

5.3 The Government's rationale for introducing Accountancy and Control Plans is that it is a sensible way of drawing together existing requirements on nuclear material accountancy and control into one document and will assist operators in demonstrating how they will establish and maintain a system of accountancy and control. The Government proposed that this requirement would not commence until the first anniversary of the main commencement date of the Regulations.

5.4 Overall, respondents recognised the value of adopting the principles of European Commission (2009/120/Euratom) within these Regulations and the reasons for proposing it as a helpful tool for operators in managing and reporting on qualifying nuclear material. However, a strong message came through, from consultation responses and through other stakeholder engagement, that operators needed to be given sufficient time to develop and

submit Accountancy and Control Plans. The view was that this would involve substantial work for large operators within the proposed timescale. ONR have committed to making guidance material available in advance on this, which will allow operators time to understand and familiarise themselves with it.

5.5 In response the Government has decided to provide a specific commencement date – 1 January 2021 – for the requirement on Accountancy and Control Plans. This gives sufficient time for guidance material to be developed, and operators to prepare an Accountancy and Control Plan, regardless of whether or not an implementation period is agreed (as part of a Withdrawal Agreement between the UK and EU).

Exemptions and Derogations

5.6 The consultation asked about the appropriateness of regulations 31 and 32, which provide for a ‘qualifying nuclear facility with limited operation’ and a ‘de minimis’ exemption (Q23a-c). These questions received a high level of engagement from some stakeholders, predominantly representing schools and hospitals, who may hold very small amounts of low-grade nuclear material, but may still fall within the scope of the Regulations. These respondents were particularly concerned that including them in the UK safeguards regime would have a detrimental impact on the use of very small amounts of nuclear material, such as in practical science education, and would impose a significant administrative burden, noting that Euratom do not currently take interest in such establishments. Existing larger nuclear industry operators would not be impacted, so did not comment specifically on these regulations.

5.7 The stated government objective is to ensure equivalent effectiveness and coverage to that provided by Euratom; and to provide that those operators who previously reported to Euratom will report to ONR under the new domestic regime. It is not the policy aim to include schools, since they were not included in the Euratom regime. The Regulations have therefore been amended to provide an additional exemption for primary and secondary schools, 16 to 19 academies and sixth form colleges which hold less than 0.01 effective kilograms of qualifying nuclear material.

5.8 These types of schools have been defined using Department for Education characterisation¹. The Government believes this approach is proportionate for those primary or secondary schools, 16 to 19 Academies or sixth form colleges

¹ 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.

that hold very small amounts of nuclear material in a manner that presents low proliferation risks.

5.9 Universities have not been included in this additional exemption, as they are currently in scope of the Euratom regime, and can vary widely in the quantities of qualifying nuclear material that they hold and activities undertaken.

5.10 There are further establishments, for example principally some hospitals, whose activities were not of interest to Euratom. Their scope is insufficiently clear to provide a similar exemption to that now being provided for schools - since the nature of materials and activities in these establishments varies. Such establishments will be able to apply for and benefit from the derogation for facilities with limited operation, which is set out in Regulation 31.

5.11 In addition, a number of these establishments may be able to use the 'exemption' provisions of Regulation 32(1), if the qualifying nuclear material in question is, in practice, irrecoverable. Establishments will be able to seek advice from the ONR about their position with respect to regulations 31 and 32. When considering an operator's request for the application of the regime for limited operation, under Regulation 31(3), the ONR may consider the particular circumstances in which the qualifying nuclear material is to be used, or produced. It is intended that the ONR will issue guidance on how they propose to operate paragraph (3) and on which circumstances will be relevant to their decision. Different circumstances might include such issues as the category of the qualifying nuclear material, form, amount, use, mobility, accessibility and whether the inventory concerned fluctuates over time, but the issue will be considered in the guidance to be issued by the ONR. BEIS and ONR will undertake further engagement on the practical operation of regulations 31 and 32.

Offences

5.12 The responses to the questions on whether the draft offences, are proportionate (Q28a-b), received a high level of engagement from respondents. Respondents were broadly evenly split on whether they did - or did not - agree. Those judging the offences to be disproportionate commented on aspects such as whether the penalties are appropriate, and about the clarity and enforceability of the offences.

5.13 There was also concern about the possibility of custodial sentences for offences and about a lack of independent review of ONR decision making. In addition, the particular selection of regulations which have penalties associated with them was queried, and there were some worries about confusion arising over overlapping legislation between the areas of Nuclear, Health and Safety,

and Environmental legislation. These points have been carefully considered in light of the Government's stated aim of adopting a graduated and proportionate approach on offences and on non-compliance. The Government understands the concerns raised by respondents about the need for clarity about what actions could give rise to offences. In response, the Government has decided to amend the list of regulations subject to an offence so they are specific about which parts of each regulation are linked to an offence.

5.14 Some regulations will no longer be subject to an offence, whilst others have been added.² The Government's aim is to focus on those parts of the regulations which directly relate to the UK's international obligations on nuclear safeguards as applied by the International Atomic Energy Agency and required by nuclear co-operation agreements. This gives the incentive for operators to provide the information required for the UK to meet these obligations. The approach here will ensure that the ONR as the national regulator can deliver the new, domestic regime effectively, and in a graduated and proportionate manner.

5.15 ONR must have regard to the Regulators' Code³, and this is reflected in their Enforcement Policy Statement⁴ and their Enforcement Management Model⁵. ONR will ensure that relevant enforcement guidance published on its website is updated, to include appropriate references to nuclear safeguards. ONR operates a proportionate approach to enforcement, progressing from targeted advice, through warnings, and enforcement notices and action. Prosecution action is reserved for the most serious cases.

Notification to the Secretary of State of non-nuclear material

5.16 These provisions in the Regulations have been included to address the UK's specific needs resulting from the 'relevant international agreements', as they apply to non-nuclear material, after exiting the EU. Both regulation 19 of the Regulations and EURATOM Regulation 302/2005 only apply to qualifying nuclear material.

5.17 The UK has signed new Nuclear Cooperation Agreements (NCAs) with Australia, Canada and the US, and has an NCA with Japan, from 1998, which

² The Consultation draft of the Regulations stipulated offences against the following regulations: 3, 4, 6, 7(1), 9(1), 10, 11, 12, 33(1), 38, 47. The draft Regulations being laid in Parliament stipulate offences against the following regulations: 3(1)-(3), 4, 6(1)-(2), (4)-(5), 7(1),(4), 9(1), 12(2)-(3), 13, 14(1)-(3), 15, 16(1)-(3), 19(1), 21(1)-(2), 22 (1)-(2), 24, 33(1), 38, 45, 46(1),(3).

³ <https://www.gov.uk/government/publications/regulators-code>

⁴ <http://www.onr.org.uk/documents/enforcement-policy-statement.pdf>

⁵ <http://news.onr.org.uk/2018/04/new-onr-enforcement-management-model/>

will remain in force following the UK's withdrawal from Euratom. These four NCAs contain provisions about nuclear safeguards - for both qualifying nuclear material and for other items, such as non-nuclear material and equipment. As such, these NCAs will be specified as 'relevant international agreements' for the purposes of section 112(1A) of the Energy Act 2013.

5.18 Regulation 19 sets out a requirement on operators to provide information to ONR in respect of qualifying nuclear material which is subject to these relevant international agreements. Further to this, Part 13⁶ sets out a requirement for operators to provide certain additional information to the BEIS Secretary of State for non-nuclear material together with certain qualifying nuclear material, which is derived from non-nuclear material which is subject to these relevant international agreements.

5.19 Around half of the respondents answered the questions 31(a-b) on Part 13, and their responses were largely positive and expressed general approval for the proposed method of implementing these provisions of relevant international agreements. A number of questions were raised, including on why there are reporting requirements to both ONR and the Secretary of State, how a decision is taken on 'termination of safeguards' (whether a 'particular item' is no longer useable for any nuclear activity relevant to safeguards or irrecoverable for processing into a form useable for nuclear activity), and on the difficulty of responding about notifications to the Secretary of State without having first seen the text of the Nuclear Cooperation Agreements. In addition, one respondent asked whether the definition of 'non-nuclear material' should include Neptunium and Americium.

5.20 The draft Regulations have been developed further since consultation, and will require operators to report to the Secretary of State on non-nuclear material under Part 13. This reporting does not duplicate the provisions in regulation 19, since the content of these notifications is distinct and there are different purposes and responsibilities under these two areas. On the matter of obligation codes, new obligation codes will not be produced for the new bilateral NCAs. Guidance to operators on reporting requirements for the NCAs will be published in due course by BEIS, to help them fully understand the requirements on them.

5.21 Copies of the four 'relevant international agreements' are publicly available on the FCO Treaties Database.⁷ These agreements will also set out

⁶ This section of the Regulations was described as 'Chapter XIV' in the version of the Regulations published alongside the consultation document.

⁷ <http://treaties.fco.gov.uk/treaties/treaty.htm>

the process for determining when obligated material is no longer covered by the NCA. The new Nuclear Cooperation Agreements and IAEA Voluntary Offer Agreement and Additional Protocol have been laid before Parliament under the Constitutional Reform and Governance Act 2010.

5.22 On the question of including Neptunium and Americium, the definition of 'non-nuclear material' given in the Regulations encompasses all the materials defined as 'non-nuclear material' in the relevant Nuclear Cooperation Agreements – heavy water, deuterium and nuclear grade graphite. These are the only non-nuclear materials the UK is required to account for and report on when transferred to the UK under a Nuclear Cooperation Agreement. They reflect definitions agreed internationally, which do not cover Neptunium or Americium.

5.23 One substantive change BEIS has made to the Regulations concerns the production of starting inventories of 'particular items' held by operators on commencement day. The notification requirement has been removed and, instead, notices will be issued to operators informing them of items they hold which are subject to relevant international agreements. This will give clarity, and addresses concerns raised at the workshops held during the consultation period.

Transitional Arrangements

5.24 Respondents were asked to give their views on the proposed Transitional Provisions of the Regulations (Q33a-c), which exist to ensure a smooth transition from the Euratom safeguards regime, when the UK formally ends its membership.

5.25 Respondents engaged moderately on this issue. Overall, responses were positive, recognising the need for transitional provisions. Queries were raised by respondents regarding the role of existing information submitted to the European Commission before transition, the potential effect of new Nuclear Co-operation Agreements on existing obligation codes⁸ and the interaction between the ONR as regulator and previous agreements and arrangements made between Euratom and UK operators. There was also a belief expressed by some respondents that transitional provisions could

⁸ Provisions relating to supply and any particular safeguarding obligations on qualifying nuclear material assumed under a relevant international agreements or obligations resulting from international trade.

impose burdens on industry despite the attempts of the Government and Regulator to minimise them.

5.26 The final draft Regulations set out Transitional Provisions in Schedule 4. The status of information provided to Euratom before transition is clarified, and the requirements on operators is made clear in ensuring the information previously provided is still valid.

5.27 On the issue of existing correspondence, between certain operators and the Commission, there is no general provision for all existing arrangements to be simply carried forward to apply to the Regulations. It is understood that there may be some initial burdens on industry during transition as operators work to adjust to the new regulatory regime. Both the Government and Regulator are working to ensure that burdens are minimised during transition.

Particular safeguard provisions

5.28 A number of points were raised on the effectiveness of a regulator imposing existing Particular Safeguard Provisions (PSPs) on an operator. As part of the current Euratom regime, the Commission has issued Commission Decisions on Particular Safeguard Provisions to some operators, under EURATOM Regulation 302/2005. PSPs concern specific qualifying nuclear facilities, requiring the operator to undertake specified actions in relation to their safeguards responsibilities (for example, a site-specific reporting timetable, or installation of site-specific equipment required by Euratom).

5.29 Some consultees found PSPs beneficial in terms of more effective verification, but others raised concerns about the effectiveness of the current PSPs and one respondent requested that all PSPs are reissued before leaving the European Union.

5.30 There are potential risks to the ONR's ability to operate an internationally compliant new regime if pre-existing Euratom PSPS remain in operation. After careful consideration of the points raised through consultation and further consideration of how the proposed regime will work in a domestic setting, the Government has decided that EURATOM Regulation 302/2005 will be repealed, together with the historic Commission Decisions on PSPs.

5.31 Under the new regime, the ONR will have the power to impose new PSPs on an operator in relation to a qualifying nuclear facility, where it considers it to be necessary. It is anticipated that the ONR will comply with

the Regulators' Code, which places an emphasis on appropriateness and proportionality.

Future Funding

- 5.32 Future funding of the regime was extensively discussed in responding to the Cost recovery questions. (Q2a-c), with concerns around how to apportion costs and the proposed remit of a regime that was funded in this way. The consultation asked respondents some initial questions about the probable effect on their business, were the UK nuclear safeguards regime to be funded by a cost recovery scheme after March 2019. The nuclear industry does not currently pay for safeguards regulation, since the Government pays for this indirectly, via its collective funding to the EU. The Regulations do not include a fees regime, but this issue may be revisited, through a further consultation within the UK. Nuclear safety and security are already funded by industry.
- 5.33 Half of respondents answered these questions, and there was almost universal, strong opposition to a cost recovery scheme amongst these replies, for various reasons. Arguments against a cost recovery scheme included: that the regime springs from the UK's state-level non-proliferation agreement with the IAEA, so costs should be borne by the state; that the UK would be commercially disadvantaged by this change against EU competitors; and concerns that some of the potential burden may fall on educational organisations. There was a desire for a decision on this to be taken as soon as possible, to allow proper planning.
- 5.34 The government has considered these arguments and is now able to confirm that it will provide further funding to the ONR, to cover the costs associated with implementing the new domestic safeguards regime so that it provides coverage and effectiveness equivalent to that currently provided by Euratom, through to December 2020. The government recognises the importance of providing clarity on the future funding arrangements of the regime beyond 2020 as soon as possible and work continues to deliver this.

Analysis of responses by Chapter Headings⁹ in Consultation Document

Consultation Chapter entitled 'Context and Background Information'

6.1 Questions on the Impact Assessment (Q1); Cost Recovery (Q2a-c); and Equalities Analysis (Q3) were covered in this section.

6.2 Responses to the Impact Assessment (Q1), published alongside the draft Regulations, highlighted the importance of establishing a domestic safeguards regime after withdrawal which exceeded IAEA obligations. However, queries were raised on the initial plan to adopt Euratom's prescriptive approach as a basis; and the figures presented in the Impact Assessment. Some respondents did not consider that the Impact Assessment fully took account of the potential impact on some holders of nuclear material, such as schools, that had benefited from a particularly light-touch regulatory approach from Euratom, but are within scope of the draft new arrangements.

6.3 The impact assessment has been revised following responses received to the consultation and contains additional information that has become available. The revised figures are detailed in full in the Impact Assessment which accompanies the Regulations.

6.4 Key revisions include an update to the ONR's transitional costs to around £28m in the period up to December 2020, compared to £12m in the consultation Impact Assessment. A figure which includes the procurement and development of a new IT system and the recruitment and training of new inspectors. The ongoing administration costs for the domestic safeguards regime, remain similar to the consultation Impact Assessment, and are estimated to be between £8.6m and £10.5m per year.

6.5 As mentioned above, there are further establishments, notably schools, hospitals and universities, to which Euratom currently adopts an extremely light touch approach, yet would be covered by the domestic regime with derogations. The impact on these establishments have been included in the updated Impact Assessment. Across all of these establishments, one-off transitional and familiarisation costs are estimated to be between £210,000 to and £1.7m, and ongoing costs to be between £10,000 and £220,000 a year.

⁹ The final draft of the Regulations will be divided up into 'parts', rather than 'chapters', as in the consultation version. The numbering of the parts is similar, although there are some changes for the higher numbers.

6.6 Future funding of the regime was extensively discussed in responding to the Cost recovery questions. (Q2a-c), with concerns around how to apportion costs and the proposed remit of a regime that was funded in this way. The issue was discussed above in section 5.34

6.7 Respondents who answered the question on Equalities Analysis (Q3) indicated they did not have any evidence to suggest the new regime would disproportionately affect those with protected characteristics. There were no changes made to this area.

Chapter I – Introduction

6.8 This chapter covered questions on the commencement (Q4) and interpretation (definitions) (Q5) elements of the Regulations.

6.9 There was overwhelming support for a staggered approach to commencement, which was reinforced by the additional comments received on both the commencement and interpretation., A few modifications have been made to the commencement and interpretation sections to provide more clarity.

Chapter II – Accountancy and control, records and the provision of information by an operator

6.10 This section covered questions related to the Basic Technical Characteristics (Q6); Annual Programme of Activities (Q7); Particular Safeguard Provisions (Q8a-b); System of Accountancy and Control (Q9a-b); and Accountancy and Control Plan (Q10a-b).

6.11 Questions were also posed on Operating and Accounting Records and Reports (Q11); Initial Book Inventory (Q12); Inventory Change Report (Q13); Material Balance Report and Physical Inventory Listing (Q14); Special Report (Q15a-b); Reporting of Nuclear Transformations (Q16); Additional Obligations Arising from Relevant International Agreements (Q17) and Weight Units and Categories of Qualifying Nuclear Materials (Q18) in this section.

6.12 Substantive responses were received in relation to questions Q9 – 10, which is covered in more detail in Section 5.

6.13 For the remaining questions (Q6-7 and Q11-18) the detail in the responses varied and covered a range of aspects, from seeking clarity on certain aspects of the Regulations, to stating agreement with the proposals or offering challenge to the regulations. This resulted in minor amendments being made to the Regulations on the Basic Technical Characteristics and those on

additional reporting obligations arising from relevant international agreements. Meaningful comments were also received on a particular aspect of Particular Safeguards Provisions in relation to Schedule 4 transitional arrangements (Q33(a)–(c)) which are covered in further detail under Section 5.

6.14 For Q17, respondents sought clarification on tracking and reporting of obligated qualifying nuclear material. Post consultation, two new paragraphs have been added to Regulation 19 which clarify the new requirements. The regulation now requires an operator who holds qualifying nuclear material which was transferred into the UK before the commencement date and in accordance with an obligation resulting from international trade, to provide certain additional information to the ONR using the codes provided by the ONR. A similar requirement applies where a licence has been issued by the ONR (under the Import of Goods (Control) Order 1954, or an order made by the Secretary of State under section 1 of the Import, Export and Customs Powers (Defence) Act 1939.

Chapter III – Exports and Imports

6.15 The areas of Exports; Imports; Loss or delay during transfer and communication of change of date (Q19) were covered in this section. Most respondents were in agreement that that the related regulations were clear and effective, therefore no changes were made in this area.

Chapter IV - Carriers, Temporary Storage Agents and Chapter V – Ores

6.16 These sections covered Carriers and Temporary Storage Agents, and Intermediaries (Q20); and Ores (Q21). There was broad support from respondents that these subjects should be included in the Regulations, although comments were also made seeking clarity on question 20. These were reviewed, but no changes were made to these regulations.

Chapter VI –Waste

6.17 Initial stock list and accounting records for conditioned and retained waste; and Transfers of conditioned waste (Q22) were covered in this section. There were no strong views from respondents, as a result, no changes were made to these topics.

Chapter VII - Qualifying Nuclear Facility with Limited Operation and an Exemption

6.18 Questions in this section related to Declaration of basic technical characteristics, stock list and accounting records for a qualifying nuclear facility

with limited operation and Exemption (Q23a-c). The majority of respondents did not provide a response to these questions but a significant minority raised considerable concerns. These concerns have driven further policy consideration of the scope of these regulations, and material changes were made. This is covered in more detail under Section 5.

Chapter VIII - Civil Activities; Chapter IX - Communication and Chapter X - Safeguards Equipment

6.19 These chapters covered questions on withdrawal from civil activities and Qualifying nuclear facilities which are used partly for civil activities (Q24); Communication with the Office for Nuclear Regulation (Q25); and Safeguards Equipment, Access to safeguards equipment, and Interference with safeguards equipment (Q26).

6.20 There were a small number of responses provided to the questions under these sections. Some of the responses regarding Q26 have resulted in some minor amends being made to the Regulations on safeguards equipment. There were no changes made to the Regulations on civil activities or communication.

Chapter XI - The Office for Nuclear Regulation

6.21 Areas on Inspections by the Office for Nuclear Regulation; Publication of information by the Office for Nuclear Regulation; Office for Nuclear Regulation to provide an annual report to the Secretary of State; and Provision of information to the Agency (Q27) were covered in this chapter. There were only a few responses received on this question, which included a range of comments. There was some concern expressed ONR's readiness to take on regulatory responsibility for safeguards. This is an administrative matter and is not an issue which is directly provided for in the draft Regulations, so no changes have been made to the regulations in response to these comments.

Chapter XII - Offences

6.22 This chapter covered enforcement and offences (Q28a-b) and asked whether respondents agree that the aim of proportionality on offences was met (Q28a) and sought suggestions and reasons for any improvements (Q28b). This was an area that generated many responses, outlining concerns about the number and level of specificity of offences. There were also comments from the ONR. As a result of consideration of these comments, some amendments have been made to regulation 43. This subject is addressed in more detail in Section 5.

Chapter XIII – Definitions for the purposes of the Nuclear Safeguards Act

6.23 The definitions of ‘Fissionable material’ (Q29) and ‘Relevant International Agreements’ (Q30) were covered in this chapter. Most respondents agreed with the proposed definitions of ‘fissionable material’ and ‘relevant international agreements’.

6.24 On advice from the Attorney General’s Office, these regulations have now been made into a separate statutory instrument called the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations. The definitions of fissionable material and relevant international agreements have not changed. It is proposed that the Fissionable and the Nuclear Safeguards Regulations will be debated in Parliament at the same time, but that there will be two votes and the Fissionable Regulations will be voted on first.

Chapter XIV - Notification to the Secretary of State

6.25 This chapter included questions (Q31a and Q31b) on the proposed method of implementing the provisions of ‘relevant international agreements’. Further development of this area was undertaken following the consultation and more detail is provided in Section 5.

Chapter XV - General

6.26 This section covered various areas including territorial extent; questionnaire and forms (at Schedule 1); the components of the accountancy and control system (set out at Schedule 2); general consequential and supplementary amendments (the Nuclear Safeguards Act 2000 and other related legislation) set out in Schedule 3 (Q32); transitional provisions (Q33a-c); and review arrangements (Q34).

6.27 Most respondents only provided detailed comments on Transitional Provisions. This area has developed further since publishing the consultation and a fuller commentary is provided in Section 5.

Further Comments

6.28 Many respondents used the ‘further comments’ question (Q35) to emphasise their specific points on areas of the Regulations addressed elsewhere in this response. Additional points raised focussed largely on ONR – with questions raised on ONR readiness, staffing, resources and training, and

on the loss of independent advice formerly provided by ONR. Although the capacity and capability of ONR to deliver the safeguards regime is not a matter for the regulations, Government understands it is an issue of interest to respondents and other interested parties. ONR is progressing well with enhancing its organisational capacity and capability to deliver the future nuclear safeguards regime. Good progress is also being made with the recruitment and training of additional inspectors, building additional institutional capacity and developing necessary IT systems. Based on current progress, the ONR will be in a position to deliver a nuclear safeguards regime which meets international standards by 29 March 2019, (should that be necessary), and to build over time to give equivalent effectiveness and coverage as that currently provided by Euratom.

6.29 As part of its work to deliver the safeguards regime, ONR will produce guidance for ONR Inspectors and nuclear material accountants, which will be made publicly available on the ONR website. Operators will be able to use these documents to help ensure they are compliant with the Regulations. ONR will also provide assistance and advice on complying with the new Regulations.

6.30 Points raised on EU exit related and other wider issues, are beyond the scope of the draft Regulations, and have not been addressed in this response.

Next steps following Consultation

7.1 An updated Impact Assessment has been produced, alongside this summary of consultation responses and government response. The Regulations are expected to be debated in Parliament either later this year, or early in 2019.

Annex: List of Consultation Questions asked

Q 1. Do you have any comments or evidence to give us on the analysis set out in the impact assessment?

Q 2a. If the UK safeguards regime were to be funded by a cost recovery scheme, how would this affect your business?

Q 2b. If applicable, please give details in support of your answer to Q 2a.

Q 2c. Please give details on how a provision to enable an operator to recover costs of certain special services to the regulator would affect your business.

Q 3. Do you have any evidence which suggests that the new regime would disproportionately affect those with protected characteristics or will not be fully effective for all target groups?

Q 4. Do you support the staggered approach to commencement, for the reasons set out above? What, if any, changes would you propose, and why?

Q 5. How could the definitions set out in Regulation 2 be improved? Please make it clear which definition you are referring to and explain your reasoning. Please state whether you think any additional definitions should be added, and what these are.

Q 6. How could regulation 3 on declaring to the Office for Nuclear Regulation the basic technical characteristics of a qualifying nuclear facility, or the forms set out in Part 1 of Schedule 1, be improved? Please make it clear specifically what you are referring to and explain your reasoning.

Q 7. Is regulation 4, to submit an annual programme of activities to the Office for Nuclear Regulation for the upcoming year- and the form set out in Part 8 of Schedule 1 - adequate? If not, please make it clear precisely what you are referring to and give your reasoning.

Q 8a. Acting on the basis of the technical characteristics, do you agree that regulation 5 on particular safeguard provisions facilitates more effective verification of a qualifying nuclear facility by the Office for Nuclear Regulation? If not, please give your reasoning.

Q 8b. What specific changes would you make to regulation 5 and why?

Q 9a. Do you agree that regulation 6, on maintaining a system of accountancy and control, which includes keeping accounting and operating records and providing reports to the Office for Nuclear Regulation, is clear? If not, please give your reasoning.

Q 9b. Will Schedule 2, which sets out the components of a system of accountancy and control plan, enable operators to fulfil the accountancy and

control requirements? If not, please detail which aspect you are referring to and explain why.

Q 10a. Do you agree that regulations 7 to 9 on an accountancy and control plan will help the Office for Nuclear Regulation ensure compliance with the Regulations in a manner that is consistent with good regulatory practice? If not, please give specific reasons.

Q 10b. Do you agree that the timescales for submitting the first accountancy and control plan are reasonable? If not, please give your reasoning.

Q 11. Are regulations 10 to 12 for keeping and maintaining operating and accounting records and reports by operators clear and practical? If not, please detail how they could be improved.

Q 12. Please give us specific comments on practical issues associated with applying regulation 13 and on using the form set out in Part 4 of Schedule 1.

Q 13. Do you agree that regulation 14 and the form set out in Part 2 of Schedule 1 clearly set out the requirements for inventory change reporting? If not, please give your reasoning and suggestions for improvements.

Q 14. Do you agree that regulation 15 on material balance report and physical inventory listing and the forms set out in Part 3 and 4 of Schedule 1 are clear? If not, please give your reasons and suggestions for improvements.

Q 15a. Do you agree that regulation 16, together with regulations 17 and 23, delivers the intended purpose of requiring operators to submit special reports to the Office for Nuclear Regulation in the circumstances described? If not, please give your reasoning.

Q 15b. Are there any other unusual occurrences that you believe should be captured by this regulation?

Q 16. Do you agree that regulation 18 is clear about how operators should describe the transformation of nuclear material in their reactors? If not, please say why and what improvements should be made?

Q 17. Do you agree that regulation 19 on relevant international agreements in relation to Nuclear Cooperation Agreements delivers its purpose of requiring the UK to account for qualifying nuclear material covered by these agreements? If not, please state why.

Q 18. Do you agree that regulation 20 on weight units and categories of qualifying nuclear materials ensures a consistent approach to reporting across all operators? If not, please give your reasons and suggestions for improvements.

Q 19. Do you agree that regulations 21 to 24 on exports, imports, loss or delay during transport and communication of change of date, together with the forms set out in Parts 5 and 6 of Schedule 1, are clear and effective? If not, please be specific about why and anything else which should be included.

Q 20. Do you agree that regulations 25 and 26 on carriers and temporary storage agents, and intermediaries should be included in the domestic regulations? Please elaborate on the reasons for your answer.

Q 21. Do you agree that regulations 27 and 28 on ores and the form in part 7 of Schedule 1 should be included in the domestic Regulations? Please elaborate on the reasons for your answer.

Q 22. Do you agree that regulations 29 and 30 on waste - and the forms in parts 9 and 10 of Schedule 1 – are clear and effective? If not, please give your reasoning.

Q 23a. Do you agree that regulations 31 and Form 11 provide an appropriate regime for operators of a qualifying nuclear facility with limited operation? If not, please state your reasons.

Q 23b. Do you agree that the meanings of reactor, critical facility, conversion plant, fabrication plant, reprocessing plant, isotope separation plant and storage installation, are technical terms which do not need to be defined in the Regulations? If not, what are your reasons?

Q 23c. Do you agree that the exemption set out in regulation 32 is appropriate? If not, what are your reasons?

Q 24. Do you have any comments on regulations 33 and 34 - and the form at Part 12 of Schedule 1?

Q 25. Do you have any suggestions about anything that should be added to regulation 35 on communication with the Office for Nuclear Regulation?

Q 26. Do you agree that regulations 36 to 38 on installation of safeguards equipment for nuclear material accountancy and surveillance provides the Office for Nuclear Regulation with appropriate powers to gain independent confirmation of information generated by an operator through suitable safeguards equipment? If not, please explain why.

Q 27. Do you have any comments on regulations 39 to 42 on the activities of the Office for Nuclear Regulation as the UK's safeguards regulator?

Q 28a. Do you agree that regulation 43 delivers our aim of proportionality on offences? If not, please state what your reasons for this are.

Q 28b. What suggestions do you have to improve regulation 43 and what is your reasoning for this?

Q29. Do you agree with the proposed definition of “fissionable material” set out in regulation 44? If not, what suggestions do you have to improve it?

Q 30. Is the proposed definition of “relevant international agreement” set out in regulation 45 clear? If not, what suggestions do you have to improve it?

Q 31a. Do you agree with the proposed method of implementing the provisions of “relevant international agreements” contained within Chapter XIV? If not, what suggestions do you have to improve it?

Q 31b. Do you have any comments on the proposed regulations 46 to 51?

Q 32. Do you have any comments on the proposed regulations 52 to 56 and amendments set out in Part I of Schedule 3?

Q 33a. Do you have any comments on the proposed transitional arrangements?

Q 33b. How could the proposed transitional provisions for Schedule 4 be improved, with particular reference to practical examples?

Q 33c. Do you consider that transitional arrangements could impose burdens on industry? If so, please provide further information in support of your answer.

Q 34. Do you have any comments on the review arrangements, set out in regulation 58?

Q 35. Do you have any further comments to make on the Regulations, which have not been covered anywhere above?