



Department for
Business, Energy
& Industrial Strategy

CONSULTATION: THE DRAFT NUCLEAR SAFEGUARDS FEES REGULATIONS 20XX

Consultation on the draft Nuclear Safeguards Fees Regulations 20XX to fund the new domestic nuclear safeguards regime

Closing date: 9th March 2021



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Any enquiries regarding this publication should be sent to us at: nuclearsafeguardsconsultation@beis.gov.uk

Introduction

This consultation seeks views on the proposed approach to the introduction of a cost recovery scheme for nuclear safeguards regulation, to commence from 1 April 2022. This will apply to those regulated under the UK's new domestic nuclear safeguards regime by the regulator, the Office for Nuclear Regulation (ONR). Those affected are subject to safeguards requirements by virtue of their responsibility for (qualifying) nuclear material and/or their involvement in nuclear fuel cycle related activities covered by the UK's international safeguards obligations. They range from nuclear site licensees responsible for large quantities of nuclear material through to businesses using specific nuclear materials, and to some educational and research entities. For the group known as Small Holders of Nuclear Material (SHNM),¹ an exemption from cost recovery is proposed.

Direct responses to the consultation questions asked are requested.

¹ This group is defined in the subsection of the consultation document concerning the proposed exemption for them.

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General information

Why we are consulting

Government has announced the decision to recover appropriate regulatory costs for the UK's new domestic nuclear safeguards regime from the nuclear industry. This approach reflects Government policy and complies with HM Treasury rules, that cost recovery of services provided by public sector organisations, including regulators, should apply in most circumstances and that costs are recovered fairly and equitably.

This consultation seeks the views of stakeholders on the Government's intended cost recovery approach, which will start from 1 April 2022. It includes the draft Nuclear Safeguards (Fees) Regulations 20xx (the "draft Fees Regulations"), which set out what safeguards activities undertaken by the Office for Nuclear Regulation (ONR) would be charged for, as they carry out their duties in their role as the UK's safeguards regulator.

The consultation also includes a Consultation Impact Assessment, which sets out to estimate the impacts of recovering costs from nuclear safeguards dutyholders². The Impact Assessment considers an option where all costs are recovered and an option where the majority of costs are recovered but there is an exemption for a group known as Small Holders of Nuclear Material. The impact on Small Holders of Nuclear Material is examined in a dedicated section of this consultation document.

The draft Fees Regulations will enable the vast majority of the UK's domestic safeguards regulatory regime to be funded, through cost recovery, from those who will be subject to and benefit from domestic safeguards regulation to ensure UK compliance with its international safeguards obligations.

The Secretary of State is required, by the Energy Act 2013, to consult ONR and other appropriate persons, when making fees regulations.

We look forward to hearing from industry and other stakeholders during this consultation.

² 'Nuclear safeguards dutyholders' is a term used by ONR and in wider industry. It includes operators of qualifying nuclear facilities, such as large nuclear power generation companies that handle specified nuclear material; and operators of qualifying nuclear facilities with limited operation who use very small quantities of specified nuclear material. Safeguards dutyholders also include businesses involved in R&D activities and those manufacturing, exporting and importing equipment for nuclear purposes.

Consultation details

Issued: 15 December 2020

Respond by: 9 March 2021

Enquiries to: Due to the impact of the coronavirus pandemic we will be unable to receive postal enquires. Please send all enquires to Domestic Nuclear Safeguards Policy Team, using the Email address: nuclearsafeguardsconsultation@beis.gov.uk

Consultation reference: The Draft Nuclear Safeguards Fees Regulations 20XX

Audiences:

Those in the nuclear industry with specific nuclear safeguards responsibilities for qualifying nuclear material and/or involvement in nuclear fuel cycle related activities covered by the UK's international safeguards obligations, related educational and research establishments, Small Holders of Nuclear Material (SHNM), and associated businesses and their representative bodies.

Territorial extent:

The draft Fees Regulations and cost recovery scheme will extend to England, Wales, Scotland and Northern Ireland. This consultation covers each of the territories. We welcome the views of the Devolved Administrations.

How to respond

Respond online at: <https://beisgovuk.citizenspace.com/civil-nuclear-resilience/consultation-on-draft-nuclear-safeguards-fees>

or

Email to: nuclearsafeguardsconsultation@beis.gov.uk

Due to the coronavirus pandemic we are unable to accept postal responses to this consultation.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

The proposals

Overview

1. Nuclear safeguards are a fundamental component of global nuclear non-proliferation. They consist of various reporting and verification processes which assure and demonstrate that civil nuclear material is not diverted unlawfully into military programmes. Nuclear safeguards are also vital to a flourishing nuclear industry, both in terms of operations and trade, since these are dependent on the UK acting in line with our international commitments on nuclear safeguards and non-proliferation.
2. This consultation concerns the introduction of a nuclear safeguards cost recovery scheme and sets out the circumstances in which fees would be payable to the UK's nuclear safeguards regulator, the Office for Nuclear Regulation (ONR), for its regulatory work on nuclear safeguards. The draft Fees Regulations will enable the ONR to recover costs from those regulated, where appropriate, to fund its work operating the UK's new domestic nuclear safeguards regime, which this regulator will undertake as part of its nuclear safeguards purposes.
3. The Fees Regulations will come into effect from 1 April 2022 and will be made under the powers set out in section 101 of the Energy Act 2013.
4. Existing cost recovery schemes under the appropriate fees regulations already govern how ONR recovers the full economic costs in regulating nuclear security³, nuclear safety⁴ and conventional health and safety⁵; and a proportion of the economic costs for civil nuclear transport⁶ - which form part of its core purposes, along with nuclear safeguards.
5. From the end of the transition period ONR will become the UK's independent nuclear safeguards regulator with responsibility for operating the UK State System of Accountancy for and Control of nuclear material (SSAC). The Government proposes to provide ONR with the legal powers to recover the vast majority of the economic costs associated with its nuclear safeguards functions, and will do so on a net nil basis.

3 The Nuclear Industries Security (Fees) Regulations 2005 made under section 77(1) and (2)(f) of the Anti-terrorism, Crime and Security Act 2001

4 The Health and Safety and Nuclear Fees Regulations 2016 made under section 101(1), (2) and (3) of the Energy Act 2013

5 The Health and Safety and Nuclear Fees Regulations 2016.

6 The Energy Act 2013 allows cost recovery for work chargeable under regulation 27 of the Carriage of Dangerous Goods Regulations 2009 (as amended).

Background to consultation

6. Following the UK's exit from the European Union (EU) and the Euratom⁷ Treaty on 31st January 2020, the UK entered a transition period which ends at 11pm on 31 December 2020. During this transition period Euratom has retained nuclear safeguards responsibilities for the UK.
7. After 11pm on 31 December 2020, ONR will become the UK's independent domestic regulator of nuclear safeguards and will be responsible for operating the UK State System of Accountancy for and Control of nuclear material (UK SSAC), required by our new safeguards agreements with the International Atomic Energy Agency (IAEA) and new Nuclear Cooperation Agreements with key partners.
8. The Nuclear Safeguards Act 2000⁸, the Nuclear Safeguards Act 2018⁹, the Nuclear Safeguards (EU Exit) Regulations 2019¹⁰ ("the Nuclear Safeguards Regulations") and the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019¹¹ together provide the framework for the UK's domestic nuclear safeguards regime to operate.
9. Following an initial period of government funding designed to ease the transition to new arrangements, it is proposed that, from 1 April 2022, cost recovery will commence in accordance with the published draft Fees Regulations. These set out the proposed circumstances in which fees will be payable to ONR.

Approach to cost recovery

Rationale for recovering nuclear safeguards regulatory costs

10. A plan for funding the new domestic safeguards regime beyond 1 April 2022 needs to be agreed to enable the UK to continue to meet international safeguards obligations. This is also necessary for a successful nuclear industry to both operate and trade.
11. HM Treasury's Managing Public Money¹² guidance suggests it can be appropriate to charge for services through fees rather than general taxation. Government is proposing to charge operators for the cost of the new domestic safeguards regime. This approach would be consistent with other nuclear regulation. For example, the ONR already independently regulates nuclear safety and security activities. Fees regulations to

⁷ Euratom is the European Atomic Energy Community.

⁸ <https://www.legislation.gov.uk/ukpga/2000/5/contents>

⁹ <http://www.legislation.gov.uk/uksi/2018/1079/contents/made>

A further set of commencement regulations will be made before the end of 2020 which will commence the remaining provisions of the Nuclear Safeguards Act 2018.

¹⁰ <http://www.legislation.gov.uk/uksi/2019/196/contents/made>

¹¹ <https://www.legislation.gov.uk/uksi/2019/195/contents/made>

¹² <https://www.gov.uk/government/publications/managing-public-money>

recover costs for its safety¹³ and security¹⁴ activities were made in 2016 and 2005 respectively.

ONR's current charging approach for nuclear safety and security

12. ONR currently recovers its costs primarily by charges to the nuclear industry it regulates; and charges to government for specific commissioned activities, together with grant funding from its sponsoring body, the Department for Work and Pensions.
13. ONR sets out its charging principles and methodology for how it charges those it regulates in its publication 'How we charge for nuclear regulation'¹⁵.
14. ONR's current charging approach is to recover costs from dutyholders¹⁶ for the work it undertakes to regulate them. In line with HM Treasury rules set out in 'Managing Public Money', ONR's cost recovery procedures aim to recover costs fairly, equitably and promptly across all dutyholders.
15. ONR is unable to generate any working capital and so does not make any profit or surplus. It recovers the full economic cost of its regulatory activities where possible and does so on a net nil basis, which means that as well as its frontline regulatory inspection activities, it recovers the costs of all other activities associated with and necessary to its regulation.

Proposed charging approach for nuclear safeguards cost recovery

16. ONR has not previously charged dutyholders for any of its current, limited safeguards activities. The wider nuclear safeguards regulatory work has been carried out on the UK's behalf by Euratom. Euratom arrangements continue to apply to the UK until the end of the transition period. At the end of the transition period ONR will become the UK's independent nuclear safeguards regulator, with responsibility for operating the UK State System of Accounting for and Control of nuclear material (SSAC). The development and implementation of the new UK SSAC has been government funded and this will continue until the end of March 2022.
17. With effect from 1 April 2022, the Government proposes that the draft Fees Regulations will provide the legislative mechanism for ONR, as the domestic safeguards regulator, to

¹³ <https://www.legislation.gov.uk/ukxi/2016/253/made>

¹⁴ <https://www.legislation.gov.uk/ukxi/2005/1654/contents/made>

¹⁵ <http://www.onr.org.uk/documents/2018/how-we-charge-for-nuclear-regulation.pdf>

¹⁶ See footnote 2 for a definition.

charge a fee to dutyholders for its safeguards regulatory activities, including its inspection, assessment, nuclear material accountancy and other safeguards activities.

18. The need for the draft regulations to include transitional arrangements has been considered – to cover activities which start in financial year 2021/22 and continue into 2022/23. However, the way ONR charges for its services makes a need for such arrangements highly unlikely. Stakeholders who disagree with our assessment that transitional arrangements are not required are requested to make this clear in their response to this consultation.
19. The Impact Assessment sets out in more detail how safeguards regulatory costs that can be charged will be allocated to dutyholders. The government proposes to exempt Small Holders of Nuclear Material as detailed at paragraph 24 below. In addition, there is a limited subset of safeguards activities that ONR must undertake as the regulator on behalf of the government, which will continue to be funded by government.

Impact Assessment

20. The impact assessment is published alongside this consultation document. The impact assessment is based on an estimate of the nuclear safeguards activities that will be undertaken and the ONR resource and effort associated with regulating that operator.
21. The impact assessment considers three options: the first option is continued government funding for the regulatory work on nuclear safeguards; the second option is to recover costs, where appropriate, from those regulated; and the third option is the same as the second option, except no fees would be paid by Small Holders of Nuclear Material.
22. The impact assessment looks specifically at the anticipated impacts of cost recovery in terms of costs and benefits. Impacts have been monetised where possible, between 2022/23 and 2031/32. This covers the 10 years after 1 April 2022. Costs are based on best assessments of the ONR resource needed to carry out the different nuclear safeguards regulatory activities of the regime¹⁷, in addition to broader costs such as training and IT.

¹⁷ ONR is not currently operating as the domestic regulator, so does not have the specific past experience here to base estimates on. Actual costs will also reflect what work is required in live operation, which can vary from dutyholder to dutyholder and from year to year. However, ONR and BEIS have worked closely together, using data from ONR's existing work areas, to produce those estimates.

Proposal to exempt Small Holders of Nuclear Material

23. Cost recovery will mostly affect a small number of nuclear site licensees responsible for large quantities of nuclear material, representing a small percentage of their overall costs of doing business. For these, the new regulatory and cost recovery approach brings broad parity with ONR's approach for its safety and security responsibilities.
24. Small Holders of Nuclear Material (SHNMs) are those dutyholders subject to the Nuclear Safeguards regulations 2019, whom ONR has agreed should be subject to the reduced reporting regime provided for in Regulation 31 of those regulations. This category also includes those who are not subject to those regulations, but who must still provide information to ONR in respect of UK obligations under its 'Additional Protocol' international agreement with the International Atomic Energy Agency.
25. Under a full cost recovery scheme, such Small Holders of Nuclear Material would also be subject to charges. We propose that the overall cost recovery approach should not apply to SHNM as we anticipate the relative impact to be disproportionate and potentially affect business viability for small and medium sized enterprises. The additional, but less easily quantifiable, impacts on this group include:
 - A deterrent effect on small organisations from taking up ONR's efforts to educate and encourage compliance for those with limited resources to manage the small quantities of nuclear material; but who would benefit greatly from ONR's expert advice;
 - Making some UK research opportunities less attractive;
 - Adversely affecting compliance and coverage thus impacting the UK's ability to carry out its nuclear safeguards responsibilities effectively to meet UK obligations.
26. The SHNM exemption would cover those dutyholders subject to the Nuclear Safeguards Regulations 2019 (NSR19), where the ONR have granted a request for the limited reporting regime under regulation 31 of NSR19. In addition, the regulations will not impose fees on those who are not subject to NSR19, but are required to provide information to ONR in respect of UK obligations under its Additional Protocol safeguards agreement with the IAEA.
27. The impact assessment gives estimated costs for the 10-year period (2022/23 – 2031/32) for those who will be exempted as approximately £5.7 million, or around 5% of the cost of the regime. This cost relates to ONR's anticipated regulatory effort and resource, the costs for which would be a significant proportion of total costs for businesses that hold small amounts of nuclear material.

Public Sector Equality Duty

28. We are considering the impacts of our consultation proposals on the following protected characteristics under the Public Sector Equality Duty (PSED): age; disability; gender reassignment; marriage or civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. At this stage we are not aware of any negative impacts on groups with protective characteristics arising from the proposed policies in this consultation. However, if there is any information you believe we should consider as part of this assessment then please include it with your consultation response.

Consultation questions

29. We welcome direct answers to the following questions:
- 1. Do you agree with the proposed approach to recovery of costs for nuclear safeguards regulation? If not, please detail why.**
 - 2. Do you agree that the analysis and assumptions in the impact assessment accurately reflect the impact to your business that might arise from cost recovery? If not, what else do we need to consider?**
 - 3. Do you agree with the proposal to exempt Small Holders of Nuclear Material from the cost recovery regime? If not, please explain why.**
 - 4. Are there any other aspects of the draft regulations on which you would like to comment?**
 - 5. Do you have any views about the implications of the proposals set out in this consultation for people with protected characteristics as defined in section 149 of the Equality Act 2010?¹⁸ What evidence do you have on these matters? Is there anything that could be done to mitigate any impacts identified?**
 - 6. Is there anything else you would like to add regarding the equalities impacts of the proposals set out in this consultation?**

¹⁸ <https://www.legislation.gov.uk/ukpga/2010/15/contents>

High Level Summary of draft Regulations

30. The Regulations will be made under section 101 of the Energy Act 2013, which provides the Secretary of State with the power to make fee-charging regulations in respect of activities carried out by the Office for Nuclear Regulation in relation to nuclear safeguards.
31. As discussed above, the 2000 Act, the 2013 Act and the Nuclear Safeguards Regulations provide for the ONR to carry out various functions in relation to nuclear safeguards. The draft Regulations set out when and by whom fees are payable to the ONR in relation to these functions.
32. Regulation 3(1) requires an operator of a qualifying nuclear facility to pay a fee to the ONR when it performs a function under the 2000 Act listed in Schedule 1. Regulation 3(2) requires an operator to pay a fee to the ONR when it performs a function under the Nuclear Safeguards Regulations listed in Schedule 2. 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. An operator is also required to pay a fee to the ONR when the ONR performs a function listed in regulations 3(4), (5) and (7).
33. The effect of regulation 3(8) is to ensure that fees will not be recoverable from the operator of a qualifying nuclear facility with limited operation, due to the amount of nuclear material they hold.
34. Regulation 4 provides that the fees payable under regulation 3 must be reasonable and not exceed the costs of performing the function to which they relate. Regulation 4(3) requires that a fee is paid within thirty days of invoicing.

Associated Documents

Draft Fees Regulations

Draft Impact Assessment

This consultation is available from: <https://www.gov.uk/government/consultations/draft-nuclear-safeguards-fees-regulations>

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