



Response to: Draft Nuclear Industries Security (Amendment) Regulations.

Submitted by email on 17th March to: James Young, DTI, 1 Victoria Street, London SW1H 0ET

Dear Mr Youngs

I am writing to you on behalf of Greenpeace concerning the DTI's consultation on the Draft Nuclear Industries Security (Amendment) Regulations, December 2005.

Greenpeace has concerns over the scope of 'any person' being covered by the security regulations – not only because the proposed regulations could cover anyone involved in legal, technical, safety, environmental or policy work on nuclear matters, but also because of the very broad (and vague) definition of the 'sensitive nuclear information' (SNI) involved, the scope of activities covered and the need for such people to be 'approved' (vetted) by the Secretary of State before they can receive such information.

Background

We note the DTI consultation document states:

'the proposed regulations extend the obligations to protect sensitive nuclear information in regulation 22 of the Nuclear Industries Security Regulations 2003 (NISR) more widely to cover **any person** in the United Kingdom who has **possession or control of such information** and who is **involved in activities on or in relation to a nuclear site or premises** or involved in the enrichment of uranium or connected activities (whether in the United Kingdom or elsewhere). This will therefore include the Nuclear Decommissioning Authority (NDA) and those of its contractors and consultants not already subject to security regulation and possibly two patent agents. (emphasis added)

Under the relevant legislation¹ "sensitive nuclear information" means:-

- (a) information relating to, or capable of use in connection with, any treatment of uranium that increases the proportion of the isotope 235 contained in the uranium; or
- (b) information relating to activities carried out on or in relation to nuclear sites or other nuclear premises which appears to the Secretary of State to be information which needs to be protected in the interests of national security.

The definition of SNI is very broad. Under the proposed new regulation definition of 'any person' in the 'United Kingdom who has possession or control of such information' is very broad – as are the activities which might be covered i.e. 'activities on or in relation to a nuclear site or premises'.

We are also concerned that changes to regulations will broaden the scope of who will be 'vetted' to allow access to SNI. If the wording of the proposed amendments are not changed then 'any person' who may have access to SNI – through legal actions or local authority work, or safety/security work, will be have to be vetted (approved) by the Secretary of State as 'being of suitable character and

¹ Section 77 (7) Anti Terrorism, Crime and Security Act 2001, and regulation 22, Nuclear Industries Security Regulations 2003.

integrity' (under proposed regulation 3 (d) *and* have to be able to fulfil all necessary security arrangements.² (emphasis added)

These broad definitions and coverage do nothing to properly explain the intention behind amending the regulations and have given rise to concern over the potential impact of the proposed changes. We appreciate the need to maintain security in the nuclear industry and that plans for increased competition and 'contractorisation' will probably create more complications in terms security than would have been experienced under the more contained UKAEA/BNFL/CEGB/SSEB system. We understand the changes will more accurately cover the NDA, its consultants and contractors. However, we are concerned that the proposed amendments do have the potential for unforeseen consequences across the NGO sector, local authorities, the legal profession, the public and the media (and perhaps others).

Greenpeace is concerned that the extension of security coverage on SNI to cover 'any person' will impact not only on those who are consultants/contractors to the NDA and NDA personnel but will also significantly impact on industry relations with civil society in terms of transparency and openness in discussing nuclear matters e.g. on planning inquiries for new reactors.

From a brief informal telephone conversation with the DTI on the proposed changes, we understand it will be possible under certain circumstances for 'any person' to be someone outside the nuclear industry e.g. a lawyer representing a local authority. The DTI's consultation document does not clearly explain that such a person might be caught by this legislation. It is understood from the discussion with the DTI that the onus of responsibility for ensuring that SNI is handled securely lies with the original holder of the SNI, and is entrusted only to those who can implement the necessary security measures. How can the organisation passing on the information ensure it will be safeguarded? Will the DTI explain what it expects to happen under these circumstances to all those who could be caught under the new arrangements if the amendments go ahead?

Greenpeace has real concerns over the impact of these proposed changes on its day-to-day work. For example, Greenpeace takes part in a number of NDA fora e.g. Nuclear Materials Issues Group. Prior to the last NDA Nuclear Materials Issues Group in March (a group which discusses matters relating to spent fuel, plutonium and uranium in the UK) Greenpeace specifically asked the NDA for information on how the amended regulation might impact on NGOs such as Greenpeace which take part in discussions with the NDA and how the broader coverage of 'any person' might impact on sharing information with the broader community.

We received a verbal report from the BNFL delegate, who although trying to answer the question did not reassure us. For example, we were told that in general the amounts of materials could be discussed e.g. the UK has a civil stockpile of 102 tonnes of plutonium, but that no information would be disclosed on security arrangements, buildings holding the material etc. We accept this position and will continue to take part in discussions on this basis. That however might change if detailed information is required and we are denied it and are unable to sensibly take part in dialogue with the NDA and other stakeholders at its meetings.

Indeed, there is a real risk that organisations requesting more information might be denied it because of security i.e. how the information would be kept secure once it has left the original owner. If SNI was released, the second person holding it would then be caught by the regulation and might

² The Draft Nuclear Industries Security (Amendment) Regulations. DTI December 2005
http://www.dti.gov.uk/energy/consultations/nisr_2005.pdf

not be able to have transparent or critical discussions with those they might wish/need to discuss the information with!

This situation is not fully spelt out in the consultation document provided by the DTI.

We give some examples below concerning how the proposed amendments may cause problems in terms of who can and can't have access to information.

1. NGOs – employees or consultants who work on legal, technical and policy matters. As the DTI will be aware, Greenpeace has taken part in planning inquiries and legal challenges on a number of nuclear installations e.g. THORP and the SMP at Sellafield. We are concerned that information related to a specific installation's functions – in terms of ability to carry out its operations safely, its location and/or production capacity – would be banned from discussion under the amended regulations as these would cover 'any person involved in activities on or in relation to a nuclear site or premises'. If employees or consultants to NGOs were made privy to SNI under an agreed confidentiality arrangement (e.g. shown the workings of a plant to prove that a postulated accident could not happen) how could they report that back except in the broadest terms? Would they have to be 'approved'? How would they be able to prove they have met the required security arrangements? What if the competent person nominated by the NGO was refused 'approval' to receive SNI?

2. Local authorities - planning concerns: Currently new nuclear reactors are under discussion for the UK. In addition, the Committee on Radioactive Waste Management (CoRWM) will hand down its recommendations on options for managing nuclear waste and nuclear materials in July. CoRWM's report will be followed – at some point – by implementation activities.

Both new build and nuclear waste/materials disposal/storage will inevitably involve local officials in discussing detailed plans on 'activities on or in relation to a nuclear site or premises' that will involve SNI. For example, if a new reactor was proposed at Sizewell, where there is a large store for spent nuclear fuel, local planning officials and emergency planning personnel may want to discuss in-depth safety matters concerning any spent fuel storage connected with the new reactor. Would these people become 'any person' under the proposed new regulations? How would that designation impact on their ability to report back to their elected representatives or answer queries from the public?

Post CoRWM, if there are plans for a regional/central store or repository for spent fuel, how would NGOs or local officials be able to access information considered 'sensitive' e.g. transport issues?

The result of the proposed amendments would be that the regulations covering 'any person' 'involved in activities on or in relation to a nuclear site or premises' which might involve SNI will result in the vetting of 'any person' and that person(s) having to set up a security system. Is this realistic given the scenarios above regarding possible NGO legal action or local authority planning? Or, will it mean that these bodies will be effectively locked out of important discussions – or barred from legitimate legal avenues to seek information or challenge proposals?

3. General public and media; information on accidents – if there was a major accident at a nuclear plant, even if it did not involve off-site releases (and particularly if it did) the public and media would want information on what had happened, where the accident had taken place, what materials were involved, had it been secured, how will the industry prevent it from happening again, could it happen at a similar site? This scenario could quite easily involve people asking for information which the industry regards as SNI.

Under such circumstances the public would be given only part of the information – thus denying them their basic right to fully access vital information on which to make decisions on health and safety. In the event of an accident it is possible that SNI ‘clause’ will be invoked which will prevent full disclosure of information. Given that the DTI is now aware of this as a potential problem it may be able to say it is ‘unintended consequence’ of the change to regulations, but cannot claim it is an *unforeseen* consequence.

Response to questions

Question 1 – Do you agree that the obligations to protect sensitive nuclear information in Regulation 22 of the Nuclear Industries Security Regulations 2003 should be extended to all persons?

Greenpeace response - No

Question 5 - Do you believe that the extension of the regulations as indicated in paragraphs 29-38 may have unintended consequences or other implications? When answering this question do bear in mind the possible implications for the NDA, contractors and consultants of the NDA, companies involved with the transport or storage of uranium enrichment equipment and software and transport companies who move nuclear material?

Greenpeace response: As we have explained above the amendments could have unintended and undemocratic consequences.

The amendments should be worded so that they have has no impact, in terms of possible security measures or legal consequences, on those not directly employed by the NDA, its contractors or others who might be potentially involved in nuclear activities.

The DTI should withdraw the amendments and undertake a round of consultation with NGOs and local authorities (and perhaps relevant national governments e.g. Isle of Man, Republic of Ireland) as to how the amendments could impact on them.

Because of problems outlined above, it is not possible to assess the Regulatory Impact Assessment of likely compliance costs and benefits of the regulations on NGOs, local authorities or individual consultants as many will not be aware they will be caught by these regulations and so cannot offer details on costs/benefits (Question 4).

In relation to the coverage on uranium enrichment software we make no challenge. Nor do we seek to challenge the proposal of reporting of transport of Class III nuclear materials.

Greenpeace trusts that the DTI will make a full response to this submission and reply to the concerns outlined above.

Yours sincerely

Jean McSorley, MPS
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Greenpeace UK.