

*This draft Statutory Instrument has been printed in substitution of the draft Statutory Instrument which was printed on 9th June 2004 and is being issued free of charge to all known recipients of that Statutory Instrument. Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 80(7) of the Anti-terrorism, Crime and Security Act 2001, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2004 No.**

**ATOMIC ENERGY AND  
RADIOACTIVE SUBSTANCES  
PREVENTION AND  
SUPPRESSION OF TERRORISM**

**The Uranium Enrichment Technology  
(Prohibition on Disclosure) Regulations 2004**

*Made* - - - - 2004  
*Coming into force* - - 2004

Whereas a draft of these Regulations has been laid before Parliament in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972<sup>(1)</sup> and section 80(7) of the Anti-terrorism, Crime and Security Act 2001<sup>(2)</sup> and has been approved by each House of Parliament:

Now, therefore, the Secretary of State, being a Minister designated<sup>(3)</sup> for the purposes of section 2(2) of that Act of 1972 in relation to information society services, in exercise of the powers conferred upon her by that section and by section 80(2), (4)<sup>(4)</sup>, and (5)(a) and (c) of that Act of 2001, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004 and shall come into force on the twenty-eighth day after the day on which they are made.

(2) In these Regulations—

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(1) 1972 c. 68.  
(2) 2001 c. 24.  
(3) S.I. 2001/2555.  
(4) See section 80(8) of 2001 c. 24 for the definition of “prescribed”.

“the Act” means the Anti-terrorism, Crime and Security Act 2001;

“enrichment equipment” means equipment which is—

- (a) specifically designed or adapted for use in connection with the enrichment of uranium, or
- (b) not so designed or adapted but likely to be of exceptional use in that connection;

“equipment” includes—

- (a) a component of equipment, and
- (b) buildings;

“information” does not include software;

“reckless” has the meaning given by regulation 2(2);

“specified activity” means any of the following activities:

- (a) treating uranium to increase the proportion of the isotope 235 contained in the uranium;
- (b) manufacturing enrichment equipment;
- (c) adapting equipment which, following its adaptation, remains or becomes enrichment equipment;
- (d) testing or evaluating the proper working of enrichment equipment.

### **Prohibition on disclosure of uranium enrichment technology**

2.—(1) Subject to regulation 3—

- (a) no person within the United Kingdom, and
- (b) no United Kingdom person<sup>(5)</sup> outside the United Kingdom,

shall disclose to any person anywhere in the world any equipment or software to which paragraph (3) applies or any information to which paragraph (4) applies with the intention of assisting or enabling, or being reckless as to whether the disclosure might assist or enable, any person (whether the person to whom the disclosure is made or any other person) to undertake a specified activity.

(2) For the purposes of these Regulations, a person is reckless as to whether a disclosure made by him might assist or enable any person who is undertaking or proposes to undertake a specified activity to undertake that activity if—

- (a) at the time he makes the disclosure—
  - (i) he has recognised that the disclosure would create a risk that any person who is undertaking or proposes to undertake a specified activity might be assisted or enabled to undertake that activity; or
  - (ii) he is indifferent as to whether the disclosure would create such a risk or not; or
- (b) the disclosure creates an obvious risk that any person who is undertaking or proposes to undertake a specified activity might be assisted or enabled to undertake that activity, but at the time he makes the disclosure he has failed to give any thought to the possibility that the disclosure would create such a risk.

(3) The equipment and software to which this paragraph applies are—

- (a) enrichment equipment;
- (b) any equipment specifically designed or adapted to be used to manufacture enrichment equipment;
- (c) any equipment specifically designed or adapted to be used to adapt any equipment which, following its adaptation, remains or becomes enrichment equipment;

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(5) The definition of “United Kingdom person” in section 81(2) and (3) of 2001 c. 24 was amended by section 2(3) of 2002 c. 8.

- (d) any equipment specifically designed or adapted to be used to test the proper working of enrichment equipment; and
  - (e) any software specifically designed or adapted to be used in connection with the use of any equipment falling within any of subparagraphs (a) to (d).
- (4) The information to which this paragraph applies is any information about—
- (a) any equipment or software to which paragraph (3) applies or the construction, testing or evaluation of such equipment;
  - (b) any equipment or software which is no longer in existence but, during its existence, was equipment or software to which paragraph (3) applies;
  - (c) any design for any equipment or software which, were it to be manufactured or produced in accordance with the design, would be equipment or software to which paragraph (3) applies; and
  - (d) the method of use of any equipment or software mentioned in any of subparagraphs (a) to (c),
- where (in any such case) the information would assist or enable a specified activity to be undertaken.

### Exempt disclosures

- 3.—(1) Regulation 2 does not prohibit disclosure if—
- (a) it is made with the intention of assisting or enabling the proper working of enrichment equipment to be —
    - (i) tested for the purpose of enabling or facilitating, or
    - (ii) evaluated in the course of,the carrying out of any functions of—
    - (aa) the Health and Safety Executive established under section 10 of the Health and Safety at Work etc Act 1974<sup>(6)</sup>; or
    - (bb) the Environment Agency established under section 1 of the Environment Act 1995<sup>(7)</sup>; or
    - (cc) Euratom; or
    - (dd) the International Atomic Energy Agency; or
  - (b) it is made—
    - (i) for the purpose of enabling an application for a patent to be filed in the Patent Office (whether under the Patents Act 1977<sup>(8)</sup> or under any treaty or international convention to which the United Kingdom is a party), or
    - (ii) for the purpose of enabling such an application to be amended, or
    - (iii) in the course of the filing or amendment of such an application, or
    - (iv) by a person acting in the course of his duties in respect of such applications under the authority or direction of the Comptroller-General of Patents, Designs and Trade Marks; or
  - (c) it—
    - (i) consists of information contained in an application for a patent; and
    - (ii) was made not less than six weeks after the application was filed in the Patent Office;

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<sup>(6)</sup> 1974 c. 37.

<sup>(7)</sup> 1995 c. 25.

<sup>(8)</sup> 1977 c. 37.

and no directions have been given under section 22 of the Patents Act 1977 in relation to the application or all such directions have been revoked; or

- (d) it is made—
- (i) for the purpose of enabling an application for a patent (or other protection for an invention) to be filed outside the United Kingdom under the law of a country other than the United Kingdom or under a treaty or international convention to which the United Kingdom is a party, or
  - (ii) for the purpose of enabling such an application to be amended, or
  - (iii) in the course of the filing or amendment of such an application,
- where the Comptroller-General of Patents, Designs and Trade Marks has granted written authority for the filing under section 23(1) of the Patents Act 1977; or
- (e) it is made by a United Kingdom person outside the United Kingdom acting in the course of his duties in respect of applications for patents (or other protections for inventions) filed outside the United Kingdom under the law of a country other than the United Kingdom or under a treaty or international convention (whether it is one to which the United Kingdom is a party or not); or
- (f) it constitutes—
- (i) an activity which is authorised by a licence granted in accordance with any provision made under the Export Control Act 2002<sup>(9)</sup>, or
  - (ii) an export which is authorised by or under Article 6 of Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology<sup>(10)</sup>, or
  - (iii) a transfer which is authorised under Article 21 of that Regulation, or
  - (iv) anything which is the subject of a prohibition imposed by an Order in Council under section 1(1) of the United Nations Act 1946<sup>(11)</sup> but which is permitted or authorised by means of the exercise of a power conferred by such an Order; or
- (g) it is authorised by the Secretary of State under regulation 4(1).
- (2) Regulation 2 does not prohibit disclosure of equipment or software by parting with possession of it to the extent that the person making the disclosure—
- (a) has the intention of assisting or enabling, or is reckless as to whether the disclosure might assist or enable, another person to undertake a specified activity, and
  - (b) both believes and has reasonable cause to believe that the undertaking of the specified activity by that other person is supported or approved by the Secretary of State.
- (3) Regulation 2 does not prohibit disclosure of information which, at the time of the disclosure, has previously been made available to the general public anywhere in the world otherwise than in contravention of section 80(3) of the Act or of any other prohibition breach of which was an offence at the time when it was so made available (including, in a case in which it was made available outside but not within the United Kingdom, an offence under the law of one or more of the places where it was made available).
- (4) Regulation 2 does not prohibit the doing of any thing the prohibition of which would be contrary to a Community obligation of the United Kingdom.

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<sup>(9)</sup> 2002 c. 28.

<sup>(10)</sup> OJ L 159, 30.6.2000, p. 1.

<sup>(11)</sup> 1946 c. 45.

### **Authorisation of disclosures**

- 4.—(1) On the application of any person or otherwise, the Secretary of State may authorise—
- (a) any individual disclosure; or
  - (b) any class of disclosure,
- which would otherwise be prohibited by regulation 2.
- (2) An authorisation—
- (a) in the case of an application, shall be granted by written notice to the applicant, and such other persons as the Secretary of State thinks fit;
  - (b) in any other case, shall be granted by written notice to such persons as the Secretary of State thinks fit; and
  - (c) in any case, may be granted for such duration and subject to such conditions as the Secretary of State thinks fit.
- (3) The Secretary of State may require—
- (a) the provision in writing by the applicant for an authorisation of such additional information as she may consider necessary to enable her to decide whether to grant the authorisation; and
  - (b) the verification of any information provided by the applicant in connection with the application in such manner as the Secretary of State may specify.
- (4) Where on an application for an authorisation the Secretary of State proposes not to grant the authorisation, she shall give the applicant written notice of her proposal and of the reasons for it.
- (5) The applicant may make written representations to the Secretary of State within the period of 28 days following the date on which the notice under paragraph (4) is given.
- (6) The Secretary of State shall take into account any such representations before deciding whether to grant the authorisation.
- (7) If the Secretary of State decides not to grant the authorisation, she shall give the applicant written notice of her decision and of the reasons for it.
- (8) This paragraph applies where the applicant for an authorisation—
- (a) makes any statement or provides any information which is false or misleading in a material particular; or
  - (b) omits any information which is material to his application;
- and the authorisation is granted.
- (9) In any circumstances to which paragraph (8) applies—
- (a) as regards the applicant, the authorisation shall be void from the time it was granted;
  - (b) as regards any other person, the authorisation shall be void from the time he knew or should reasonably have become aware of those circumstances.

### **Withdrawal or variation of authorisations**

- 5.—(1) The Secretary of State may withdraw or vary an authorisation by written notice to each person to whom notice of the authorisation was given under regulation 4(2); and in this regulation, such a person is referred to as an “interested party”.
- (2) A notice given under paragraph (1) shall specify the reasons for the decision to withdraw or vary the authorisation (as the case may be).
- (3) The withdrawal or variation of an authorisation shall take effect for each interested party upon the receipt by him of the notice given under paragraph (1).

(4) An interested party may make representations to the Secretary of State within 28 days of the date on which the notice is given to him.

(5) The Secretary of State shall take into account any such representations before reaching a decision whether to set aside or vary the notice given under paragraph (1), and shall give written notice to every interested party of her decision.

(6) A decision under paragraph (5) shall have immediate effect.

(7) A decision under paragraph (5) to vary a notice given under paragraph (1) shall not cause any disclosure not to be authorised which would have been authorised if the notice had not been varied.

(8) This paragraph applies where an interested party, in making representations under paragraph (4)–

(a) makes any statement or provides any information which is false or misleading in a material particular; or

(b) omits any information which is material to his representations;

and the notice given under paragraph (1) is set aside or varied under paragraph (5).

(9) In any circumstances to which paragraph 8 applies,–

(a) as regards the interested party, any decision by the Secretary of State under paragraph (5) to set aside or vary the notice shall be void from the time the decision was made;

(b) as regards any other person, any decision by the Secretary of State under paragraph (5) to set aside or vary the notice shall be void from the time that person knew or should reasonably have become aware of those circumstances.

### **Sending and giving of applications, information, representations and notices**

**6.—**(1) In this regulation—

“electronic communication” means a communication transmitted—

(a) by means of an electronic communications network, or

(b) by other means but while in electronic form;

“written document” means an application, information, a representation or a notice under regulation 4 or 5.

(2) A written document may be sent or given to the intended recipient by—

(a) delivering it to him, or

(b) leaving it at his proper address, or

(c) sending it to him at that address by post or other means.

(3) No written document may be sent or given by means of an electronic communication unless either—

(a) the intended recipient has indicated that he is willing to receive it in that form, or

(b) it is sent in response to a previous electronic communication and the intended recipient has not indicated that it should not be given or sent in that form.

(4) A written document may be sent or given—

(a) to a body corporate by being sent or given to its secretary or clerk;

(b) to a firm by being given or sent to a partner in the firm or a person having management or control of the partnership business;

(c) to an unincorporated body by being sent or given to a member of its governing body.

(5) For the purposes of this regulation and of section 7 of the Interpretation Act 1978<sup>(12)</sup> in its application to this regulation, the proper address (except in a case falling within paragraph (7)) of—

- (a) the Secretary of State is the address of the principal office of the holder of the office of Secretary of State who for the time being exercises the functions of the Secretary of State under regulations 4 and 5;
- (b) a body corporate is the address of its registered or principal office;
- (c) a firm or unincorporated body is the address of its principal office;
- (d) any other person is his last known address.

(6) Where, by virtue of the above provisions of this regulation, the proper address of the intended recipient of a written document is outside the United Kingdom, references in this regulation to the proper address of—

- (a) a body corporate, firm or unincorporated body include its principal office (if any) in the United Kingdom;
- (b) any other person include his last known address in the United Kingdom (unless he is known no longer to have an address in the United Kingdom).

(7) Where a written document is to be given or sent by means of an electronic communication, the proper address of any person includes the number or address which he has indicated is to be used by him for receipt of the communication.

#### **Supplementary provisions about offences**

7.—(1) Proceedings for an offence under section 80(3) of the Act alleged to have been committed outside the United Kingdom may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(2) In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings, the court may, upon application by the prosecution in the course of proceedings for an offence under section 80(3) of the Act, order all or any portion of the public to be excluded during any part of the hearing if it considers that the publication of any evidence to be given or of any statement to be made in the course of the hearing would be prejudicial to national security; but the passing of sentence shall in any case take place in public.

(3) In proceedings for an offence under section 80(3) of the Act relating to the disclosure of information, it shall not be necessary to prove that, at the time of the disclosure, the information had not been made available to the general public as provided in regulation 3(3) unless the defence adduces evidence to the contrary.

#### **The Electronic Commerce (EC Directive) Regulations 2002**

8. The Electronic Commerce (EC Directive) Regulations 2002<sup>(13)</sup> shall apply to these Regulations notwithstanding regulation 3(2) of those Regulations.

2004

Department of Trade and Industry

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<sup>(12)</sup> 1978 c. 30.

<sup>(13)</sup> S.I. 2002/2013, amended by S.I. 2004/1178.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prohibit the disclosure of certain equipment, software and information relating to uranium enrichment technology. By virtue of section 80(8) of the Anti-terrorism, Crime and Security Act 2001, “disclosure” includes parting with possession of things (including equipment). Section 80(8) also defines “information” as including software: but in these Regulations, “information” is defined as not including software, which is dealt with separately in the Regulations.

Paragraph (1) of regulation 2 contains the prohibition: it covers both intentional and reckless disclosures; and applies not only to disclosures within the United Kingdom but also to disclosures by “United Kingdom persons” (as defined by section 81(2) and (3) of the 2001 Act) abroad. Paragraph (2) defines “reckless”. Paragraphs (3) and (4) set out the software, equipment and information to which the prohibition applies.

Regulation 3 contains exemptions.

Regulations 4 and 5 provide for the Secretary of State to authorise disclosures and for the withdrawal or variation of authorisations.

Regulation 6 makes provision for the sending or giving of written documents for the purposes of regulations 4 and 5.

Paragraph (1) of regulation 7 provides for offences committed abroad to be tried anywhere in the United Kingdom. Paragraph (2) provides for evidence in the trial of offences to be taken without the public being present. Paragraph (3) provides that the prosecution do not have to prove that information was not publicly available (since publicly available information is exempted from the prohibition by regulation 3(3)) unless the defence brings forward evidence that it was.

Regulation 8 applies the Electronic Commerce (EC Directive) Regulations 2002 (‘the E-Commerce Regulations’) to these Regulations. The E-Commerce Regulations transpose into national law Articles 3, 5, 6, 7(1), 10 to 14, 18(2) and 20 of Directive [2000/31/EC](#) of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). However, regulation 3(2) of the E-Commerce Regulations provides that they do not apply in relation to the exercise of a power to legislate after the date on which they were made (30th July 2002), so that they do not have prospective effect.

Regulation 8 of these Regulations provides that the E-Commerce Regulations apply to them so that they must be read in a way that is compatible with the requirements of the E-Commerce Regulations.

A transposition note setting out how the main elements of Directive [2000/31/EC](#) are transposed into law was placed in the libraries of both Houses of Parliament when the E-Commerce Regulations were laid. Copies are also available from the International Communications Unit, Department of Trade and Industry, Bay 202, 151 Buckingham Palace Road, London SW1W 9SS.

A regulatory impact assessment in respect of these Regulations may be obtained from the Department of Trade and Industry, Energy Innovation and Business Unit, 1 Victoria Street, London SW1H 0ET. A copy has been placed in the libraries of both Houses of Parliament.