



## BRIEFING PAPER

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# The Nuclear Safeguards Act 2018

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## Summary

Nuclear safeguards are measures to verify that countries comply with their international obligations not to use nuclear materials for nuclear weapons.

Safeguards were introduced as part of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons where the nuclear weapon states (China, France, Russia, the United Kingdom and the United States) undertook not to transfer nuclear weapons or support manufacture or acquisition of weapons by non-nuclear weapon states. As a result, non-nuclear weapons states undertook to have international monitoring of their nuclear material by the International Atomic Energy Agency (IAEA – a United Nations affiliated organisation) and nuclear weapons states voluntarily accepted the same monitoring.

The UK joined the European Atomic Energy Community (Euratom) in 1973. Since then, the UK's agreements for safeguard monitoring with the IAEA have been fundamentally underpinned by the UK's membership of Euratom. One of Euratom's roles is to implement safeguards on nuclear material across Euratom member states.

The *European Union (Notification of Withdrawal) Act 2017* received Royal Assent on 16 March 2017. On 29 March 2017, the Prime Minister gave notification of the withdrawal of the UK from the EU and from Euratom under section 1(1) of the *European Union (Notification of Withdrawal) Act 2017*.

The Nuclear Safeguards Bill 2017-19 (referred to in this paper as 'the Bill') was presented to Parliament on 11 October 2017 and makes provision for nuclear safeguards after the UK leaves Euratom.

This Bill would allow the Government to make regulations for, and implement international agreements in relation to, nuclear safeguarding. This is required once the UK leaves Euratom. The Bill does not set out what the regulations will look like but does include a duty to consult the UK's Office for Nuclear Regulation. Pre-consultation draft regulations were published in January 2018. The new regulations will initially be subject to the affirmative procedure in both Houses, but later amendments will not unless they meet certain conditions. The Bill also allows existing legislation to be amended by regulation in relation to the UK's withdrawal from Euratom. The Bill extends to the whole of the UK.

The Bill does not cover other aspects of the UK's relationship with Euratom, such as research funding. The Government published a written statement on 11 January 2018, setting out the principles of their strategy on nuclear separation policy and their objectives on a future relationship with Euratom.

This Briefing Paper discusses the background to the Bill, the content of the Bill, and contains some comment on the Bill.

The Bill was amended at report stage in the House of Lords on 20 March 2018 by the Government and Opposition. On 8 May, the Commons replaced a Lords amendment with a similar Government amendment. The Bill received Royal Assent on 26 June 2018 and became the *Nuclear Safeguards Act 2018*.

# 1. UK nuclear industry regulation

The UK has a long history of nuclear power. The UK's first nuclear power plant that provided electricity to the National Grid opened in 1956 at Calder Hall.<sup>1</sup> Today the UK has fifteen operating reactors, generating about 21% of its electricity<sup>2</sup> and 36 nuclear licensed sites.<sup>3</sup> Aside from nuclear power stations, civilian uses of nuclear material can extend to other industries such as medicine, farming, transport, and industrial processes.

Nuclear safeguards are measures to verify that countries comply with their international obligations not to use nuclear materials for nuclear weapons.<sup>4</sup> They are different from regulations relating to the safe operation of UK nuclear facilities which are managed by the Office of Nuclear Regulation.

## 1.1 International Safeguards

The use of nuclear material is regulated. International agreements cover cooperation and use of such material. Safeguards on nuclear material were originally required due to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons. The nuclear weapon states (China, France, Russia, the United Kingdom and the United States) undertook not to transfer nuclear weapons or support manufacture or acquisition of such weapons by non-nuclear weapon states. As a result, non-nuclear weapons states undertook to have international monitoring of their nuclear material by the International Atomic Energy Agency (IAEA) and nuclear weapons states voluntarily accepted the same monitoring. In the UK, this voluntary agreement came into force in 1978. This monitoring is of civil nuclear material with exemptions for defence purposes.

Since 1973, when the UK joined Euratom (see details in Section 2 below), the UK's agreements with the IAEA have been fundamentally underpinned by the UK's membership of Euratom. One of Euratom's roles is to implement safeguards on nuclear material across Euratom member states.

As the [Explanatory Notes](#) of the Bill state:

The detail of the safeguards regime is set out in *Commission Regulation (Euratom) No. 302/2005* of 8 February 2005 on the application of Euratom safeguards ("the Euratom Regulation"), made under the *Euratom Treaty*. The Euratom Regulation imposes the detailed technical requirements on those holding civil nuclear material and takes effect automatically in United Kingdom law by virtue of the *European Communities Act 1972* (without specific domestic implementing legislation).

**The Nuclear Safeguards Bill would allow the Government to make regulations for, and implement international agreements in relation to, nuclear safeguarding. The Bill does not cover other aspects of the UK's relationship with Euratom such as research funding.**

<sup>1</sup> World Nuclear Association, [Nuclear Development in the United Kingdom](#), October 2016

<sup>2</sup> World Nuclear Association, [Nuclear Power in the United Kingdom](#), June 2017

<sup>3</sup> Office for Nuclear Regulation, [Aims and Objectives](#) (accessed 12 October 2017)

<sup>4</sup> Office for Nuclear Regulation, [What are nuclear safeguards?](#) (accessed 12 October 2017)

## 1.2 The Office for Nuclear Regulation

Within the UK, the Office for Nuclear Regulation (ONR) is the statutory independent organisation responsible for regulation of nuclear safety and security. According to the Bill's [Explanatory Notes](#):

The *Energy Act 2013* established the ONR as the United Kingdom's independent nuclear regulatory body in 2014 (with certain functions having rested with the Health and Safety Executive). The *Energy Act 2013* sets out the purposes of the ONR, which define the five areas of regulatory responsibility: those relating to nuclear safety, nuclear health and safety, nuclear security, nuclear safeguards, and transport of radioactive material. In addition to this section 74 of the *Energy Act 2013* provides for the Secretary of State to make regulations (known as "nuclear regulations") for four of the ONR's purposes, including the nuclear safeguards purposes.

The purpose of the Bill is to transfer the responsibilities currently managed by Euratom to the ONR, as well as for the UK to set out a new safeguards regime previously provided by Euratom. However, as the [ONR website](#) states:

A fundamental principle of the safeguards regime is that the verification is independent of the country, and is performed by international inspectorates.<sup>5</sup>

As such any future safeguards procedure will need to ultimately conform to the requirements of the IAEA.

The Bill does not cover other aspects of the UK's relationship with Euratom such as research funding.

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<sup>5</sup> Office for Nuclear Regulation, [What are nuclear safeguards?](#) (accessed 12 October 2017)

## 2. Euratom and Brexit

### 2.1 What is Euratom?

The European Atomic Energy Community, better known as Euratom, was established in the 1950s as part of the creation of the European Community. The Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community, known collectively as the *Treaties of Rome*, were signed in March 1957 and came into force on 1 January 1958.<sup>6</sup> At the time there were six founding states - Belgium, France, Germany, Italy, Luxembourg and the Netherlands - but Euratom has grown as the European Community, and then European Union (EU), has enlarged. The UK became a member of both on 1 January 1973.<sup>7</sup>

The *Euratom Treaty* specifies that it is operational within the countries of the EU and shares the EU's institutional framework but is a distinct legal entity from the EU under the 1957 Euratom Treaty.<sup>8</sup>

Euratom was founded to contribute to the formation and development of Europe's nuclear industries, to guarantee high safety standards and to prevent nuclear materials intended principally for civilian use from being diverted to military use. It provides the basis for the regulation of civilian nuclear activity, implements a system of safeguards to monitor the use of civil nuclear materials, controls the supply of fissile materials within EU member states and funds leading international research into nuclear fission and nuclear fusion.<sup>9</sup>

The *European Union (Notification of Withdrawal) Act 2017* received Royal Assent on 16 March 2017.

On 29 March 2017, the Prime Minister gave notification of the withdrawal of the UK from the EU and from Euratom under section 1(1) of the *European Union (Notification of Withdrawal) Act 2017*.

### 2.2 Euratom in the UK

In the UK, both Euratom and the ONR have roles in nuclear regulation. Euratom contributes to regulating the civil nuclear industry, including safeguards for nuclear materials and technology, disposal of nuclear waste, ownership of nuclear fuel, and research and development.<sup>10</sup> All of these roles will have to be transferred to the ONR.

The UK will have to take on a number of measures to leave Euratom smoothly such as:

- Design, resource and implement new UK safeguarding arrangements in line with accepted international standards;

**Euratom was founded to contribute to the formation and development of Europe's nuclear industries, to guarantee high safety standards and to prevent nuclear materials intended principally for civilian use from being diverted to military use.**

<sup>6</sup> [Treaty Establishing the European Atomic Energy Community \(Euratom\)](#), Accessed 22 June 2017

<sup>7</sup> [Treaty of Accession of Denmark, Ireland and the United Kingdom](#), 1972

<sup>8</sup> [Euratom Treaty](#), 1957

<sup>9</sup> Nuclear Industry Association, [The UK's Withdrawal from Euratom](#), May 2017

<sup>10</sup> European Commission, [Nuclear Energy](#), Accessed 22 June 2017

- Replace current safeguarding commitments under the Non Proliferation Treaty (which are also predicated on Euratom membership);
- Identify and plan negotiation of replacement Nuclear Cooperation Agreements (NCAs) with countries with which the UK has ongoing nuclear trade (where NCAs are required by a country's domestic policy).<sup>11</sup>

As Euratom manages inspections of UK nuclear power, the UK will need to agree new inspections with the IAEA before the UK leaves Euratom.

In addition to a new agreement with Euratom, the UK may also seek new Nuclear Cooperation Agreements (NCAs) with key nuclear countries including the US, Japan and Australia as current agreements are based on Euratom membership and would expire when the UK leaves. The process is slowed by sequencing, as safeguards must be in place before NCAs can be negotiated.<sup>12</sup>

Some industry commentators have expressed concern that there are also potential impacts to healthcare through the provision of radioisotopes, and to nuclear research funding. The Government have said that as radioisotopes are not special fissile nuclear material, their availability will not be impacted by leaving Euratom.<sup>13</sup> They have also published a position paper on [Collaboration on Science and Innovation](#) which states:

The UK hopes to find a way to continue working with the EU on nuclear R&D, including the JET and ITER programmes.<sup>14</sup>

More information is available in the Library Briefing Paper on [Euratom](#).<sup>15</sup>

## 2.3 Parliamentary comment

In February 2017, Jesse Norman, the then Parliamentary Under Secretary at the Department for Business, Energy and Industrial Strategy (BEIS), said that the UK:

Remains committed to the highest standards of nuclear safety, safeguards and support for the industry, and will aim for continuity of the cooperation and standards enjoyed under Euratom membership.<sup>16</sup>

A debate in Westminster Hall on 12 July 2017 led by Albert Owen considered "That this House has considered negotiations on future Euratom membership".

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<sup>11</sup> Jonathan Leech and Rupert Cowan, [Brexit White Paper Confuses Euratom Debate](#), World Nuclear News, 8 February 2017

<sup>12</sup> Jonathan Leech and Rupert Cowan, [Brexit and Euratom: No Rush to exit?](#), World Nuclear News, 20 January 2017

<sup>13</sup> HC Deb 27 June 2017 [Vol 626](#)

<sup>14</sup> HM Government, [Collaboration on science and innovation. A future Partnership Paper](#), September 2017

<sup>15</sup> Library briefing paper, [Euratom \(8036\)](#), 11 July 2017

<sup>16</sup> PQ [63612](#) [on Euratom] 8 February 2017



The Parliamentary under Secretary of State at the Department for Business, Energy and Industrial Strategy, Richard Harrington, concluded the debate, saying:

Our primary aim will be to maintain our mutually successful civil nuclear co-operation with Euratom and the rest of the world. I reiterate that we are strong supporters of Euratom, and that is not going to change. The first phase of negotiations will commence next week, on 17 July, following the publication of the European Commission's position paper on Euratom.<sup>17</sup>

## Position Papers

A position paper on '[Nuclear materials and safeguards issues](#)' was published by the Government on 13 July 2017. This sets out the UK's plans for safeguard regulation after leaving Euratom:

6. As part of the UK's orderly withdrawal, and to provide certainty to industry and reassurance to all, it is important to work through the following issues in the initial phases of discussion:

- nuclear safeguards arrangements; and
- provision of legal certainty on immediate issues related to nuclear material in both the UK and Euratom. [...]

8. The UK remains firmly committed to maintaining its role as a responsible Nuclear Weapons State and non-proliferation leader, and to ensuring that a UK nuclear safeguards regime is in place that is commensurate with its international obligations through the IAEA.

9. In order to ensure this, the UK will:

- agree a Voluntary Offer Agreement with the IAEA that sets out the UK's primary safeguards arrangements in international law;
- take responsibility for meeting the UK's safeguards obligations, as agreed with the IAEA;
- in line with the specific circumstances of the UK and respecting the UK's current obligations, agree Nuclear Cooperation Agreements between the UK and key non-EU/Euratom States, including the United States, Canada, Australia and Japan - these agreements will underline the UK's commitment to upholding the safeguards obligations agreed with the IAEA;
- work closely with the European Commission to ensure a smooth transition to its new arrangements, including the setup of the new safeguards regime; and
- seek to ensure that the UK's new regime provides for continued close cooperation with the Euratom Community.<sup>18</sup>

They Government have also published a position paper on [Collaboration on Science and Innovation](#).<sup>19</sup>

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<sup>17</sup> HC Deb 12 July 2017 [C109WH](#)

<sup>18</sup> HM Government, [Nuclear materials and safeguards issues. Position Paper](#), 13 July 2017

<sup>19</sup> HM Government, [Collaboration on science and innovation. A future Partnership Paper](#), September 2017

## 3. The Nuclear Safeguards Bill

The Queen's Speech 2017 included a *Nuclear Safeguards Bill*.<sup>20</sup> The Government said:

The Bill will establish a UK nuclear safeguards regime as we leave the European Union and Euratom. The Bill will give the Office for Nuclear Regulation<sup>21</sup> powers to take on the role and responsibilities required to meet our international safeguards, and nuclear non-proliferation, obligations.

The background briefing for the Queen's Speech gave extra details of this Bill:<sup>22</sup>

- The purpose of the Bill is to:
  - Establish a UK nuclear safeguards regime as we leave the European Union and Euratom.
- The main benefits of the Bill would be:
  - To ensure that the UK continues to meet our international obligations for nuclear safeguards, as applies to civil nuclear material through the International Atomic Energy Agency.
  - To continue the UK's reputation as a responsible nuclear state, to support international nuclear non-proliferation, and to protect UK electricity supplied by nuclear power.
- The main elements of the Bill are:
  - To give the Office for Nuclear Regulation powers to take on the role and responsibilities required to meet our international safeguards, and nuclear non-proliferation obligations.
- Key facts
  - Nuclear safeguards are reporting and verification arrangements to ensure that civil nuclear material is not diverted from its intended use.

These arrangements are essential for a responsible nuclear state, and a prerequisite for civil nuclear trade.

The [Nuclear Safeguards Bill 2017-19](#) received its first reading on Wednesday 11 October 2017.

### 3.1 The Energy Act 2013

The Bill largely amends the [Energy Act 2013](#). The *Energy Act 2013* created the ONR and provided powers for the Secretary of State with regards to nuclear safeguards. The Act overall was wide ranging and covered issues concerning electricity market reform, encouraging low carbon generation, domestic supplies of gas and electricity, consumer issues, and carbon monoxide alarms. The Library Briefing Paper on the [Energy Bill](#) contains more information.

[Part 3 of the Act](#) covers nuclear regulation. The Act:

- Sets out the ONR's purpose

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<sup>20</sup> Gov.uk, [The Queen's speech 2017: what it means for you](#) Nuclear Safeguards Bill, 21 June 2017

<sup>21</sup> The [Office for Nuclear Regulation](#) manages aspects of the UK's nuclear industry already, such as the Generic Design Assessment for new reactors.

<sup>22</sup> Gov.uk, [The Queen's Speech And Associated Background Briefing](#), 21 June 2017

- Provides powers to the Secretary of State to make nuclear regulations
- Establishes the ONR as a body corporate
- Sets out the powers and duties of the ONR

The Act covers the current powers the Secretary of State has in relation to nuclear regulations, including safeguards. It states:

74 (1) The Secretary of State may make regulations (to be known as “nuclear regulations”) for any of the following purposes—

- (a) the nuclear safety purposes;
- (b) the nuclear security purposes;
- (c) the nuclear safeguards purposes;
- (d) the transport purposes.

[Section 113](#) of the Act covers the approval of regulations made under Part 3. This states that secondary legislation is exercisable by the affirmative procedure (requiring approval of both Houses of Parliament) if they are the first regulations to be made on nuclear regulations, amend specific named Acts or create an offence. Secondary legislation not meeting these conditions is subject to the negative procedure. Section 113 states:

113 (1) Any power to make subordinate legislation under this Part is exercisable by statutory instrument.

(2) An instrument containing (whether alone or with other provision)—

- (a) nuclear regulations which fall within subsection (3), or
- (b) an order under section 111,

may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Nuclear regulations fall within this subsection if—

- (a) they are the first nuclear regulations to be made,
- (b) they include provision amending or repealing any provision of—

- (i) the Nuclear Installations Act 1965, or
- (ii) the Nuclear Safeguards Act 2000, or

(c) they include provision creating a new offence by virtue of section 75;

and for this purpose nuclear regulations which revoke and re-enact an offence are not to be regarded as creating a new offence.

(4) An instrument containing an order under paragraph 26 of Schedule 7 (payments and borrowing) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(5) An instrument containing any other subordinate legislation under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

## 3.2 Clauses of the Nuclear Safeguards Bill

This section provides an overview of the contents of the [Nuclear Safeguards Bill 2017-19](#).

[Explanatory notes](#) to accompany the Bill have been produced. There is also a [Memorandum concerning the Delegated powers in the Nuclear Safeguards Bill](#) which includes further information.

The Bill states that it aims to “make provision about nuclear safeguards; and for connected purposes.”

The Nuclear Safeguards Bill has two main clauses.

### Clause 1: Nuclear safeguards

This clause amends the *Energy Act 2013* to provide the Secretary of State with a delegated power to make nuclear safeguard regulations.

Proposed substituted clause 72 of the *Energy Act 2013* refines the definition of the ONR’s nuclear safeguard purposes to reflect their new safeguard purposes following withdrawal from Euratom. The proposed clause states:

- (1) For section 72 of the Energy Act 2013 substitute—  
“72 Nuclear safeguards purposes  
*In this Part, the “nuclear safeguards purposes” means the purposes of—*
  - (a) *ensuring compliance with nuclear safeguards regulations (see section 76A),*
  - (b) *ensuring compliance by the United Kingdom or, as the case may be, enabling or facilitating compliance by a Minister of the Crown, with a relevant international agreement, and*
  - (c) *the development of any future obligations relating to nuclear safeguards.”*

Proposed new clause 76A of the *Energy Act 2013* provides the Secretary of State with powers to make regulations relating to nuclear safeguards. Subsection 4 states these safeguards do not apply to defence purposes. The clause states:

- (1) The Secretary of State may by regulations (“nuclear safeguards regulations”) make provision for the purpose of—
  - (a) ensuring that qualifying nuclear material, facilities or equipment are only available for use for civil activities (whether in the United Kingdom or elsewhere), or
  - (b) giving effect to provisions of a relevant international agreement.
- (2) The regulations may, for example, make provision relating to—
  - (a) record-keeping or accounting;
  - (b) the provision or publication of information;
  - (c) inspection or monitoring;
  - (d) imports or exports;
  - (e) the design of qualifying nuclear facilities or equipment;

(f) the production, processing, use, handling, storage or disposal of qualifying nuclear material or equipment.

The power to make regulations under these clauses will follow the procedure set out in Section 113 of the *Energy Act 2013*. Section 9 of the Schedule of this Bill amends Section 113 of the Energy Act to include “nuclear regulations **or nuclear safeguard regulations**” [new part in bold]. The procedure states that regulations will be made by Statutory Instrument laid before and approved by each House of Parliament. This applies if they are the first regulations to be made, involve repealing or amending any provision of the *Nuclear Installations Act 1965* or *Nuclear Safeguards Act 2000*, or create a new offence. Subsequent legislation not meeting these criteria is however subject to the negative procedure.

Subsection 6 of proposed clause 76A refers to provisions modifying retained EU law within the *European Union (Withdrawal) Act 2017*. This Bill is currently before Parliament. As the [Explanatory Notes](#) describe:

Subsection (6) provides that the power to make consequential and transitional, etc., provision in section 113(7) of the Energy Act 2013 can be exercised to modify retained EU law (which will have the meaning given in the European Union (Withdrawal) Bill), including the Euratom Regulation. This will allow law relating to nuclear safeguards which has become ineffective on the United Kingdom’s withdrawal from the Euratom (such as the Euratom Regulation mentioned above) to be repealed in consequence of the new regime that will be put in nuclear safeguards regulations.

Before making new regulations under new clause 76A, the Secretary of State is required by Subsection 9 of the new clause to consult the ONR and, if they consider it appropriate, any other relevant persons before making regulations under this clause. However, the final clause states that consultations can be valid if carried out before the Bill is passed.

Proposed clause 76B of the *Energy Act 2013* allows the Secretary of State to, by regulations, authorise or require the ONR to make payments towards compliance costs, meaning the costs of complying with nuclear safeguard regulations.

### Box 1: Reference to the Withdrawal Bill

The new clause 76A of the *Energy Act 2013*, as inserted by clause 1 of this Bill, includes the first reference to retained EU law outside of the [European Union \(Withdrawal\) Bill](#) (the EUW Bill).

Subsection 76A(6) provides that the delegated power in section 113(7) of the *Energy Act 2013* can be used to make changes to retained EU law, as defined by the *European Union (Withdrawal) Act 2017*. The EUW Bill defines retained EU law through clauses 2, 3 and 4 which seek to preserve domestic legislation that implements EU law and convert directly applicable EU law. This represents a large body of law, which includes 12,000 regulations, all of the rights in the EU treaties, and all the domestic primary and legislation that has implemented EU law since the UK became a Member State.

The Delegated Powers Memorandum explains the reference to retained EU law in this Bill as follows:

This will allow law relating to nuclear safeguards which has become ineffective on the United Kingdom's withdrawal from the Euratom (such as the Euratom Regulation mentioned above) to be repealed in consequence of the new regime that will be put in nuclear safeguards regulations.<sup>23</sup>

The House of Lords Select Committee on the Constitution has argued that "it is imperative, in the interests of legal certainty, that there is maximum clarity as to what counts as retained EU law".<sup>24</sup> It is likely that other Brexit Bills will contain similar powers to amend retained EU law for specific purposes.

## Clause 2: Power to amend legislation relating to nuclear safeguards

This clause gives the Secretary of State the power to use regulations to amend previous Acts relating to nuclear safeguards. As the [Explanatory notes](#) of the Bill explain:

This legislation refers to provisions of existing agreements between the United Kingdom and the IAEA. The power allows the legislation to be amended in consequence of the new agreements to be agreed with the IAEA, which will replace the existing agreements. This clause does not confer a wide discretion on the Secretary of State to change the substance of what the 1978 Act, 2000 Act and 2004 Regulations permit.

The Acts in question are:

- [Nuclear Safeguards and Electricity \(Finance\) Act 1978](#) (enabling the 1976 Vienna agreement between the UK, Euratom and IAEA on safeguards under the Non-proliferation of nuclear weapons).
- [Nuclear Safeguards Act 2000](#) (enabling the 1998 Vienna additional protocol to the 1976 agreement between the UK, Euratom and IAEA on safeguards under the Non-proliferation of nuclear weapons. Also implementing additional UK protocol – see below)
- [Nuclear Safeguards \(Notification\) Regulations 2004](#) (implementing additional protocol to increase the IAEA's capability to detect undeclared nuclear activities in non-nuclear weapons states; or improve the effectiveness or efficiency of IAEA safeguards at facilities designated for inspection in the UK. More information is available from the ONR's webpage on '[UK additional protocol and regulations](#)'

These Acts would otherwise have become ineffective on withdrawal from Euratom.

The Acts are permitted to be amended as a consequence of a "relevant safeguard agreement". This means an agreement relating to nuclear safeguards between the UK and the International Atomic Energy Agency.

<sup>23</sup> [Memorandum concerning the Delegated Powers in the Nuclear Safeguards Bill for the Delegated Powers and Regulatory Reform Committee](#) (2017) para 29

<sup>24</sup> House of Lords Select Committee on the Constitution, [European Union \(Withdrawal\) Bill: interim report](#) (2016-2017 Third Report HL Paper 19) para 31

The power to make regulations under this section is subject to the affirmative procedure.

### Box 2: Implementing future international agreements on nuclear safeguards

The Bill contains new delegated powers to implement future international agreements on nuclear safeguards.

As the explanatory notes set out, once the UK withdraws from Euratom, “the United Kingdom’s main agreements with the IAEA will become ineffective.”<sup>25</sup> The Government’s delegated powers memorandum argues that sufficiently broad delegated powers are needed to deal with the fast-changing nuclear regulatory landscape.<sup>26</sup>

It is normal for international agreements to need UK legislation to implement them, as they are not directly applicable in the UK. But usually this legislation would be made once the agreement is concluded. This Bill seeks to pre-empt the need for future primary legislation once future nuclear safeguards agreements have been concluded, and leaves it to the Government to determine the form in which any such agreements should be implemented in UK law.

If any of these future agreements are treaties requiring UK ratification, the procedures of Part 2 of the [Constitutional Reform and Governance Act 2010](#) would also apply.<sup>27</sup> The 2010 Act gives parliamentary disapproval of treaties statutory effect, and effectively gives the House of Commons a new power to block ratification. Its procedures are the only way for Parliament to take a binding position on the merits of international treaties, rather than on how they are implemented. But they do not enable Parliament to amend the substance of any treaties. And they do not require Parliament to scrutinise, debate or vote on treaties (it rarely does so).

## Schedule

The Schedule mostly makes consequential amendments. Subsection 9, is dealt with under Clause 1 above.

Section 10 refers to Section 118 of the *Energy Act 2013* which requires the Secretary of State to review the provisions of Part 3 of the *Energy Act* (relating to nuclear regulations, discussed above) and report the conclusions of the review to Parliament in 5 years (in 2018). Subsection 10 of the new schedule proposes extending this to 7 years (2020).

Section 118 of the *Energy Act* currently states:

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the day on which section 77 comes into force, the Secretary of State must carry out a review of the provisions of this Part.
- (2) The Secretary of State must set out the conclusions of the review in a report.
- (3) The report must, in particular—
  - (a) set out the objectives of the provisions of this Part,

<sup>25</sup> Para 13

<sup>26</sup> [Memorandum concerning the Delegated Powers in the Nuclear Safeguards Bill for the Delegated Powers and Regulatory Reform Committee](#) (2017) para 35

<sup>27</sup> For more information on Parliament’s role in ratifying treaties, see Commons Library briefing paper 5855, [Parliament’s role in ratifying treaties](#), 17 February 2017.

(b) assess the extent to which those objectives have been achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.

(4) The Secretary of State must lay the report before Parliament.

The Explanatory notes state this is due to the timing of the UK's exit from Euratom:

Extending the review period for Part 3 of the 2013 Act from 5 years to 7 years, as otherwise the duty to review Part 3 would arise shortly before the United Kingdom withdraws from Euratom and the changes made by the Bill as regards nuclear safeguards come into force.

## Implementation

The further three clauses of the Bill cover Extent, Commencement and Short Title.

Nuclear safeguards are not devolved. As such the provisions of the Bill apply to the whole of the UK.

Clauses 3, 4 and 5 would come into force on the day the Bill is passed. The main provisions of the Bill will be commenced on such day (or time of day) as the Secretary of State may appoint in regulations.

## Financial Implications

The Explanatory Notes indicate there are [Financial Implications of the Bill](#). They state:

The public expenditure resulting from the Bill are the cost of the establishment and operation of the new regime by the ONR in line with the regulations that will be made under the powers in the Bill. The costs to set up a UK domestic safeguards regime (which remain subject to further analysis) are potentially up to £10m. This would include procurement of a new IT system, recruitment and training of a large number of inspectors and strengthening institutional capacity to deliver the project. This cost can be met from within BEIS's Spending Review allocations. The cost of any equipment currently in the United Kingdom but belonging to Euratom is a matter currently under negotiation with the European Union. The regime is also likely to involve an ongoing cost of around £10m a year, which is in line with the United Kingdom's current cost of Euratom safeguards activity in the United Kingdom.

As the Bill may give rise to increased charges on public revenue, the explanatory notes state that a money resolution will be required.

On 2 February 2018, the Minister Richard Harrington made a written statement stating the the Department of Business, Energy & Industrial Strategy's intention to seek an advance from the Contingencies Fund in the amount of £2,275,000 for FY 2017/18 to provide financial cover to the Office for Nuclear Regulation (ONR).<sup>28</sup>

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<sup>28</sup> [HCWS445 \[Energy Policy\]](#), 2 February 2018



### 3.3 What the Bill doesn't cover

The Nuclear Safeguards Bill only makes provisions for Euratom's role on nuclear safeguards. Euratom, however, has several functions including regulating the civil nuclear industry, disposal of nuclear waste, ownership of nuclear fuel, and research and development. The research and development aspect includes funding for the Joint European Torus (JET) nuclear fusion program at the Culham Centre in Oxfordshire, and the International Thermonuclear Experimental Reactor (ITER) underway in France which the UK is contributing to. There have also been concerns raised about the supply of medical radio-isotopes for medicinal purposes after the UK leaves Euratom. The Government have said that as radioisotopes are not special fissile nuclear material their availability will not be impacted by leaving Euratom.<sup>29</sup>

More information is available in the Library Briefing Paper on [Euratom](#).<sup>30</sup>

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<sup>29</sup> HC Deb 27 June 2017 [Vol 626](#)

<sup>30</sup> Library briefing paper, [Euratom \(8036\)](#), 21 December 2017

## 4. Comment on the Bill

On publication of the Bill, the Energy Minister Richard Harrington said:

The Nuclear Safeguards Bill will help secure the future of the UK's nuclear industry and high standards of nuclear safety and safeguards once we leave Euratom.

We are bringing forward the UK's first new nuclear power plants in a generation and it is in our mutual benefit to maintain the successful working relationship we have now with Europe, and the rest of the world, on nuclear matters. This is what we will be looking to secure in negotiations with our partners.<sup>31</sup>

A spokesperson for the Office for Nuclear Regulation said in a [statement](#) on 11 October 2017:

Given the Government's decision to withdraw from the Euratom treaty, we welcome this bill as an important step in granting ONR the powers it needs to deliver a UK State System of Accountancy for and Control of nuclear material (SSAC).

We are working positively with Government to ensure the UK is in a position to meet its international safeguards, and nuclear non-proliferation obligations following its withdrawal from the Euratom treaty.<sup>32</sup>

However, Tom Greatrex, Chief Executive of the Nuclear Industry Association (NIA) said in a [statement](#):

Laying a Nuclear Safeguards Bill before Parliament may be a necessary legislative step to enabling the Office for Nuclear Regulation to take on safeguarding inspection responsibilities if the UK ceases to be part of Euratom. However, Government should not be so complacent to assume this alone gets close to resolving the issues they have created.

The process of replicating safeguarding inspections, agreeing a series of nuclear co-operation agreements with other countries (including EU states), and guaranteeing world-leading international research into fusion at Culham in Oxfordshire, is complex and likely to be subject to intensive negotiation.

In a week when the Chancellor has said leaving the EU should be done in a way that minimises the impact on jobs, growth and economic activity, the UK Government must ensure this is the case. If they are absolutely wedded to leaving Euratom, there must be transitional arrangements in place to prevent a damaging cliff-edge in 21 months' time.

Even at this late stage, seeking to negotiate a way to retain membership of Euratom is an infinitely preferable outcome. For a minority Government to announce a Bill, with no prior consultation, is largely symbolic and leaves much work to do.<sup>33</sup>

An 11 October 2017 article in Business Green, 'Nuclear Safeguards Bill published to prepare UK for Euratom departure' states:

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<sup>31</sup> Gov.uk, [Nuclear Safeguards Bill introduced today](#), 11 October 2017

<sup>32</sup> ONR, [Nuclear Safeguards Bill](#), 11 October 2017

<sup>33</sup> Nuclear Industry Association, [NIA comment on Nuclear Safeguards Bill](#), 21 June 2017

Many in the industry fear today's Bill will not go far enough to resolving outstanding post-Brexit issues surrounding safety inspections, nuclear trade, and international research collaboration.<sup>34</sup>

Foratom, the trade body for European nuclear power, have not commented specifically on the Bill, but have published a European Nuclear Industry [position paper](#) on priorities for the Brexit negotiations in relation to the nuclear industry. The press release refers to safeguard arrangements:

In FORATOM's view, the EU and UK should immediately start negotiating the post-Brexit relationship and – if necessary – transitional arrangements in order to avoid any disruption of the nuclear fuel cycle. With this in mind, FORATOM calls for:

- The rapid establishment of a Nuclear Cooperation Agreement between the EU and the UK, including arrangements for free trade in the nuclear sector.
- Linked to this, a smooth transition from the current Euratom safeguards arrangement to a new UK regime should be ensured.
- The free movement of nuclear skills to and from the EU and the UK should be preserved.
- In terms of Euratom R&D programmes, a new agreement needs to be negotiated to maintain cooperation between the EU and the UK
- Co-operation and collaboration on nuclear policy and regulation (including safety) should continue.
- The validity of contracts already approved by the European Commission and the Euratom Supply Agency for the supply of nuclear materials between EU suppliers and the UK needs to be confirmed.
- To minimise any disruption to the civil nuclear sector activities across the EU, a transitional period should be implemented.<sup>35</sup>

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<sup>34</sup> Business Green, [Nuclear Safeguards Bill published to prepare UK for Euratom departure](#), 11 October 2017

<sup>35</sup> Foratom, [Brexit: FORATOM outlines priorities for EU-UK nuclear discussions](#), 12 October 2017

## 5. Second Reading

[Second Reading](#) of the Nuclear Safeguards Bill 2017-19 took place on 16 October 2017. Issues raised in the debate included the UK's future safeguard relationships with Euratom and the IAEA, the procedures for secondary legislation proposed by the bill, and the ONR's capacity to manage the new role.

The Secretary of State Greg Clark introduced the Bill by stating:

The Bill is straightforward. It ensures that when the United Kingdom is no longer a member of the European Atomic Energy Community—Euratom—we will have in place a legal framework that meets our future international obligations on nuclear safeguarding. Nuclear safeguards demonstrate to the international community that civil nuclear material is not diverted into military or weapons programmes. It is important to be clear about the definitions in and scope of the Bill, because nuclear safeguards are distinct from nuclear safety, which is about the prevention of nuclear accidents, and from nuclear security, which relates to the physical protection of nuclear material. Those topics are subject to different regulatory regimes.

Our current nuclear safeguards obligations arise from our voluntary offer agreement—an additional protocol—with the International Atomic Energy Agency. The IAEA is the UN-associated body responsible for the oversight of the global non-proliferation regime. The first requirement flowing from the UK's commitments on safeguards is to have a domestic system that allows the state to know what civil nuclear material it has, where it is and whether any has been withdrawn from civil activities.<sup>36</sup>

Shadow Secretary of State for Business, Energy and Industrial Strategy, Rebecca Long Bailey raised concerns about the delegated powers, criticised the Government for the notice to leave Euratom, and noted that other aspects of Euratom's work would need to be provided for.

Several MPs with nuclear interests in their constituencies spoke in the debate about wider nuclear issues such as safety, jobs, maintaining research and development, and the length of a Euratom transition period.

### 5.1 Future relationships on safeguards

The Secretary of State for BEIS, Greg Clark, said the Government supports a continued relationship with Euratom, and suggested that the Bill was contingency in case no deal is agreed:

I can confirm that the Bill has been prepared on a contingency basis. The discussions around our continued arrangements with Euratom and with the rest of the European Union have not been concluded, but it is right to put in place in good time any commitments that are needed in primary legislation. Euratom has served the United Kingdom and our nuclear industries well, so we want to see maximum continuity of those arrangements.<sup>37</sup>

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<sup>36</sup> HC Deb 16 October 2017 vol 629 [c617](#)

<sup>37</sup> HC Deb 16 October 2017 vol 629 [c617](#)

[...]

We continue to support Euratom and want to see a continuity of co-operation and standards and a close future partnership with it.

We do not know what the final arrangements will be, so we are doing what any responsible Government would do by putting in place now a civil nuclear safeguards regime for the United Kingdom through this Bill so that we will be fully prepared whatever the outcome of negotiations.<sup>38</sup>

A number of MPs raised points on whether the UK should have a transition period with Euratom, seek a future relationship that replicated parts of membership, or remain a member. For example, Chair of the BEIS committee, Rachel Reeves, said:

The Minister is setting out two alternatives: the ONR taking responsibility or our staying in Euratom. However, there is a third way forward—a third way—which is to seek a transition period in which we remain in Euratom and then go for some sort of associate membership of Euratom.<sup>39</sup>

Rachel Reeves also mentioned that the BEIS committee were undertaking an inquiry on Euratom (this inquiry was published on 12 December 2017<sup>40</sup>):

[...] it should not be a surprise to Ministers or the House that my Committee [...] has launched an inquiry into the impact of the Government's decision to leave Euratom.<sup>41</sup>

In addition to the UK's future relationship with Euratom, several MPs raised the issue of negotiations with the IAEA. Greg Clark said negotiations were progressing "extremely well":

As I have mentioned, we will also be agreeing new safeguards agreements with the IAEA. My officials have had meetings with officials from the IAEA at their headquarters in Vienna to take the discussions forward, and I am pleased to report that they are progressing extremely well.<sup>42</sup>

## 5.2 Delegated powers

Greg Clark described the delegated power set out in Clause 2 as "limited" and "narrow":

Clause 2 will create a limited power, enabling regulations to amend the Nuclear Safeguards and Electricity (Finance) Act 1978; the Nuclear Safeguards Act 2000; and the Nuclear Safeguards (Notification) Regulations 2004. This narrow power will mean that cross references in that legislation to existing agreements with the IAEA can be updated once new international agreements have been reached.<sup>43</sup>

Opposition MPs raised concerns regarding the powers in both clauses, and said they would need to see substantial amendment to the

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<sup>38</sup> HC Deb 16 October 2017 vol 629 [c623](#)

<sup>39</sup> HC Deb 16 October 2017 vol 629 [c683](#)

<sup>40</sup> House of Commons Business, Energy and Industrial Strategy Committee, *Leaving the EU: implications for the civil nuclear sector*, Second report of session 2017-19, 12 December 2017

<sup>41</sup> HC Deb 16 October 2017 vol 629 [c640](#)

<sup>42</sup> HC Deb 16 October 2017 vol 629 [c622](#)

<sup>43</sup> HC Deb 16 October 2017 vol 629 [c623](#)

procedure set out in the Bill before they could commit to supporting it at later stages. Shadow Secretary of State for Business, Energy and Industrial Strategy, Rebecca Long Bailey, said:

The Bill is effectively a blank cheque handing that job over to Ministers. I hope that the Minister will give an iron-clad guarantee that the Government will not use those powers in that way and an ultimate guarantee to change the Bill itself. Safeguards are vital for our nuclear industry, but they are needed for our parliamentary democracy as well.

The Bill's Henry VIII clauses are particularly worrying, for the simple reason that if the Secretary of State does not use the powers effectively, the UK will simply not have a nuclear safeguarding regime. [...]

We are clear, however, that, should all else fail, of course we need a nuclear safeguarding regime for the UK post Brexit [...] But let me add a caveat: we will need to see evidence of substantial amendment to the procedure set out in the Bill, as well as evidence that the Government are really thinking about the best post-Brexit Euratom formulation, before we can wholeheartedly commit to agreeing to the passage of this Bill on Report and Third Reading.<sup>44</sup>

At the end of the debate, the Minister Richard Harrington responded to these concerns about powers saying:

The shadow Secretary of State said that there were too many delegated powers, Henry VIII provisions and all those sorts of thing. In fact, there is one Henry VIII power, which is limited and necessary because it enables us to alter references to the United Kingdom's agreements with the IAEA.<sup>45</sup>

### 5.3 ONR capacity

There were also a number of points on whether the ONR has the capacity to take on the safeguarding role currently provided by Euratom. For example, Ed Vaizey MP raised staffing and funding concerns:

Then there is the question of whether the Office for Nuclear Regulation has the capacity to undertake the responsibilities it will be given in the Bill. As I understand it, eight members of staff at the ONR currently work on safeguarding, and about 40 Euratom staff do so. Incidentally, for those of us in this House who routinely refer to bloated European bureaucracy, I was interested to note that Euratom has only 160 staff, about 25% of whom work on safeguarding.

Clearly, some financial support will be needed. The grant from the Government to the ONR is actually going down. Understandably, emphasis has been put on the nuclear industry funding the ONR, but it is a pity that the grant—admittedly it is very small, in the single millions—is being halved at precisely the time when new responsibilities are being put through in statute.<sup>46</sup>

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<sup>44</sup> HC Deb 16 October 2017 vol 629 [c628](#)

<sup>45</sup> HC Deb 16 October 2017 vol 629 [c684](#)

<sup>46</sup> HC Deb 16 October 2017 vol 629 [c631](#)

In response to a similar point made by Rachel Reeves, Albert Owen MP, who previously secured a Westminster Hall debate on Euratom on 12 July 2017, said:

My hon. Friend is making an important point about the ONR's resources. Indeed, it takes about seven years to train the experts to ensure that they are competent enough to do the work. The lack of resources means that we really need a transitional period.<sup>47</sup>

There were also calls for industry to be consulted with respect to regulations in addition to the ONR. The Bill, as introduced, specifies that the ONR be consulted on regulations and others 'the Secretary of State considers it appropriate to consult'.

Albert Owen MP recommended industry should also be consulted:

The Secretary of State said that Ministers regularly meet various industry experts and bodies. Will he go further and say that by the time the Bill is enacted it will contain a clause that says it is necessary to consult the industry as widely as possible? The trade unions and the trade bodies currently feel left out.<sup>48</sup>

Greg Clark responded:

Such consultation is the universal practice in the nuclear sector. The hon. Gentleman might serve on the Bill Committee, so perhaps he will be able to interrogate the issues he raises, but at every point the nuclear sector proceeds not through the unilateral fiat of Governments but appropriately, on the basis of expert advice.<sup>49</sup>

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<sup>47</sup> HC Deb 16 October 2017 vol 629 [c639](#)

<sup>48</sup> HC Deb 16 October 2017 vol 629 [c621](#)

<sup>49</sup> HC Deb 16 October 2017 vol 629 [c621](#)

## 6. Committee Stage

Committee Stage of the Bill commenced on 31 October 2017, and concluded on 14 November after six sittings. The Government did not put forward any amendments to the Bill. The Opposition and the Scottish National Party (SNP) laid 17 amendments and five New Clauses.<sup>50</sup> The Bill passed to Report Stage without amendment.

### 6.1 Evidence Session

Before the debate on amendments and new clauses, an evidence session was held including representatives from the ONR, the Nuclear Industry Association, Prospect Law, EDF energy, Prospect Union, Unite Union and the Dalton Nuclear Institute.<sup>51</sup> The witnesses were questioned on the requirement for a new safeguarding regime, nuclear cooperation agreements and alternative membership, ONR capacity, and nuclear inspectors amongst other things.

#### Need for a new safeguarding regime

All the witnesses were asked if they thought the Bill was necessary and all told the Committee that the new safeguarding regime was necessary, as without it the industry would not be able to operate. However, issues were raised including the legal basis for leaving Euratom,<sup>52</sup> and whether the timescale for delivering a new safeguarding regime was sufficient.<sup>53</sup> Rupert Cowan and Jonathon Leech from Prospect Law, and Tom Greatrex, Chief Executive of the Nuclear Industry Association, all stressed that they did not see the Bill as a contingency measure, for example Mr Leech said:

The Bill is in no sense a contingency, unless we get into a position where we simply do not need our own domestic safeguards regime. Otherwise, it is necessary—it is essential. We have to have it, and we have to have it now. We need the secondary legislation on the table as soon as possible, if not now, and then we need the resource within ONR that we heard about earlier. Critically, it is not just that we need all that in place at the end of the two-year period; we also need to be able to demonstrate that to all those we seek to negotiate replacement nuclear co-operation agreements with.<sup>54</sup>

Tom Greatrex agreed with the contingency argument:

I am, similarly, intrigued by the ministerial comments in the Second Reading debate, particularly around this being a contingency, because that is something different from what we have been discussing to date. My overall concern is that we need to do a whole range of different things, not just what is in the Bill,

<sup>50</sup> Public Bill Committee, Nuclear Safeguards Bill 2017-19, [Amendments as at 14 November 2017](#) (accessed 20 November 2017)

<sup>51</sup> Nuclear Safeguards Bill Debate ([First](#) and [Second](#) Sitting) 31 October 2017

<sup>52</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c12](#)

<sup>53</sup> Nuclear Safeguards Bill Debate (Second Sitting) 31 October 2017, [c32](#)

<sup>54</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c14](#)



to ensure that we have a position that avoids any disruption to activity in the civil nuclear industry.<sup>55</sup>

Prospect Law highlighted in their written evidence their view that there was a difference between the scope of the Bill and the existing Euratom treaties.<sup>56</sup>

Professor Matthews, a visiting professor at the Dalton Nuclear Institute, also raised the question of whether a wider definition of controlled nuclear material should be covered by the Bill, such as that used at Culham, which is not fissile<sup>57</sup> so is technically not covered by the Bill:

The only mention in the Bill and in these discussions is of our fissile materials. We are talking about uranium, plutonium and other actinide isotopes, and precursors such as thorium, which can be converted into fissile materials. In the case of Culham and the fusion programme, they use tritium. Tritium is a material that comes under safeguards, which is not a fissile material. It is a material that is a component in hydrogen bombs, and it is controlled.<sup>58</sup>

## Nuclear Cooperation Agreements

Mr. Cowan said nuclear safeguards were a first step, after which all nuclear cooperation agreements (NCAs) would have to be renegotiated.<sup>59</sup> Mr. Leech stressed that these agreements were not based on agreement with the IAEA but with other nuclear states and expressed concern about the possibility of securing agreements within the current timescale.<sup>60</sup>

On the possibility of associate membership with Euratom Mr. Leech and Angela Hepworth, the Corporate Policy and Regulation Director at EDF, said that associate or third party membership of Euratom would not automatically solve the problem of having to re-negotiate NCAs.<sup>61</sup>

## ONR capacity

Dr. Mina Golshan, Director and Deputy Chief Inspector at the Office for Nuclear Regulation (ONR), explained that a new safeguards regime operated by ONR was essential as otherwise the nuclear industry "simply will not be able to operate."<sup>62</sup>

Dr. Golshan also explained the plan to replace the Euratom safeguarding regime, which required recruitment to replace Euratom inspectors:

Given our membership of Euratom, it has not been necessary for the UK and ONR to build capacity and resilience in this area. Now that we are in a different position, we have started to recruit. The first phase of recruitment is complete. We successfully recruited four individuals, three of whom have already started with us. An

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<sup>55</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c11](#)

<sup>56</sup> Prospect Law, HC Public Bill Committee: 31 October 2017, [Outline of Views on Nuclear Safeguards Bill](#), 30 October 2017

<sup>57</sup> Fissile material is material capable of sustaining a nuclear fission chain reaction.

<sup>58</sup> Nuclear Safeguards Bill Debate (Second Sitting) 31 October 2017, [c44](#)

<sup>59</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c13-14](#)

<sup>60</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c14](#)

<sup>61</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c15](#)

<sup>62</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c5](#)

area of shortage for us was subject matter expertise. That was a worry for me, but I am pleased to say that we will hopefully be in a position to rectify that by the middle of this month.<sup>63</sup>

Dr. Golshan added that a further 10 -12 inspectors would be required to meet international obligations and to achieve a regime that is equivalent to Euratom, 20 addition inspectors will be needed. Dr Golshan said that the ONR were working with Government and industry on the transfer:

We are working closely with officials at the Department for Business, Energy and Industrial Strategy and we have engaged with the industry—I have had a number of meetings with the industry. We are explaining what we are doing, how far we have gone down this route and what there is left to do. We are working with all our stakeholders to make a success of this.<sup>64</sup>

Dr. Golshan said that a transitional period would be helpful to ensure continuation of standards:

From our perspective, a transitional arrangement will be extremely helpful. It will enable us to have parallel working arrangements in place with Euratom to conclude the discussions that we need to have with it, first, to understand what activities it currently undertakes on nuclear sites, but also the Secretary of State has mentioned that there should not be any weakening of standards in the UK following our departure from Euratom. The transitional period, as I see it, will seek to achieve that.<sup>65</sup>

Ms. Hepworth of EDF raised concerns about how the increased cost of inspectors would be dealt with, saying operators pay ONR for existing roles but don't feel they should pay more for safeguarding as it is the Government's responsibility.<sup>66</sup>

## Nuclear inspectors

Sue Ferns, Deputy General Secretary of Prospect Union, and Kevin Coyne, National Officer for the Energy and Utilities Sector at Unite Union set out concerns for nuclear inspectors. Ms. Ferns stressed that it takes a number of years to train inspectors for safeguarding:

A reasonable approximation is several years—it is not a matter of months but years for people to be able to do that job. [...] It is a small talent pool, and it is a challenging talent pool even in the best of times.<sup>67</sup>

When asked about training, Dr. Golshan of the ONR highlighted that training was a long-term process:

[...] our training function—training materials and expertise in training these individuals—needs to develop. We have started that process, but it is a long road and I am not going to sit here and pretend that it is all going to be a smooth run.<sup>68</sup>

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<sup>63</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c5](#)

<sup>64</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c6](#)

<sup>65</sup> Nuclear Safeguards Bill Debate (First Sitting) 31 October 2017, [c9](#)

<sup>66</sup> Nuclear Safeguards Bill Debate (Second Sitting) 31 October 2017, [c27](#)

<sup>67</sup> Nuclear Safeguards Bill Debate (Second Sitting) 31 October 2017, [c35](#)

<sup>68</sup> Nuclear Safeguards Bill Debate (Second Sitting) 31 October 2017, [c7](#)

On the issue of inspectors, concern was also raised by Prospect Union that the powers of inspectors were not set out in the Bill and subject to regulation whereas they state that previous legislation has been more specific.<sup>69</sup>

Professor Juan Matthews of the Dalton Nuclear Institute also discussed inspectors, saying safety and safeguarding inspectors were completely different:

The term “inspector” as it is being used is not clear, in the respect that nuclear inspectors are normally people who look at the safety of facilities; nuclear safeguards are quite different because they require a different set of skills and a different stance. The personnel cannot be interchanged.<sup>70</sup>

## 6.2 Updates

### IAEA negotiations

During third sitting of the Committee Stage of the Bill, the Government gave an update to IAEA negotiations saying:

Discussions began in September. They have been constructive and substantial progress has been made, as my colleague Mr David Wagstaff said when he and I gave evidence to the Business, Energy and Industrial Strategy Committee yesterday. Importantly, our view is that the new agreements with the IAEA should follow the same principles as our current ones: the IAEA will retain its right to inspect all civil nuclear facilities and will continue to receive all current safeguards reporting, ensuring that international verification of our safeguards activity will continue to be robust. We are working with international partners on bilateral arrangements, and with the IAEA itself, to ensure that they are in place ahead of the UK’s withdrawal from Euratom. We are seeking to conclude new agreements with the IAEA that follow the principles I have outlined. I cannot make our intention clearer: we have every reason to believe that the agreements will cover exactly the same points that they do now. We are seeking to achieve that on a bilateral basis, and we have made a lot of progress.

I was asked about the timetable of the progress. I expect, and have every reason to believe, that the new agreements will be put to the IAEA board of governors to ratify at some point in 2018. We are on target for that. I am confident, and happy to say on the record in Committee, that the new agreements should be ready to enter into force upon the UK’s withdrawal from Euratom. That is important, and I agree that the House has a responsibility to know that it is happening, but officials are confident that it will, as was put on the record yesterday when our lead negotiator and I gave evidence to the Select Committee. Obviously, he is not here today because this is a Bill Committee, but I found that evidence compelling, coming from the person who is actually dealing with these matters.<sup>71</sup>

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<sup>69</sup> Nuclear Safeguards Bill Debate (Second Sitting) 31 October 2017, [c35](#)

<sup>70</sup> Nuclear Safeguards Bill Debate (Second Sitting) 31 October 2017, [c39](#)

<sup>71</sup> Nuclear Safeguards Bill Debate (Third Sitting) 2 November 2017, [c54-55](#)

## Nuclear Safeguard Regulations

During fifth sitting of Committee Stage, the Minister Richard Harington said that he intended to publish draft regulations in January:

I apologise to the hon. Gentleman and the Committee as I do not have the draft regulations for the Committee. We discussed them the week before last, but I was eager to secure this slot so that the Bill could progress. Discussions with the Office for Nuclear Regulation are well advanced, and I hope that, before we discuss the Bill further—definitely by January—they will be published for all hon. Members and a wider audience to see. They are not secret regulations or anything particularly devious. It is simply because of the logistics of organising them along with the Bill that we have not published them in time.<sup>72</sup>

The [draft regulations](#) were published on 19 January 2018. The two regulations are:

- [The Nuclear Safeguards Regulations 20--](#)
- [The Nuclear Safeguards \(Civil Activities, Fissionable Material and Relevant International Agreements\) Regulations 20—](#)

The former will set out the new domestic, civil nuclear safeguards regime in the UK, replacing the legal framework provided by Euratom. The latter sets out three definitions: civil activities, fissionable material, and relevant international agreements.

The explanatory notes state that the regulations are still being developed and the Government plan to hold public consultations in Spring 2018:

The drafts are initial pre-consultation draft versions of the two sets of regulations, and are provided now, in accordance with the Minister's commitment to demonstrate how the regulations are developing, and to provide an opportunity for early engagement with Parliament, industry and other stakeholders. Although good progress has been made with the two sets of regulations, they are still being developed with the Office for Nuclear Regulation (the "ONR"). Some elements are dependent on external issues, and some require further policy development.

As such, the regulations are likely to change in response to this early engagement with Parliament and stakeholders and views received will inform the on-going development of the regulations, prior to formal public consultation, which is currently planned for Spring 2018.<sup>73</sup>

The explanatory notes for the regulations also state that the Government intends to lay the draft regulations before Parliament by the end of 2018.<sup>74</sup>

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<sup>72</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c104-5](#)

<sup>73</sup> Department for Business, Energy and Industrial Strategy, [Nuclear Safeguards Bill, Publication of Draft Regulations](#), 19 January 2018

<sup>74</sup> Department for Business, Energy and Industrial Strategy, [Nuclear Safeguards Bill, Publication of Draft Regulations](#), 19 January 2018

## 6.3 Discussion of Amendments

The Government did not put forward any amendments to the Bill. The Opposition and the Scottish National Party (SNP) laid 17 amendments.<sup>75</sup>

All amendments were either withdrawn after debate or rejected following a division. Amendments 15, 16 and 17, laid by the SNP, were not called. The Bill therefore passed to Report Stage without amendment. However, the Minister committed to further discussion with the Opposition or to look again at several amendments. The Opposition pressed two amendments, 5 and 6, to a division (there were further divisions on new clauses). During discussion of amendments 5 and 6, the Opposition expressed concern about the use of the Henry VIII powers. Although these amendments were defeated at division, the issue may be returned at report stage. In addition, on discussion of amendment 1 (discussed with 3 and 8) Dr. Whitehead said the Opposition may return to the issue at the Report Stage before he withdrew the amendment.

### Alternative membership with Euratom Amendments 1, 3 and 8

The intentions of amendments 1, 3 and 8 were to amend Clause 1 so regulations could not be made unless the Government made a statement to Parliament about associate Euratom membership or maintaining arrangements with Euratom.

These amendments were discussed with New Clause 1 (see Section 6.4 below).

Dr. Whitehead said these amendments were necessary as the Bill had been described as a 'contingency' Bill and it was conceivable that the UK may remain in, or retain an alternative membership of Euratom, which could cause the Bill to be effectively redundant:<sup>76</sup>

Assuming the Bill comes to pass as a contingency, it is important that we know between us what has been done in respect of possible continued Euratom membership, and what has been done in respect of possible association with Euratom. Even after those things have been done, it will perhaps turn out that no progress has been possible on those particular areas. The Secretary of State should report to the House that that is the case—that the time for negotiations and discussions is over, that there is no prospect of going down that route and that therefore this Bill, as a contingency, comes into operation.<sup>77</sup>

In response, the Minister Richard Harrington said he sympathised with the opposition's aim but "I disagree with how they are going about it." Whilst the future relationship remained undecided, the Minister said it was vital to have the Bill - whilst he agreed it was a contingency, a delay to further preparations would not be desirable:

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<sup>75</sup> Public Bill Committee, Nuclear Safeguards Bill 2017-19, [Amendments as at 14 November 2017](#) (accessed 20 November 2017)

<sup>76</sup> Nuclear Safeguards Bill Debate (Third Sitting) 2 November 2017, [c62-63](#)

<sup>77</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c70](#)

Given the uncertainty about the outcome of all the negotiations, it is absolutely vital that we continue to press ahead with work to set up an internationally approved safeguards regime and to put in place the nuclear co-operation agreements we will need. So, I am happy with the word “contingency”, which has been used, but “contingency” has to start now; it cannot start after all else has not succeeded.<sup>78</sup>

Dr. Whitehead indicated that they may return to this issue on Report and withdrew the amendment.

## Delegated Powers in Clause 1

Clause 1 amends the *Energy Act 2013* to provide the Secretary of State with a delegated power to make nuclear safeguard regulations. The procedure in the *Energy Act 2013* is the affirmative procedure. This applies if they are the first regulations to be made, involves repealing or amending any provision of the *Nuclear Installations Act 1965* or *Nuclear Safeguards Act 2000*, or creates a new offence. Subsequent legislation not meeting these criteria is however subject to the negative procedure.

A number of amendments were tabled to change the procedure in Clause 1 to always be the affirmative procedure.

## Amendment 2

Amendment 2 would amend Clause 1 so that changes to international treaties were subject to the affirmative procedure.

Dr. Whitehead set out that the intention of the amendment was to ensure the any new agreement with the IAEA was scrutinised by Parliament. In conclusion, he said:

It seems pretty elementary to include in the Bill a provision that Parliament should look at that process and assure itself that it properly matches up with what we thought we were doing. We find ourselves in unique circumstances when discussing how we will bring about the regime change from Euratom to the UK. The amendment simply states that the Bill should guarantee a proper procedure for parliamentary scrutiny and discussion about what we are doing with the IAEA because of those circumstances.<sup>79</sup>

In response, the Minister set out the progress of negotiations with the IAEA, but also said that the Government did not feel the amendment was necessary as international treaties are already subject to parliamentary scrutiny:

International treaties are already subject to the general ratification processes of the Constitutional Reform and Governance Act 2010. The Bill goes a step further by separately requiring “relevant international agreements” on nuclear safeguards to be approved by Parliament in draft affirmative regulations before the regulation-making powers of new section 76A [Clause 1] are unlocked.<sup>80</sup>

More information on international treaties is available in Box 2 and in the Library Briefing on [Parliament’s role in ratifying treaties](#).<sup>81</sup>

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<sup>78</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c76-8](#)

<sup>79</sup> Nuclear Safeguards Bill Debate (Third Sitting) 2 November 2017, [c50](#)

<sup>80</sup> Nuclear Safeguards Bill Debate (Third Sitting) 2 November 2017, [c55](#)

<sup>81</sup> House of Commons Library, [Parliament’s role in ratifying treaties](#), 17 February 2017

There followed a more detailed discussion of the language used and the Minister offered to discuss the detail with Dr. Whitehead to ensure the Bill's language was acceptable to all; the amendment was withdrawn.

### **Amendments 9, 10 and 11**

Opposition amendments 9, 10 and 11 intended to amend the schedule so that nuclear safeguard regulations, relating to Clause 1, required the affirmative procedure to come into force on every occasion. The debate centred on whether future changes to regulations would be significant or technical, and the appropriate method of Parliamentary approval. The Government argued that future changes, after the first set of regulations, would be technical and the affirmative procedure would not be a good use of Parliament's time. The Minister said:

Although [Dr. Whitehead] has the ability to press this to a vote, I wonder if he would be interested instead in talking about this in other discussions before Report to see if there is common ground. I feel that the majority of the regulations are technical, and the affirmative procedure [for the first regulation] is perfectly acceptable, but if there were a way of separating the two issues so that he and I could discuss it with colleagues, I would be very happy to.<sup>82</sup>

The Minister did not agree to amendments, but said this could be discussed with other issues raised by the Opposition. Dr. Whitehead withdrew the amendment.

During discussion of these amendments, the Minister also said that he intended to publish draft regulations in January.

The [draft regulations](#) were published on 19 January 2018 (see Section 6.2 above).

### **Delegated Powers in Clause 2**

Clause 2 of the Bill gives the Secretary of State the power to use regulations to amend previous Acts relating to nuclear safeguards. The relevant Acts are the [Nuclear Safeguards and Electricity \(Finance\) Act 1978](#) (enabling the 1976 Vienna agreement between the UK, Euratom and IAEA on safeguards under the Non-proliferation of nuclear weapons), the [Nuclear Safeguards Act 2000](#) (enabling the 1998 Vienna additional protocol to the 1976 agreement between the UK, Euratom and IAEA on safeguards under the Non-proliferation of nuclear weapons) and the [Nuclear Safeguards \(Notification\) Regulations 2004](#) (implementing additional protocol to increase the increase the IAEA's capability to detect undeclared nuclear activities in non-nuclear weapons states; or improve the effectiveness or efficiency of IAEA safeguards at facilities designated for inspection in the UK).

The Opposition tabled two amendments to Clause 2 of the Bill. Firstly, amendment 5 to *require*—rather than *enable*—the Secretary of State to make changes to the three Acts by regulation. Secondly, Amendment 6 attempts to limit the scope of the powers to make regulations

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<sup>82</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c108](#)

contained in Clause 2, and for a report to be laid before Parliament when the power is used.

### **Amendment 5**

Opposition Amendment 5 suggested changing the wording of Clause 2 from “may by regulations amend”, in reference to the three Acts or regulations the Secretary of State can change following a relevant safeguards agreement, to “must by regulations amend”.

Dr. Whitehead said that as a “statement of principle, the Opposition do not like Henry VIII clauses [...] we think they are an overturning of the sovereignty of Parliament”<sup>83</sup> (see Box 3) and that the change from “may” to “must” was a “minimum” concession:

As we have previously alluded to, the emphasis is on the fact that the Secretary of State “may” amend by regulations. For the transposition of agreements to ONR and the signing of the new agreement with IAEA, it is clear from the Government’s own documentation that it is not the case that the Secretary of State may amend, but that he must do so. If he does not amend by regulation, the whole thing does not work. Although I accept the parliamentary convention that a power given to a Secretary of State saying that they “may” do things by regulation means, under most circumstances, that they should do something, that is not what the Bill says.

[...]

The amendment changes the word “may” to “must”, and it makes clear that the Secretary of State must make those changes. That seems to be entirely logical and consistent with what the Department has said about the necessity of making those changes and it submitted that necessity to the regulations committee.

Changing the word “may” to “must” does not automatically bring something fully into the purview of Parliament, so we have tabled amendment 6, which requires the Secretary of State, when he has done his duty when amending regulations, to place a report before Parliament that will be debatable under a motion. Parliament can see what the Secretary of State has done when amending those pieces of legislation, and can give its opinion on whether they are good enough to do the job that they are supposed to do. Parliament would then have oversight, to see whether the changes work once the Secretary of State has done what he should with those regulations.

My view is that that is probably not good enough. There are still Henry VIII clauses in the first instance, but at least the amendment goes some way towards ameliorating the unacceptable way in which those clauses work at present. To my mind, that is the very minimum that the Minister ought to accept as a change in the arrangements. If he cannot accept those changes, we will want to pursue the matter quite a long way further.<sup>84</sup>

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<sup>83</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c116](#)

<sup>84</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c118](#)



### Box 3: Henry VIII powers

A Henry VIII power is a provision that enables primary legislation to be amended or repealed by subordinate legislation with or without further parliamentary scrutiny.

Such provisions are known as Henry VIII clauses, so named from the Statute of Proclamations 1539 which gave King Henry VIII power to legislate by proclamation.<sup>85</sup>

But the Minister said the change of wording was not needed:

Making the Secretary of State's power in Clause 2 mandatory does not provide any additional value. Following the negotiation of the new agreements, the references to the old agreements in the legislation mentioned in this power automatically become ineffective—they will not work. [...] It is not in anyone's interest to fail to make the necessary consequential amendments to existing safeguards once new agreements with the IAEA are agreed. Requiring the exercise of the power in the Bill is therefore unnecessary.<sup>86</sup>

The Opposition and SNP pressed the amendment to a division, where it was defeated ten to eight.<sup>87</sup>

### Amendment 6

Amendment 6 sought to ensure the powers to make regulations in Clause 2 were only used in relation to the transfer of safeguarding responsibility from Euratom to the ONR. The amendment would limit the use of the powers and require the Government to report to Parliament on any exercise of the power.

The Minister said the capacity for changes was very narrow, and scrutiny would be achieved through the Parliamentary procedure for the regulations:

Amendment 6 is intended to limit the circumstances under which the Secretary of State may exercise the powers in clause 2, and requires a report to be laid before both Houses of Parliament on the exercise of the power. I welcome the sentiment of proposed new subsection (1A), because it acknowledges that a power of this nature is necessary and appropriate in the circumstances.

The exercise of the power in clause 2 is already very narrowly cast to allow changes to be made in consequence of the new bilateral agreements with the IAEA which, as I have explained, will be negotiated to replace the existing trilateral agreements. It is not necessary to make the change set out in proposed new subsection.

Similarly, although we understand the intent of the proposed new subsection (1B) to allow both Houses of Parliament to scrutinise the use of the powers through a report laid before Parliament, it is unnecessary since the draft regulations under clause 2 must already be laid before both Houses for scrutiny.<sup>88</sup>

On Henry VIII powers the Minister continued:

<sup>85</sup> Parliament.uk, [Henry VIII clauses](#), Glossary (accessed 14 December 2017)

<sup>86</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c120](#)

<sup>87</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c124](#)

<sup>88</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c120](#)

I remind the Committee that the changes under the Henry VIII power are about changing references to specific articles in the existing legislation. They are not changes to substance or principle.<sup>89</sup>

The following debate centered on timescale, with the Opposition concerned about the potential use of Henry VIII powers in Clause 2 and the Minister saying that as a deal with the IAEA could come late in the negotiating timetable, there may not be time to pass a bill through Parliament so the legislation is necessary.<sup>90</sup>

This amendment was also pressed to a vote where it was defeated ten to eight.<sup>91</sup>

## Consulting and publishing reviews

### Amendment 4, 12 and 13

Clause 1 requires the Secretary of State to consult with the ONR and other appropriate persons ahead of making regulations. Amendments 4, 12 and 13 would together change the consultations required by Clause 1. In addition to consulting the ONR and other appropriate persons, Amendment 4 suggested requiring the Secretary of State to consult the National Audit Office, publish an impact assessment, and lay before Parliament a statement declaring that the ONR has sufficient staffing and financial resources available for nuclear safeguarding responsibilities. Amendments 12 and 13 required the consultations to be published.

Dr. Whitehead said the amendments intended to ensure that ONR had sufficient capacity to take on the new nuclear safeguarding role before regulations are made:

This group of amendments revolves around the question of the staffing, the preparations and the enabling activities that need to take place to ensure that the nuclear safeguards regime being run entirely in this country can take place properly, smoothly and immediately, as we have already discussed. Amendment 4 sets out pretty exactly what we want to achieve in relation to an understanding of the preparedness for the new regime. It would require a number of things to happen before the legislation is fully in place. First, an impact assessment would have to be published—I hope that is on its way anyway. One has not been published yet, but I would welcome an indication from the Minister on what is in the pipeline in that respect.

Secondly, there should be consultation with the ONR, the National Audit Office and such other persons as the Secretary of State considers it appropriate to consult. Following that consultation, the Secretary of State should lay before Parliament

“a statement declaring that he or she is satisfied that the staffing and financial resource available to the ONR is sufficient for the purpose of assuming responsibility for nuclear safeguarding in the United Kingdom.”

The amendment would require the Secretary of State to set before Parliament, following consultation, a clear statement that

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<sup>89</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c122](#)

<sup>90</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c121](#)

<sup>91</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c124](#)

he was assured—there would be information in the statement to underline that assurance—that it really is reliably likely that the ONR will be able to take up the mantle of nuclear safeguarding from day one, when we are no longer in a position to do that through Euratom.<sup>92</sup>

Dr. Whitehead went on to raise ONR funding:

The reason I think that is important arises from what we know about the present position of the ONR and, indeed, what we heard in oral evidence. We know that the ONR is mainly funded through charges to the nuclear industry at present; it recovers the money for its operations generally from a charge on the nuclear industry. However, it also receives some grant funding, which essentially pays for the nuclear safeguarding work, while the charges on the nuclear industry essentially pay for the ONR's other functions, which are not the subject of the Bill.

That distinction is important, because the Government intend to halve the grant to the ONR in the period up to 2020. At the outset of these negotiations we face the prospect of the ONR actually being able to do less work than at the moment. If it is to continue to do the amount it does at the moment, it will probably have to levy substantially more charges on the industry in order to make up for the loss of grant up to 2020. At the same time, however, this Committee is saying that the ONR will have to undertake a whole lot of new work that it had not previously budgeted for, that has not been in its terms of reference for a very long time and that will clearly require a lot more resource. As we heard in oral evidence, that is no mean amount of additional work for it to undertake.<sup>93</sup>

He also raised concerns that the capacity Euratom had for UK inspections was significantly more than the capacity currently in the ONR.

In his concluding comments he said:

I believe that these amendments are helpful in terms of what we know is the task in front of us, and how certain we want to be in this Committee that we are able to do what we want to do. I will go beyond calling them helpful and say that it would be irresponsible to proceed to the end of this legislation without some method of ensuring that we can deliver on what this House will have decided. I think that all hon. Members would agree that it would not be the first occasion on which this House legislated on something without securing the means to ensure it happened. In this instance it is not just a money resolution at the end of the legislation, but ensuring that an industry is equipped to do the different things that we want it to do and that it previously was not carrying out.<sup>94</sup>

The Minister responded to the issue around resources by saying the Government had been transparent about the costs and resources needed:

On ONR capacity, which is the core of many of the amendments, I recognise the importance of transparency and the need for Parliament to be assured that the ONR is adequately resourced to

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<sup>92</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c84](#)

<sup>93</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c85](#)

<sup>94</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c88](#)

set up the absolutely critical domestic civil nuclear safeguards regime. I have continually stated that we will allocate to the ONR the funding necessary to set up the regime. We have been transparent about the costs and resources of setting up the regime. Current estimates of the set-up costs are set out in the explanatory notes to the Bill. They are under my file, but from memory they are about £10 million in set-up costs and about that annually, which is roughly the cost of Euratom at the moment to perform the same function. I know the figures are approximate, but they give hon. Members a perception of the scale.<sup>95</sup>

The Minister also said that an impact assessment was being produced

I can put his mind at rest and confirm that a full impact assessment is being undertaken and will be published in the coming weeks, certainly well before Report stage.<sup>96</sup>

The [impact assessment](#) was published on 11 December 2017.<sup>97</sup>

On the issue of further consultations, the Minister said consultations were vital but the Bill already places clear requirements on the Government to consult:

On amendments 12 and 13 and the issue of consultation more broadly, the Opposition made some valid points, and I agree wholeheartedly that, as was said on Second Reading as well as today in Committee, consultation is vital in the development of any regulatory system—and even more so when it concerns something of such national importance.

[...]

The Bill therefore places clear requirements on the Government to consult. We have already made it clear that the development of the regulations that underpin the Bill will be subject to detailed consultation with the regulator and industry. Hon. Members will be aware that it is policy for such consultations to be made public, and we intend to do so in this case.

The Minister went on to add:

The public consultations on the regulations, which we are absolutely clear we will hold, will not be the first opportunity for stakeholders to be made aware of the Government's intentions. It will not be their only opportunity, either, because the statutory consultation is the minimum consultation. This is a small industry for stakeholders, and there are regular ongoing discussions and consultations.<sup>98</sup>

Dr. Whitehead accepted the Government's intention to ensure full publication of the consultation:

I am almost a little disappointed that such an extremely modest suggestion could not be taken on board by the Government, but I hear what the Minister says about the intention to ensure that there is full publication and knowledge of the matters to do with the consultation. Therefore, we will not proceed to a vote on those amendments.<sup>99</sup>

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<sup>95</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c93-94](#)

<sup>96</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c91](#)

<sup>97</sup> Department for Business, Energy and Industrial Strategy, [Euratom Nuclear Safeguards Impact Assessment](#), 11 December 2017

<sup>98</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c94-95](#)

<sup>99</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c97](#)

Dr. Whitehead also said on ONR capacity:

The Minister said to me this afternoon that he is willing to consider a method by which it would be possible to report to the House what is happening towards the end of the process of recruitment and the shaping up of the ONR to put itself in a position to be able to undertake the duties that we hope it will undertake.<sup>100</sup>

The Minister confirmed this was the case saying:

I am perfectly prepared to give that undertaking. I cannot think quite how to do that at the moment, but I will give it a bit of thought. What the hon. Gentleman is suggesting is very reasonable.<sup>101</sup>

Dr. Whitehead withdrew the amendment.

## Powers for safeguarding inspectors

### Amendment 14

Amendment 14 suggested changing the Bill's schedule to ensure that Schedule 8 of the Energy Act 2013 would no longer exempt nuclear safeguards from ONR inspector's responsibilities.

Dr. Whitehead said this was required to translate inspectors' powers:

The amendment simply states that the inspectors' powers relate to any of the relevant statutory provisions, and excises the rest of the paragraph. The relevant statutory provisions include nuclear safeguards, and therefore what was there previously would be fully translated into what a nuclear inspector pursuing nuclear safeguards can do.<sup>102</sup>

The Minister said change was unnecessary but further drafting would be considered:

I believe that the intentions behind amendment 14 are entirely good, but I would argue that it is defective because it would turn on the improvement notice power for nuclear security...

But he concluded by noting he would consider changes if needed:

...this is obviously a complex area and I think that the Bill does exactly what he wants. I will consider his points carefully and, if further drafting is necessary, will bring forward proposals on that subject.<sup>103</sup>

The amendment was withdrawn.

## Commencement

### Amendment 7

Amendment 7 would amend Clause 4 (Commencement) so Clauses 1 and 2 would not commence until regulations under these clauses had been approved by a resolution in both Houses of Parliament. The Minister said it was "entirely conventional for the commencement

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<sup>100</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c96](#)

<sup>101</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c96](#)

<sup>102</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c112](#)

<sup>103</sup> Nuclear Safeguards Bill Debate (Fifth Sitting) 14 November 2017, [c113](#)

power not to be subject to any parliamentary procedure”<sup>104</sup> and “draft nuclear safeguard regulations are currently being worked on in close collaboration with the Office for Nuclear Regulation, and we will provide drafts during the passage of the legislation.”<sup>105</sup>

Dr. Whitehead said the Minister had gone “a long way towards reassuring us” and withdrew the amendment.<sup>106</sup>

## 6.4 New Clauses

Five New Clauses were suggested in total.<sup>107</sup>

### New Clause 1

New Clause 1 added a “Purpose” clause to the Bill. Dr. Whitehead argued that unlike other pieces of legislation, the Bill was a contingency measure that could conceivably be redundant depending on the outcome of negotiations with Euratom (such as retaining a form of membership). As such, Dr. Whitehead argued that it was important to make that clear at the beginning of the Bill. However the Minister said the Clause would undermine negotiations:

New clause 1 would undermine our position in our negotiations with international partners beyond the EU. It would change the purpose of the Bill to permit arrangements for a safeguards regime to be put in place only in the wake of failure of the discussions with the EU. We need to pursue discussions bilaterally and with the IAEA now, while we await the start of negotiations with the EU on our future relationship.<sup>108</sup>

The new Clause was defeated on division by ten votes to seven.

### New Clause 2

New Clause 2 sought to require the Secretary of State to seek to secure a transition period of a minimum of two years before the UK leaves Euratom during which the same relationship would apply. Dr. Whitehead said this was necessary to ensure the new regime “is assuredly in place by the time we leave Euratom” and specifically referred to training and recruitment.<sup>109</sup>

The Minister responded that he was “certain and satisfied that we can do the necessary recruitment and make the necessary arrangements [...] within the time period required”.<sup>110</sup> He also said more generally that the agreement of a transition period was beyond the realm of the Department for Business, Energy and Industrial Strategy and was instead subject to the wider EU negotiations.<sup>111</sup>

The new Clause was defeated on division by ten votes to seven.

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<sup>104</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c127](#)

<sup>105</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c128](#)

<sup>106</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c128](#)

<sup>107</sup> Public Bill Committee, Nuclear Safeguards Bill 2017-19, [Amendments as at 14 November 2017](#) (accessed 20 November 2017)

<sup>108</sup> Nuclear Safeguards Bill Debate (Fourth Sitting) 2 November 2017, [c50](#)

<sup>109</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c130](#)

<sup>110</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c133](#)

<sup>111</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c134](#)

In a Written Statement on 11 January 2018, the Secretary of State for BEIS, Greg Clark said that any transition period agreed as part of the EU negotiations would include Euratom (see Section 6.5 for the full statement).<sup>112</sup>

### **New Clause 3**

New Clause 3 sought to require the Secretary of State to produce a report for the approval of both Houses of Parliament on the full funding arrangements for the TORUS fusion research project undertaken at Culham in the event that no agreement is reached with Euratom.

This Clause was not called.

### **New Clause 4**

New Clause 4 sought to require the Secretary of State to produce a report every three months, following the passing of the Nuclear Safeguards Act, detailing the progress towards concluding relevant international agreements.

Dr. Whitehead referred to discussion throughout Committee Stage on Parliament being asked to approve legislation before the details of any future agreement with the IAEA are known. He said the new Clause would shed light on the ongoing processes:

[The clause] simply asks for, and would essentially certify in the Bill, light to be shed on the process, and for light to come back to Parliament on the process—as legislators, we have been have been required to pass legislation without knowledge of where that agreement stood, in what order it was and where we are going with it.

[...]

The new clause is modest in intent but would actually strengthen our hand, so that as Committee members we could say that while we legislated in some ignorance of what was going on, we nevertheless rectified that by requiring the report to be laid before Parliament, allowing everybody to see the picture as it develops and giving them a good idea of where things are going.<sup>113</sup>

The Minister said although he appreciated the sentiments behind the new clause, he could not agree to it because international treaties are already subject to the ratification process under the Constitutional Reform and Governance Act 2010.<sup>114</sup> He added that he was concerned that “requiring such frequent updates on negotiations could weaken our position and might compromise our ability to build rapport and trust with our negotiating partners”.<sup>115</sup> However he also said he recognised the need for transparency and would give the matter further thought to “come up with a proposal that strikes the right balance”.<sup>116</sup>

The new Clause was withdrawn.

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<sup>112</sup> Written Statement [Energy Policy], [HCWS399](#), 11 January 2018

<sup>113</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c137](#)

<sup>114</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c138-139](#)

<sup>115</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c139](#)

<sup>116</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c139](#)

In a Written Statement on 11 January 2018, the Secretary of State for BEIS, Greg Clark committed to “report back every three months about overall progress on Euratom, covering the EU negotiations and other important matters covered in this statement, by way of further Written Statements to keep Parliament updated”.<sup>117</sup> (see Section 6.5 for the full statement).

## New Clause 5

Drew Hendry, the Scottish National Party Energy Spokesperson, laid New Clause 5 requiring the Secretary of State to consult the devolved authorities before concluding any international or EU agreement relating to nuclear safeguarding. Mr Hendry said the amendment was important for Scottish national security:

In the light of the Minister’s earlier comments on issues of national security that could arise, the Scottish Government must be involved in the negotiations regarding nuclear safeguards, and the UK Government must include the Scottish Government at every stage of the negotiation process to ensure that the deal reached works for the people of Scotland.<sup>118</sup>

He added this was equally important for other devolved administrations.

The Minister responded that nuclear safeguards are not a devolved matter<sup>119</sup> but there would be transparency in the Bill through the process of ratifying treaties under the Constitutional Reform and Governance Act 2010.<sup>120</sup> He also said devolved administrations would continue to be involved in discussions and agreed to write to devolved administrations on the subject of consultations:

My officials have already been in discussions with colleagues from across the devolved Administrations and the relevant environment agencies, such as the Scottish Environment Protection Agency, Natural Resources Wales and so on, to ensure effective collaborations on key Euratom-related policy areas—including the domestic nuclear safeguards regime—and will continue to do so. My officials have already been in discussions with colleagues from across the devolved Administrations and the relevant environment agencies, such as the Scottish Environment Protection Agency, Natural Resources Wales and so on, to ensure effective collaborations on key Euratom-related policy areas—including the domestic nuclear safeguards regime—and will continue to do so.

I have been clear that the relevant international agreements will be subject to a clear, open and transparent process involving a high degree of consideration, scrutiny and external engagement. However, I do appreciate the concern behind new clause 5, which is why I already committed to the hon. Member for North Ayrshire and Arran to address her query on consultation with the Scottish Government by writing to her on the subject. I would therefore propose instead, if it will be satisfactory to the hon. Member for Inverness, Nairn, Badenoch and Strathspey, to write directly to Scottish Ministers, Welsh Ministers and the Northern Ireland devolved authority on the subject for consultation.<sup>121</sup>

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<sup>117</sup> Written Statement [Energy Policy], [HCWS399](#), 11 January 2018

<sup>118</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c140](#)

<sup>119</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c141](#)

<sup>120</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c141](#)

<sup>121</sup> Nuclear Safeguards Bill Debate (Sixth Sitting) 14 November 2017, [c142](#)



The new Clause was defeated on division by ten votes to seven.

## 6.5 Discussion during Committee Stage of the European Union (Withdrawal) Bill

On the 7<sup>th</sup> allocated day of the *European Union (Withdrawal) Bill* debate, amendment 300, tabled by Ed Vaizey MP, was discussed. The Amendment stated:

- “(3A) No regulations may be made under this section until—
- (a) the Government has laid before Parliament a strategy for maintaining those protections, safeguards, programmes for participation in nuclear research and development, and trading or other arrangements which will lapse as a result of the UK’s withdrawal from membership of, and participation in, the European Atomic Energy Community (Euratom), and
  - (b) the strategy has been approved by both Houses of Parliament.”

*This amendment would prevent the Government using any delegated powers under Clause 9 until it had secured Parliamentary approval for its proposals to replace any provisions that cease to apply as a result of the UK’s withdrawal from membership of Euratom.*<sup>122</sup>

The Minister of State for Courts and Justice Dominic Raab responded to the debate by saying that the Government intended to set out a vision for close association with Euratom before Report:

The Government intend to present a written ministerial statement to Parliament before Report which will set out our vision, or strategy, for a close association with Euratom.<sup>123</sup>

### Written Statement on Euratom

On 11 January 2018, the Secretary of State for BEIS, Greg Clark, made the following written statement:

The UK has benefited from its membership of the European Atomic Energy Community since joining the EU and Euratom in 1973. The Government’s ambition is to maintain as many of these benefits as possible through a close and effective association with Euratom in the future, after the UK withdraws from Euratom, at the same time as withdrawing from the EU, on 29 March 2019. Our plans are designed to be robust so as to be prepared for a number of different scenarios including the unlikely outcome that there is no future agreement at all. Our number one priority is continuity for the nuclear sector.

Since the 1950s, when the UK launched the world’s first nuclear power station, this country has been a leading civil nuclear country on the international stage, with deep nuclear research and nuclear decommissioning expertise, and with nuclear power playing a vital part in our electricity generation mix. It is vitally important that our departure from the EU does not jeopardise this success, and it is in the interests of both the EU and the UK that our relationship should continue to be as close as possible. We recognise and understand the concerns that the nuclear industry

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<sup>122</sup> HC Deb, 13 December 2017, [c407](#)

<sup>123</sup> HC Deb, 13 December 2017, [c491](#)

has raised. We agree it is essential that projects and investment are not adversely affected by the UK's withdrawal from the EU, and can continue to operate with certainty.

To achieve this outcome, the Government's strategy is twofold: through negotiations with the European Commission we will seek a close association with Euratom and to include Euratom in any implementation period negotiated as part of our wider exit discussions; and at the same time, to put in place all the necessary measures to ensure that the UK could operate as an independent and responsible nuclear state from day one.

Our strategy is therefore based on the following principles:

- to aim for continuity with current relevant Euratom arrangements;
- to ensure that the UK maintains its leading role in European nuclear research;
- to ensure the nuclear industry in the UK has the necessary skilled workforce covering decommissioning, ongoing operation of existing facilities and new build projects; and
- to ensure that on 29 March 2019 the UK has the necessary measures in place to ensure that the nuclear industry can continue to operate.

The Government has made good progress on separation issues in the last few months as part of Phase One of negotiations with the EU. Negotiations have covered a set of legal and technical issues related to nuclear material and waste, and safeguards obligations and equipment. The next phase of discussions will focus on the UK's future relationship with Euratom. We believe that it is of mutual benefit for both the UK and the EU to have a close association with Euratom and to ensure a future safeguards regime that will be equivalent in effectiveness and coverage as that currently provided by Euratom, including consideration of any potential role for Euratom in helping to establish the UK's own domestic safeguards regime.

The UK's specific objectives in respect of the future relationship are to seek:

- a close association with the Euratom Research and Training Programme, including the Joint European Torus (JET) and the International Thermonuclear Experimental Reactor (ITER) projects;
- continuity of open trade arrangements for nuclear goods and products to ensure the nuclear industry is able to continue to trade across EU borders without disruption; and
- maintaining close and effective cooperation with Euratom on nuclear safety.

We understand the importance to businesses and communities, including those in the nuclear sector, of being able to access the workforce they need. Proposals for our future immigration system will be set out shortly and we will ensure that those businesses and communities, and Parliament have the opportunity to contribute their views before making any decisions about the future system.

Whatever the outcome of the negotiations with the EU, it is vital that Government pursues all options for providing certainty for

the civil nuclear industry that it will be able to continue its operations, including that the UK has a safeguards regime that meets international standards by the end of March 2019 and that necessary international agreements are in place. Such elements are not dependent on the EU negotiations and the UK Government is well advanced in delivering this plan.

The UK is: establishing a legislative and regulatory framework for a domestic safeguards regime – the Nuclear Safeguards Bill will, subject to the will of Parliament, provide legal powers for the Secretary of State to establish a domestic regime which the Office for Nuclear Regulation will regulate; negotiating bilateral safeguards agreements with the International Atomic Energy Agency; and putting in place bilateral Nuclear Cooperation Agreements with key third countries.

As set out by the Prime Minister, the UK Government is proposing a time-limited implementation period where we continue to have access to one another's markets on current terms and take part in existing security measures. This implementation period would cover Euratom too. The exact nature of the period will be subject to forthcoming negotiations including on the issues outlined in this statement.

As discussions with the EU move onto the important issue of the future relationship, I shall report back every three months about overall progress on Euratom, covering the EU negotiations and other important matters covered in this statement, by way of further Written Statements to keep Parliament updated.<sup>124</sup>

## Written Statement on ONR funding

On 2 February 2018, the Minister Richard Harrington made the following written statement:

I hereby give notice of the Department of Business, Energy & Industrial Strategy's intention to seek an advance from the Contingencies Fund in the amount of £2,275,000 for FY 2017/18 to provide financial cover to the Office for Nuclear Regulation (ONR).

This cash advance from the Contingencies Fund is required in order to enable ONR to establish a new domestic civil nuclear safeguards regime ahead of the UK's withdrawal from the European Union and Euratom on 29<sup>th</sup> March 2019. This is in line with the written ministerial statements made by the Secretary of State for Business, Energy and Industrial Strategy on 14<sup>th</sup> September 2017 and 11<sup>th</sup> January 2018. The work necessary includes recruitment and training of additional safeguards officers and installation of a new safeguards IT system.

ONR has already begun some preparatory work to deliver the regime but requires this cash advance to move to its next phase of project implementation which includes financial commitments towards recruitment and asset purchases, to be able to deliver the regime ahead of day 1 of exit.

Parliamentary approval for additional resources of £2,275,000 for this new service will be sought in an Estimate for the Department of Business, Energy and Industrial Strategy. Pending that approval,

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<sup>124</sup> Written Statement [Energy Policy], [HCWS399](#), 11 January 2018

urgent expenditure estimated at £2,275,000 will be met via repayable cash advances from the Contingencies Fund.

The cash advance will be repaid upon receiving Royal Assent for the Nuclear Safeguards Bill and the Supply and Appropriation Bill.<sup>125</sup>

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<sup>125</sup> Written Statement [Energy Policy], [HCWS445](#), 2 February 2018

## 7. Report Stage and Third Reading

Report stage and Third Reading of the Nuclear Safeguards Bill (2017-19) took place on 23 January 2018. The Bill passed to the House of Lords without amendment. At Third Reading, the Secretary of State Greg Clark said

Our strategy is twofold: first, to seek through our negotiations with the European Commission a close association with Euratom; and, secondly and simultaneously, to put in place all necessary measures to ensure that the UK can operate as an independent and responsible nuclear state from day one.

The Shadow Secretary of State Rebecca Long-Bailey said Labour would support the Bill at Third Reading but still had concerns about the Government approach.

The Labour Party and Scottish National Party tabled three new clauses and seven amendments, largely repeating the concerns raised at Committee Stage:

- New Clause 1 'Transition Period' was the same as New Clause 2 at Committee Stage and sought to ensure a transition period for leaving Euratom of a minimum of two years.
- New Clause 2 'Purpose' was the same as New Clause 1 at Committee Stage and sought to state that the Bill was a contingency measure.
- New Clause 3, 'Euratom: maintenance of nuclear safeguarding arrangements' was the only amendment laid by the SNP and related to the Secretary of State reporting on the possibility of maintaining current Euratom arrangements for safeguarding.
- Amendment 1 was new and, according to Dr. Whitehead, based on the Impact Assessment published on 11 December 2017, after the conclusion of Committee Stage. It sought to amend Clause 1 to ensure the new safeguard regime would continue at the same level previously established by Euratom.
- Amendment 2 was the same as Amendment 3 at Committee Stage and sought to prevent the Government from making regulations under Clause 1 unless a report on the strategy for, or reasons against, an associate membership of Euratom had been laid before both Houses of Parliament.
- Amendment 3 was the same as Amendment 1 at Committee Stage and sought to prevent the Government from making regulations under Clause 1 unless a statement on why it was no longer possible to remain in Euratom or establish an association had been laid.
- Amendment 4 was broadly the same as Amendment 4 at Committee Stage and suggested requiring the Secretary of State to consult the National Audit Office as well as the ONR before making regulations under Clause 1, and lay before Parliament a

statement declaring that the ONR has sufficient resources available for nuclear safeguarding responsibilities.

- Amendment 5 was the same as Amendment 6 at Committee Stage and sought to amend Clause 2 to limit the circumstances under which the Secretary of State could use the powers.
- Amendment 6 sought to ensure draft regulations were published but as these were published on Friday 19 January 2018 the amendment was not debated.
- Amendment 7 was the same as Amendment 8 at Committee Stage and sought to change Clause 4 (commencement) to prevent the Government using the powers in either Clause 1 or 2 unless a report was laid before Parliament on a strategy for maintaining other aspects of the UK's relationship with Euratom that will lapse upon leaving.

The debate centred around concerns raised at Committee stage - whether to consider the Bill as a contingency measure, whether an associate membership with Euratom is possible, whether the ONR is prepared for the new safeguards regime, whether a transition agreement should be written into legislation, and the use of Henry VIII powers.

Following debate, Dr. Alan Whitehead MP withdrew all amendments except New Clause 1 and Amendment 5 which went to division. New Clause 1 was defeated at division by 294 votes to 255.<sup>126</sup> New Clause 2 was defeated at division by 295 votes to 254.<sup>127</sup>

### **New clause 1: transition period**

On New Clause 1, the transition period, Rachel Reeves the Chair of the Business, Energy and Industrial Strategy Committee said:

I have been in meetings with the Office for Nuclear Regulation, in which it has said very clearly that it will not be able to meet Euratom standards for safety inspections by March 2019. Indeed, even to meet IAEA standards will be very challenging. Does she not agree that new clause 1 would provide certainty, rather than the other way around, because it would ensure that in March 2019 we were in a transition period in which we could still rely on Euratom to perform the inspections that are so crucial?<sup>128</sup>

The Minister said an implementation period for Euratom is possible if the Government's wish for an overall EU transition period is agreed:

As far as the implementation period is concerned, we intend to ensure continuity for the nuclear industry and to avoid the possibility of a cliff edge for the industry on the date of exit. Members will be aware—if they were not listening at the time, this has been mentioned several times already today, so they will be aware now—that the Prime Minister set out in her Florence speech her desire for an implementation period after the UK ceases to be a member of the EU. If the European Commission agrees to an implementation period of around two years, the UK will not be a member state of the European Union during that period. None the less, the *acquis* will continue to apply, which

<sup>126</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [Division 106](#)

<sup>127</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [Division 107](#)

<sup>128</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [c168-169](#)

means that, for the duration of that implementation period, the UK will expect to continue to pay into the EU, to be bound by its rules and to benefit from access to its market. The European Commission's draft guidelines are explicit that, in its view, this acquis would include Euratom matters. The implication of that—I accept that it is an implication because it has to be tested in negotiations—is that the current Euratom regime could continue to apply during any transition period.

I have to reiterate that a transition period prior to our withdrawal, as proposed by new clause 1, is not a situation envisaged in the proposals for the implementation period. Both parties to the discussions agree that it would be helpful to have the matter agreed as speedily as possible—again, there is no disagreement over that—so as to provide the certainty that we need. Whatever the outcome of the talks about an implementation period, let me emphasise that the UK's overarching objective remains to maintain as close and effective an association with Euratom for the long term as possible.

New clause 1, which was tabled by the hon. Member for Southampton, Test, proposes not an implementation period after exit, but a transitional period before exit. That would delay the UK's exit from Euratom, but that situation is not envisaged in the proposals for the implementation period, or in the article 50 notification that has already been passed by Parliament.<sup>129</sup>

Dr. Whitehead said the clause had been debated “in a very unsatisfactory way”<sup>130</sup> and pressed it to a division.

#### **Amendment 5: Henry VIII powers**

On Amendment 5, Dr. Whitehead reiterated his dislike for the Henry VIII clauses, previously discussed at Committee, and again said limiting the powers in Clause 2 was a minimum change.<sup>131</sup>

The Minister Richard Harrington repeated what he said at Committee Stage that “it is a very narrow power”<sup>132</sup> but Dr. Whitehead said it was a “a fundamental defect in the structure of the Bill”<sup>133</sup> and pressed it to division.

#### **Statements at Third Reading**

At Third Reading, the Secretary of State for BEIS Greg Clark highlighted how the Government had responded to concerns:

- Making the Written Statement on the Government's strategy and objectives for leaving Euratom.
- Committing to report back to Parliament every three months statements on progress with Euratom.
- Commitment to continue dialogue with industry, the devolved administrations and civil society through events, workshops and consultations on the regulations.

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<sup>129</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [c190](#)

<sup>130</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [c191](#)

<sup>131</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [c200](#)

<sup>132</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [c207-208](#)

<sup>133</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [c208](#)

The Secretary of State also gave an update on negotiations with the IAEA and Euratom:

The swift progress of the Bill, and the supportive discussions in the House about it, have aided our negotiations with the EU, the IAEA and third countries. We have already held several rounds of discussions on Euratom issues in the first phase of the negotiations with the EU, and there has been good progress. Negotiations with the IAEA on future voluntary agreements for the application of civil nuclear safeguards have also been constructive, and substantial progress has been made. It is expected that these new agreements will be put to the IAEA board of governors for ratification later this year. Negotiations on nuclear co-operation agreements have also proceeded significantly. In particular, constructive progress has already been made in negotiations with key partners, such as the United States, Canada, Australia and Japan.<sup>134</sup>

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<sup>134</sup> HC Deb [Nuclear Safeguards Bill] 23 January 2018, Vol 635, [c214-215](#)



## 8. House of Lords Second Reading

The Bill had its First Reading in the House of Lords on 24 January 2018 and Second Reading on 7 February 2018. Committee stage will begin on 22 February 2018.

During the Second Reading debate, Peers raised many of the same concerns that had been debated in the Commons: radioisotopes, ONR capacity, transition periods, Henry VIII powers, the possibility of associate membership, research funding and freedom of movement.

### Radioisotopes

Lord Henley, the Parliamentary Under-Secretary of State for BEIS addressed the supply of radioisotopes despite saying the issue “is not strictly relevant to the bill”.<sup>135</sup> Although he repeated that radioisotopes are not special fissile material so are not subject to approval by the Euratom Supply Agency, he did say supply may depend on future customs agreements:

The Government recognise the concerns that changes to our customs arrangements after our withdrawal from the European Union could potentially affect the timely supply of medical radioisotopes. Therefore I offer an assurance to the noble Lord, Lord Hunt, and other noble Lords who have raised this point that the Government are committed to minimising any impact such changes might have. I have had meetings with counterparts in the Department of Health and Social Care and Her Majesty’s Treasury to step up our work in this area. We are working across government to prepare domestically and to negotiate a future customs arrangement with the European Union that ensures cross-border trade in this area is as frictionless as possible.<sup>136</sup>

Lord Carlile of Berriew, Patron of the Society for Radiological Protection, said he opposed radioisotopes being put in general negotiations with standard goods as they are “much too important”.<sup>137</sup> Other Peers raised concerns about leaving the Euratom Observatory which helps guarantee the supply of radioisotopes when there are shortages.<sup>138</sup>

### ONR Capacity

In addition to concerns raised in the Commons that the ONR may not have the capacity to prepare a new safeguards regime and negotiate new NCAs in time,<sup>139</sup> the independence of the ONR was also raised. Lord Rooker said “the ONR cannot be independent in the same way that Euratom was” due to the involvement of the DWP in appointing ONR’s accounting officer and appraising the chair of the ONR.<sup>140</sup>

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<sup>135</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2026](#)

<sup>136</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2026-2027](#)

<sup>137</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2041](#)

<sup>138</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2027](#)

<sup>139</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2039-2040](#)

<sup>140</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2024](#)

On 19 February 2018, the Government published a fact sheet on ONR independence, saying that in 2013, following a review, the IAEA reported that the ONR had de jure independence.<sup>141</sup>

In response to concerns raised in the Commons regarding ONR funding and the potential for industry having to pay more, Lord Henley stated:

The ONR is actually very well-funded and that changes to the level of the grant it gets from government are only a very small part of the overall ONR budget, which is actually growing and not shrinking. More than 90% of the ONR's budget is recovered from industry; it is not coming from government. The safeguards work is being paid to ONR directly from BEIS's budget, so I can again give the assurance to [...] that there will be no charge on industry to pay for safeguarding work.<sup>142</sup>

### Transition/implementation period

Several Peers repeated Labour's suggestion in the Commons for an implementation period. Baroness Neville-Rolfe, a former Conservative Energy Minister, said "I would not completely rule out extending Article 50 in the case of Euratom if unforeseen problems arise".<sup>143</sup> Lord Warner stated he would be putting down an amendment to introduce a transition period:

Last September, in her Florence speech, the Prime Minister said that the status quo should continue for what she called,

"an implementation period of around two years".

Yet when the Opposition tried to amend the Bill in the Commons to give effect to this approach by staying in Euratom after March 2019 for a transition period of up to two years, the Government marshalled their forces to vote it down. This is despite the fact that the Government will not be operating at the same safeguarding standards as Euratom because they will not have sufficient inspectors in post. I shall be putting down an amendment at the close of this debate to reintroduce a transition period for this sector, irrespective of what happens on wider Brexit issues.<sup>144</sup>

### Henry VIII powers

The use of Henry VIII powers was also raised with Peers arguing these should be constrained with suggestions of sunset clauses or reviews and reports.<sup>145</sup> Lord Grantchester, speaking for Labour, suggested they may put forward amendments on the Henry VIII clauses in Committee following the report from the Delegated Powers and Regulatory Reform Committee.<sup>146</sup> (See section 8.1 below).

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<sup>141</sup> Department for Business, Energy and Industrial Strategy, *Nuclear Safeguards Bill Fact Sheet. ONR Independence*, February 2018

<sup>142</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2064](#)

<sup>143</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2035](#)

<sup>144</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2049](#)

<sup>145</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2061](#)

<sup>146</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2030](#)

## Associate Membership

Several Peers reiterated a preference for an associate membership<sup>147</sup> or debated the necessity of leaving Euratom especially in the context of wider ongoing exit negotiations which if resulting in membership of the European Economic Area, could allow the UK to remain in EU agencies.

<sup>148</sup>

Other repeated issues from the Commons stages included the impacts of leaving Euratom on UK nuclear research,<sup>149</sup> and the freedom of movement of nuclear specialists, not just those working in science but also helping to build new power plants such as Hinkley.<sup>150</sup>

## 8.1 House of Lords Delegated Powers and Regulatory Reform Committee

On 9 February 2018, the House of Lords Delegated Powers and Regulatory Reform Committee published their 13<sup>th</sup> Report of Session 2017-19 which included the Nuclear Safeguards Bill. The report contained three recommendations to limit the powers of the bill:

We recommend that the term “civil activities” should be defined in new section 76A of the 2013 Act, rather than leaving this to be dealt with exclusively in regulations.

[...]

We therefore recommend a “sunset” provision so that the power in new section 112(1B) may not be exercised after two years from the date on which the UK withdraws from Euratom.

[...]

We therefore recommend a sunset provision for clause 2(1) too. This is so that the power it confers may not be exercised after two years from the date of the UK’s withdrawal from Euratom.<sup>151</sup>

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<sup>147</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2057](#)

<sup>148</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2025](#)

<sup>149</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2044](#)

<sup>150</sup> HL Deb [Nuclear Safeguards Bill] 7 February 2018 vol 788, [c2039](#)

<sup>151</sup> House of Lords Delegated Powers and Regulatory Reform Committee, [Nuclear Safeguards Bill, 13<sup>th</sup> Report of Session 2017 – 19](#), 9 February 2018

## 9. Amendments made in the Lords

At Report Stage, the House of Lords made a number of amendments to the Bill.

The Government moved six amendments, all of which were agreed:

- Amendments 1, 2 and 12 added a definition of “civil activities” to the Bill;
- Amendment 4 added a sunset provision to Clause 2 making the powers to amend existing legislation effective for a period of 5 years from the day the section comes into force;
- Amendment 6 was a new Clause requiring the Secretary of State to lay a quarterly report before Parliament on nuclear safeguards;
- Amendment 10 was a minor and consequential change to commencement.

Peers from other parties moved four amendments, two of which were withdrawn after debate and two of which were agreed on division.

The two withdrawn amendments related to the freedom of employment for specialists (amendment 8) and a report on the information and technology systems required for a domestic safeguard regime (9A).

The two amendments agreed on division were Amendment 3, which would seek to suspend the UK’s withdrawal from Euratom if relevant agreements were not in place, and Amendment 7, which amended the Government’s Amendment 6 to so that the Secretary of State’s report on nuclear safeguard may include information on nuclear research and development, and imports and exports.

A version of the Bill as amended on report is available [here](#).

### 9.1 Civil activities definition

The Government moved amendments 1, 2 and 12 which would add a definition of “civil activities” to the Bill. The definition was set out as:

“civil activities” means—

- (a) production, processing or storage activities which are carried on for peaceful purposes;
- (b) electricity generation carried on for peaceful purposes;
- (c) decommissioning;
- (d) research and development carried on for peaceful purposes;
- (e) any other activity carried on for peaceful purposes;<sup>152</sup>

This amendment was suggested by the House of Lords Delegated Powers and Regulatory Reform Committee in their 13<sup>th</sup> Report of

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<sup>152</sup> HL, Nuclear Safeguards Bill, [Marshaled List of amendments to be moved on Report](#), 16 March 2018

Session 2017-19 which included the Nuclear Safeguards Bill (see section 8.1 above). The report said in paragraph 12:

“Civil activities” is a concept that is central to the reach of the nuclear safeguards regulations. We are not convinced that the term does have a natural meaning. We assume that it is intended to refer to non-military activities. If that is correct, then we see no reason why this should not be made clear on the face of the Bill. The power conferred by new section 76A(5) allows the Secretary of State to define what “civil activities” means; and therefore, in effect, to determine the whole scope of the regulations.<sup>153</sup>

The Opposition agreed with the amendment though Lord Hutton of Furness questioned why it was necessary to define electricity generation and “peaceful purposes” in a line together.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy, Lord Henley, said he did not know why it had been included and would write to Lord Hutton with an answer:

On the more detailed technical point raised by the noble Lord, Lord Hutton, about electricity generation carried out for non-peaceful purposes, I have not got a clue and will take advice on the matter. I am assured by those drafting the Bill that this was the appropriate and proper way to deal with this matter.<sup>154</sup>

Amendments 1, 2 and 12 were agreed.

## 9.2 Agreements required before withdrawal

Cross-bench peer Lord Broers moved Amendment 3 which suggested a new Clause on ‘Agreements required before withdrawal’ requiring the UK to request to suspend its withdrawal from Euratom if specific agreements were not in place in time:

(1) In the event that any of the agreements listed in subsection (3) are not in place on 1 March 2019, a Minister of the Crown must, as part of the negotiations regarding the United Kingdom’s withdrawal from the European Atomic Energy Community Treaty, request to suspend the United Kingdom’s withdrawal until either—

- (a) the agreements listed in subsection (3) are in place, or
- b) other arrangements have been made to enable the United Kingdom to continue to benefit from existing nuclear safeguards arrangements until the agreements listed in subsection (3) are in place.

(2) For the avoidance of doubt, a request for suspension under subsection (1) applies only to withdrawal from the European Atomic Energy Community Treaty and to no other part of the United Kingdom’s negotiations for withdrawal from the European Union.

(3) The relevant agreements are—

- (a) an agreement between the United Kingdom and the International Atomic Energy Agency recognising the Office of Nuclear Regulation as the approved United Kingdom

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<sup>153</sup> House of Lords Delegated Powers and Regulatory Reform Committee, *Nuclear Safeguards Bill, 13<sup>th</sup> Report of Session 2017 – 19*, 9 February 2018

<sup>154</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c190](#)

safeguarding authority in place of the European Atomic Energy Community;

(b) a Voluntary Offer Agreement between the United Kingdom and the International Atomic Energy Agency resulting from the United Kingdom no longer being a member of the European Atomic Energy Community; and

(c) relevant international agreements with those nations with which the United Kingdom has exercised rights in the last three years as a party to agreements made by the European Atomic Energy Community.”<sup>155</sup>

Lord Hutton of Furness, who supported the amendment, said the amendment was a backstop in case agreements were not made in time:

Fundamentally, the amendment poses that question: what do we do, all of us, if, with the very best of intentions and the absolute commitment of the Government, which I do not doubt, to renew these nuclear co-operation agreements, the implementation period comes to an end and we have not succeeded in putting into place the nuclear co-operation agreements? It seems pretty obvious that, despite all the difficulties of trying to construct a default or backstop, we have to give attention to the risk that we come to the end of that period and we have not renegotiated successfully—through no fault of our own but simply because we do not control all the processes that are involved in moving pieces of the jigsaw—and we do not find ourselves in the situation, where we all want to be, where these NCAs can be seamlessly renewed.

If we get to that point where the NCAs are not in place with our key nuclear trading allies, we have a major problem. In my view, it would become impossible for the vital exchange of goods and services in the nuclear sector to continue beyond that point legally and lawfully, and if it cannot be done legally and lawfully then it will not be done at all. The noble Lords, Lord Warner and Lord Teverson, have referred to the problem which that might create for the energy security of the UK. I am sure I cannot be the only person in this House to say, “I don’t think any of us should take a gamble or a risk with the energy security of our country”. Given the important role of the nuclear industry, that is precisely what we will be doing if we do not find the wherewithal in this Chamber today to find a way of constructing a backstop for the “What if?” moment if at the end of the day these nuclear co-operation agreements cannot be brought into effect at the time when we want them to be. That seems to be the issue that the amendment has raised, and it is not going to go away.<sup>156</sup>

Lord Henley said leaving Euratom was a “done deal” and the amendment would create “uncertainty”:

At this stage, it is important to remind the House that when my right honourable friend the Prime Minister gave notice last year of our intention to leave the European Union, she also commenced the process for leaving Euratom. The power to make that notification has already been debated at considerable length in both Houses of Parliament and authorised by the European Union (Notification of Withdrawal) Act 2017. That notification has been

<sup>155</sup> HL, Nuclear Safeguards Bill, [Marshaled List of amendments to be moved on Report](#), 16 March 2018

<sup>156</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c196](#)

accepted by the European Union. The United Kingdom will therefore withdraw from Euratom at the same time as withdrawing from the European Union. That, as I put it to the noble Lord, Lord Hutton, earlier, is a done deal.<sup>157</sup>

[...]

The amendment would create a situation where we are compelled to secure agreements that we do not need and it runs counter to what the Government are doing: creating certainty. Even if this amendment were technically correct, its impact would be to introduce further uncertainty and potential disruption to an industry by casting doubt over establishing the domestic safeguards regime in the long term.<sup>158</sup>

The New Clause was agreed on division by 265 to 194.<sup>159</sup>

### 9.3 Time limit on Clause 2 powers

Clause 2 gives the Secretary of State the power to use regulations to amend previous Acts relating to nuclear safeguards. The House of Lords Delegated Powers and Regulatory Reform Committee recommended a sunset provision on the powers in Clause 2 (para 20):

We therefore recommend a “sunset” provision so that the power in new section 112(1B) may not be exercised after two years from the date on which the UK withdraws from Euratom.<sup>160</sup>

Both the Government and the Opposition moved amendments to add a sunset provision to Clause 2 but the Government said it should be after 5 years after coming into force (amendment 4) and the Opposition said it should be two years (amendment 5).

Baroness Vere of Norbiton, speaking for the Government, said of amendment 4:

The Delegated Powers and Regulatory Reform Committee agreed that the power in Clause 2 is necessary and appropriately framed. It recognised that it is intended as a way of reflecting the new agreements with the agency required to establish the UK’s civil nuclear safeguards regime, and recommended preventing the use of the power after a period of two years had expired.

The Government accept the principle of the committee’s recommendation, and of Amendment 5, that we should not retain this power for an indefinite period. However, the regime is heavily reliant on wider international negotiations and it is therefore of the utmost importance that the power is not sunsetted prematurely.<sup>161</sup>

Lord Grantchester (Lab) asked why the Government thought two years was insufficient:

I would like to press the Minister on why the Government think that a two-year period that coincides with any transition period

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<sup>157</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c202](#)

<sup>158</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c205](#)

<sup>159</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c206-208](#)

<sup>160</sup> House of Lords Delegated Powers and Regulatory Reform Committee, *Nuclear Safeguards Bill, 13<sup>th</sup> Report of Session 2017–19*, 9 February 2018

<sup>161</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c209-210](#)

could be insufficient to conclude necessary wider international agreements.<sup>162</sup>

Baroness Vere of Norbiton said there may be unforeseen circumstances:

There may be circumstances that we cannot possibly foresee at this time that will make it necessary for the sunset clause to exist for slightly longer.<sup>163</sup>

After debate amendment 4 was agreed and amendment 5 was not moved.

## 9.4 Report on nuclear safeguards

Following discussion in Second Reading and Committee, the Government moved Amendment 6, a new Clause requiring the Secretary of State to lay before Parliament quarterly reports on international agreements relating to nuclear safeguards and the establishment of UK nuclear safeguards.

The Opposition moved an amendment to the new Clause. Amendment 7, suggested the report 'may' include information on nuclear research and imports and exports.

Lord Henley said the new Clause was in response to concerns raised across Parliament:

We have taken seriously the requests from Members of both Houses, across all parties, for regular, detailed updates about nuclear safeguarding arrangements in this country.

I agree that it is vital that Parliament is able to assure itself that the Government are taking effective action in relation to nuclear safeguards. In order to promote a transparent system of regular information on progress, my right honourable friend the Secretary of State for Business, Energy and Industrial Strategy committed to provide quarterly updates on overall progress on Euratom negotiations, going further than the proposed amendments at the time. The House will be aware that we plan to publish the first such update at the end of this month. This is even sooner than originally envisaged, coming three months since the publication of our January statement. As the end of the three months would fall during the Easter Recess, a decision was made to bring forward the publication of the first update so that it will be laid before Parliament rises.

Further updates will be made available every three months, with the next one scheduled for June 2018. I listened very carefully in Committee and I understand that noble Lords across the House would like something more than hopeful reassurances; for that reason Amendments 6 and 10 would place a statutory duty on the Secretary of State to provide quarterly reports on nuclear safeguards, covering both domestic and international matters, for the first year after the Bill receives Royal Assent.<sup>164</sup>

Lord Hunt of Kings Heath, who moved Amendment 7, summarised the debate and said why he wanted to test the opinion of the House on Amendment 7:

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<sup>162</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c210](#)

<sup>163</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c210-211](#)

<sup>164</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c212](#)



[Lord Henley] expressed deep sympathy with the intent of our amendments but, alas, even with divine inspiration, he failed to go a little further. Essentially, his argument in relation to my Amendment 7 was that it was unnecessary in the light of existing commitments in the Written Ministerial Statement and what he has said today about the importance of research and development. I go back to our debate last night on the EU (Withdrawal) Bill, in which there was an overwhelming sense that this country still has a lead in some aspects of nuclear research. The noble Lord, Lord Broers, spoke about that very eloquently. This is at risk because of what is happening in relation to Brexit and our withdrawal from Euratom. It is important to have on the face of the Bill—in primary legislation—a commitment that the Government will report on research and development. I wish to test the opinion of the House.<sup>165</sup>

Amendment 6 was agreed and Amendment 7 was agreed on division by 244 to 194.<sup>166</sup>

## 9.5 Other amendments

Opposition parties moved two other amendments which were withdrawn after debate.

Amendment 8 related to the “freedom of employment of specialists”. After debate, Lord Teverson, who moved the amendment said “the issue will inevitably be fought out during the immigration bill”.<sup>167</sup>

Amendment 9a suggested inserting a new Clause to require the Secretary of State to produce quarterly reports on the progress of information and technology (IT) systems necessary for the UK’s domestic safeguarding regime. Lord Henley said that such reporting would fall within the reporting duty laid out under the Government’s agreed amendment 6. He also said he would write to Lord Fox who had asked about whether the IT system was starting from scratch or a modification of existing systems. Lord Teverson, who proposed the amendment, said on that basis, he would withdraw the amendment.<sup>168</sup>

The Government also made minor and consequential amendments to Clause 4 and the Schedule.

## 9.6 Third Reading

The Bill received [Third Reading](#) in the House of Lords on 27 March 2018 without further amendment.

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<sup>165</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c220-221](#)

<sup>166</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c222-224](#)

<sup>167</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c227](#)

<sup>168</sup> HL Deb, Nuclear Safeguards Bill Report, 20 March 2018, Vol 790, [c231](#)

## 10. Consideration of Lords' amendments

The House of Lords' amendments were considered by the Commons on 8 May 2018.

The Government [proposed an amendment in lieu of Lords amendment 3 above](#). The key differences between the two amendments were:

- The Lords' amendment states that the relevant agreements must be in place by 1 March 2019 or the UK should request to suspend the withdrawal from Euratom. The Government's amendment uses the same date (phrased as 28 days before exit day) but says they will not make a 'relevant request' (see below) if:
  - agreements have been signed or;
  - for agreements that have not been signed, arrangements have been made for Euratom arrangements to continue after exit day/in the Secretary of State's opinion, the arrangements will be made before exit day.

The Government amendment does not cover what will happen if the arrangements are in fact not made by exit day itself.

- The Lords' amendment states that if the agreements are not in place, a Minister of the Crown must 'request to suspend the UK's withdrawal [from Euratom]'. The Government's amendment states that if the conditions listed in point 1 are not in place they will make a 'relevant request' meaning the Government will ask for each of the principal international agreements relating to Euratom to continue to have effect in the UK after exit day. Therefore, the Government's amendment means only the principal agreements will continue to have effect until an alternative is found, rather than the UK remaining in Euratom.

Though the wording varies, the principal agreements appear largely the same in both the Lords and Government amendments. The agreements are:

- An agreement between the UK and the international Atomic Energy Agency (IAEA).
- International agreements with other countries relating to nuclear safeguards (known as Nuclear Cooperation Agreements).

Dr Whitehead, speaking for the Opposition, said:

I accept that the amendment in lieu proposed by the Government comes a very long way, and that it has taken a considerable amount of U-turning, if we want to call it that, to put in place these arrangements, but in reality it is not quite far enough.<sup>169</sup>

The Lords' amendment was replaced with the Government's amendment on division by 306 votes to 278.<sup>170</sup>

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<sup>169</sup> HC Deb, Nuclear Safeguards Bill, 8 May 2018, Vol 640, [c609](#)

<sup>170</sup> HC Deb, Nuclear Safeguards Bill, 8 May 2018, Vol 640, [c622-625](#)

## 11. Royal Assent

The Bill received Royal Assent on 26 June 2018 and became the *Nuclear Safeguards Act 2018*.<sup>171</sup>

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<sup>171</sup> HL Deb, [Royal Assent](#), vol 792, 26 June 2018

## 12. Further reading

- The [Parliament Bill page](#) for the Nuclear Safeguards Bill 2017-19 contains Bill documents including the [Bill itself](#), the [Explanatory Notes](#) and the [Delegated Powers Memoranda](#). The Bill page also shows the progress of the Bill through Parliament.
- The [Impact Assessment](#) for the Bill was published on 11 December 2017. The [draft regulations](#) for the new safeguard regime were published on 19 January 2018. The two regulations are:
  - [The Nuclear Safeguards Regulations 20--](#)
  - [The Nuclear Safeguards \(Civil Activities, Fissionable Material and Relevant International Agreements\) Regulations 20—](#)
- On 11 January 2018 BEIS also published a series of [factsheets](#) on different aspects of the Nuclear Safeguards Bill.<sup>172</sup>
- The [Energy Act 2013](#) contains previous powers on nuclear safeguards. This Bill proposes to amend the Energy Act 2013.
- The [Nuclear Non-Proliferation Treaty](#) began the requirement for non-nuclear states to have nuclear safeguards.
- The [Euratom Treaty](#) and [Euratom Regulation No 302/2005](#) contain further information on Euratom and its role in safeguard regulations.
- The International Atomic Energy Agency has a variety of documents relevant to the UK's safeguards monitoring. For example see the [IAEA Voluntary Offer Agreement 1978](#) where the UK voluntarily agreed to international nuclear safeguard monitoring, and the [IAEA Additional Protocol 1998](#) which involves additional monitoring agreements.
- The UK Government published on 13 July 2017 their position paper on [Nuclear Materials and Safeguard Issues](#).
- The House of Commons Library published in July 2017 a briefing paper on [Euratom](#). This paper covers what Euratom do and the issues surrounding leaving Euratom.
- The House of Commons Business, Energy and Industrial Strategy Committee, published on 12 December 2017 their inquiry on [Leaving the EU: implications for the civil nuclear sector](#).
- The House of Lords Library published on 1 February 2018 their [Briefing for Lords Stages](#).
- On 9 February 2018, the House of Lords Delegated Powers and Regulatory Reform Committee published their [13<sup>th</sup> Report of Session 2017-19](#) which included the Nuclear Safeguards Bill.

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<sup>172</sup> Gov.uk, [Nuclear Safeguards Bill: factsheets](#), 11 January 2018

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