



# Energy Act 2013

## 2013 CHAPTER 32

An Act to make provision for the setting of a decarbonisation target range and duties in relation to it; for or in connection with reforming the electricity market for purposes of encouraging low carbon electricity generation or ensuring security of supply; for the establishment and functions of the Office for Nuclear Regulation; about the government pipe-line and storage system and rights exercisable in relation to it; about the designation of a strategy and policy statement; about domestic supplies of gas and electricity; for extending categories of activities for which energy licences are required; for the making of orders requiring regulated persons to provide redress to consumers of gas or electricity; about offshore transmission of electricity during a commissioning period; for imposing fees in connection with certain costs incurred by the Secretary of State; about smoke and carbon monoxide alarms; and for connected purposes. [18th December 2013]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### DECARBONISATION

##### **1 Decarbonisation target range**

- (1) It is the duty of the Secretary of State to ensure, in respect of each year in relation to which a decarbonisation target range is set, that the carbon intensity of electricity generation in the United Kingdom is no greater than the maximum permitted level of the decarbonisation target range.
- (2) The Secretary of State may by order (“a decarbonisation order”) set or amend a decarbonisation target range in relation to a year.

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- (3) A “decarbonisation target range”, in relation to any year, means a range for the carbon intensity of electricity generation in the United Kingdom.
- (4) Section 4 makes further provision in relation to subsection (3).
- (5) The earliest year in relation to which a decarbonisation target range may be set is 2030; and the first decarbonisation order may not be made before the date on which the carbon budget for the budgetary period which includes the year 2030 is set by virtue of the duty of the Secretary of State under section 4(2)(b) of the Climate Change Act 2008.
- (6) A decarbonisation order may amend a decarbonisation target range only if it appears to the Secretary of State that significant changes affecting the basis on which the decarbonisation target range was set (or previously amended) make it appropriate to do so.
- (7) The Secretary of State may not revoke a decarbonisation order unless, in respect of each year in relation to which the order sets a decarbonisation target range, a decarbonisation target range remains in effect.
- (8) A decarbonisation order may—
  - (a) amend section 23(4) of the Climate Change Act 2008 (alteration of budgetary periods) so that after “Act” there is inserted “or sections 1 to 4 of the Energy Act 2013”;
  - (b) repeal section 5 of the Energy Act 2010 (reports on decarbonisation and CCS progress).
- (9) Provision made by virtue of subsection (8) may also—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings.
- (10) A decarbonisation order is to be made by statutory instrument and a statutory instrument containing a decarbonisation order may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) Before laying before Parliament a draft of a statutory instrument containing a decarbonisation order the Secretary of State must consult the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

## 2 Matters to be taken into account

- (1) The following matters must be taken into account by the Secretary of State in setting or amending a decarbonisation target range.
- (2) The matters are—
  - (a) scientific knowledge about climate change;
  - (b) technology relevant to the generation and storage of electricity and to the demand for and use of electricity;
  - (c) economic circumstances, and in particular the likely impact on the economy and the competitiveness of particular sectors of the economy;
  - (d) fiscal circumstances, and in particular the likely impact on taxation, public spending and public borrowing;

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- (e) social circumstances, and in particular the likely impact on fuel poverty;
- (f) the structure of the energy market in the United Kingdom;
- (g) differences in circumstances between England, Wales, Scotland and Northern Ireland;
- (h) circumstances at European and international level;
- (i) the duties of the Secretary of State under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets).

### **3 Further duties of the Secretary of State**

- (1) As soon as is reasonably practicable after a decarbonisation order is made, the Secretary of State must lay before Parliament a report setting out proposals and policies for fulfilling the duty in section 1(1).
- (2) Before laying the report under subsection (1), the Secretary of State must consult the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers; and the Secretary of State must send a copy of the report to them.
- (3) The Secretary of State must in respect of each year—
  - (a) beginning with the year after the first year in which a decarbonisation order is made, and
  - (b) ending with the final year in relation to which a decarbonisation target range is set,lay before Parliament a statement of the carbon intensity of electricity generation in the United Kingdom in relation to that year.
- (4) Section 4 makes further provision in relation to subsection (3).
- (5) The statement must include—
  - (a) a summary of the means by which the carbon intensity was calculated;
  - (b) in any statement after the first, a declaration of whether the carbon intensity has decreased or increased since the previous statement.
- (6) In respect of any year in relation to which a decarbonisation target range is set, the statement must also include—
  - (a) a declaration that the carbon intensity in relation to that year was no greater than the maximum permitted level of the decarbonisation target range, or
  - (b) the reasons why the carbon intensity in relation to that year was greater than the maximum permitted level of the decarbonisation target range.
- (7) The statement required by subsection (3) must be laid before Parliament not later than the 31st March in the second year following the year in respect of which the carbon intensity is being stated.
- (8) The Secretary of State must send a copy of the statement required by subsection (3) to the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

### **4 Meaning and calculation of “carbon intensity of electricity generation in the United Kingdom”**

- (1) In sections 1 and 3, “carbon intensity of electricity generation in the United Kingdom” means grams of carbon dioxide equivalent emissions, measured per kilowatt hour of

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electricity generated in the United Kingdom (calculated consistently with international carbon reporting practice).

- (2) For the purposes of subsection (1)—
- (a) “carbon dioxide equivalent” means a gram of carbon dioxide or an amount of any other greenhouse gas with an equivalent global warming potential (calculated consistently with international carbon reporting practice);
  - (b) “the United Kingdom” includes—
    - (i) the territorial sea adjacent to the United Kingdom, and
    - (ii) any area for the time being designated by an Order in Council under section 84(4) of the Energy Act 2004 (a “Renewable Energy Zone” for the purposes of that Act).
- (3) In this section—
- (a) “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008;
  - (b) “international carbon reporting practice” has the meaning given by section 94(1) of that Act.
- (4) But the Secretary of State may by order make further provision about—
- (a) the meaning of “carbon intensity of electricity generation in the United Kingdom” (including, in particular, the meaning of “the United Kingdom”);
  - (b) the means by which the carbon intensity is to be calculated;
  - (c) the meaning of “in relation to any year”;
- and subsections (1) to (3) are subject to provision made by any such order.
- (5) An order under this section is to be made by statutory instrument and a statutory instrument containing such an order may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) An order under this section may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Before laying before Parliament a draft of a statutory instrument containing an order under this section the Secretary of State must consult the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

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## PART 2

### ELECTRICITY MARKET REFORM

#### CHAPTER 1

##### GENERAL CONSIDERATIONS

#### 5 General considerations relating to this Part

- (1) In exercising the function of making—
  - (a) regulations under section 6;
  - (b) an order under section 23;
  - (c) a modification under section 26;
  - (d) regulations under section 27;
  - (e) a modification under section 37;
  - (f) a modification under section 45;
  - (g) an order under section 46;the Secretary of State must have regard to the matters mentioned in subsection (2).
- (2) The matters are—
  - (a) the duties of the Secretary of State under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);
  - (b) the duty of the Secretary of State under section 1(1) of this Act (decarbonisation target range);
  - (c) ensuring the security of supply to consumers of electricity;
  - (d) the likely cost to consumers of electricity;
  - (e) the target set out in Article 3(1) of, and Annex 1 to, the renewables directive (use of energy from renewable sources).
- (3) In subsection (2)(e) “the renewables directive” means Directive [2009/28/EC](#) of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.
- (4) The Secretary of State must before 31st December in each year, beginning with 2014, prepare and lay before Parliament a report setting out how the Secretary of State has carried out during the year the functions under this Part of this Act.
- (5) The Secretary of State must publish the report and send a copy of it to the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

#### CHAPTER 2

##### CONTRACTS FOR DIFFERENCE

#### 6 Regulations to encourage low carbon electricity generation

- (1) The Secretary of State may for the purpose of encouraging low carbon electricity generation make regulations about contracts for difference between a CFD counterparty and an eligible generator.

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- (2) A contract for difference is a contract—
- (a) certain payments under which are to be funded by electricity suppliers (see further section 9), and
  - (b) which a CFD counterparty is required to enter into by virtue of section 10 or 14;
- and such a contract is referred to in this Chapter as a “CFD”.
- (3) For the purposes of this Chapter—
- “CFD counterparty” is to be construed in accordance with section 7(2);
  - “eligible generator” is to be construed in accordance with section 10(3);
  - “low carbon electricity generation” means electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases;
  - “regulations” means regulations under this section.
- (4) In subsection (3) “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.
- (5) The provision which may be made by regulations includes, but is not limited to, the provision described in this Chapter.
- (6) Regulations may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Regulations are to be made by statutory instrument.
- (8) An instrument containing regulations of any of the following kinds may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament (in each case, whether or not the regulations also make other provision)—
- (a) the first regulations which make provision falling within each of the following—
    - (i) section 14;
    - (ii) section 15;
    - (iii) section 19;
    - (iv) section 20;
  - (b) regulations which make provision falling within—
    - (i) section 9;
    - (ii) section 10;
    - (iii) section 12;
    - (iv) section 13;
    - (v) section 17;
    - (vi) section 18;
    - (vii) section 21;
    - (viii) section 22;
    - (ix) section 23.

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- (9) Any other instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If, but for this subsection, an instrument containing regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

## **7 Designation of a CFD counterparty**

- (1) The Secretary of State may by order made by statutory instrument designate an eligible person to be a counterparty for contracts for difference.
- (2) A person designated under this section is referred to in this Chapter as a “CFD counterparty”.
- (3) A person is eligible if the person is—
  - (a) a company formed and registered under the Companies Act 2006, or
  - (b) a public authority, including any person any of whose functions are of a public nature.
- (4) A designation may be made only with the consent of the person designated.
- (5) The Secretary of State may exercise the power to designate so that more than one designation has effect under this section, but only if the Secretary of State considers it necessary for the purposes of ensuring that—
  - (a) liabilities under a CFD are met,
  - (b) arrangements entered into for purposes connected to a CFD continue to operate, or
  - (c) directions given to a CFD counterparty continue to have effect.
- (6) A designation ceases to have effect if—
  - (a) the Secretary of State by order made by statutory instrument revokes the designation, or
  - (b) the person withdraws consent to the designation by giving not less than 3 months’ notice in writing to the Secretary of State.
- (7) At any time after the first designation has effect, the Secretary of State must, so far as reasonably practicable, exercise the power to designate so as to ensure that at least one designation has effect under this section.
- (8) Schedule 1 (which makes provision about schemes to transfer property, rights and liabilities from a person who has ceased to be a CFD counterparty to a person who is a CFD counterparty) has effect.
- (9) As soon as reasonably practicable after a designation ceases to have effect the Secretary of State must make a transfer scheme under Schedule 1 to ensure the transfer of all rights and liabilities under any CFD to which the person who has ceased to be a CFD counterparty was a party.
- (10) Regulations may include provision about the period of time for which, and the circumstances in which, a person who has ceased to be a CFD counterparty is to continue to be treated as a CFD counterparty for the purposes of the regulations.

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## **8 Duties of a CFD counterparty**

- (1) A CFD counterparty must act in accordance with—
  - (a) any direction given by the Secretary of State by virtue of this Chapter;
  - (b) any provision included in regulations.
- (2) A CFD counterparty must exercise the functions conferred by or by virtue of this Chapter to ensure that it can meet its liabilities under any CFD to which it is a party.
- (3) In this Chapter “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

## **9 Supplier obligation**

- (1) Regulations must make provision for electricity suppliers to pay a CFD counterparty for the purpose of enabling the counterparty to make payments under CFDs.
- (2) Regulations may make provision for electricity suppliers to pay a CFD counterparty for the purpose of enabling the counterparty—
  - (a) to meet such other descriptions of its costs as the Secretary of State considers appropriate;
  - (b) to hold sums in reserve;
  - (c) to cover losses in the case of insolvency or default of an electricity supplier.
- (3) In subsection (2)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Chapter.
- (4) Regulations may make provision to require electricity suppliers to provide financial collateral to a CFD counterparty (whether in cash, securities or any other form).
- (5) Regulations which make provision by virtue of subsection (1) for the payment of sums by electricity suppliers must impose on the CFD counterparty a duty in relation to the collection of such sums.
- (6) Provision made by virtue of this section may include provision for—
  - (a) a CFD counterparty to determine the form and terms of any financial collateral;
  - (b) a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or are to be provided as financial collateral by an electricity supplier;
  - (c) the issuing of notices by a CFD counterparty to require the payment or provision of such amounts;
  - (d) the enforcement of obligations arising under such notices.
- (7) Provision made by virtue of subsection (6)(b) may provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (8) Provision made by virtue of subsection (6)(d) may include provision—
  - (a) about costs;
  - (b) about interest on late payments under notices;



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- (c) about references to arbitration;
  - (d) about appeals.
- (9) Any sum which—
- (a) an electricity supplier is required by virtue of regulations to pay to a CFD counterparty, and
  - (b) has not been paid by the date on which it is required by virtue of regulations to be paid,
- may be recovered from the electricity supplier by the CFD counterparty as a civil debt due to it.
- (10) In this section “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
- (a) section 6(1)(d) of EA 1989, or
  - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)).

## **10 Direction to offer to contract**

- (1) The Secretary of State may, in accordance with provision made by regulations, direct a CFD counterparty to offer to contract with a person specified in the direction, on terms specified in the direction.
- (2) A person may be specified in a direction under subsection (1) only if that person is an eligible generator.
- (3) Regulations must make provision defining who is an “eligible generator” for the purposes of this Chapter.
- (4) Regulations may make further provision about a direction under this section and in particular about—
  - (a) the circumstances in which a direction may or must be given;
  - (b) the terms which may or must be specified in a direction.
- (5) Provision falling within subsection (4) may include provision for—
  - (a) the determination of a matter on a competitive basis,
  - (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (6) A direction may not be given under this section in relation to an electricity generating station in Northern Ireland unless the Department of Enterprise, Trade and Investment consent to the direction.
- (7) But regulations may, with the consent of that Department, include provision for circumstances in which consent under subsection (6) is not required.
- (8) In subsection (6) “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

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## **11 Standard terms**

- (1) The Secretary of State may issue standard terms and conditions of CFDs (“standard terms”).
- (2) The Secretary of State may from time to time revise standard terms.
- (3) Standard terms issued or revised under this section must be in accordance with provision made in regulations.
- (4) In issuing or revising standard terms the Secretary of State must have regard to the matters mentioned in section 5(2).
- (5) The Secretary of State must publish standard terms as issued or revised under this section.
- (6) In publishing standard terms the Secretary of State may designate particular standard terms as terms that may not be modified under section 15.
- (7) Different standard terms may be issued for different categories of CFD.

## **12 CFD notifications**

- (1) The national system operator may, in accordance with provision made by regulations, give a notification to a CFD counterparty (a “CFD notification”) specifying—
  - (a) an eligible generator, and
  - (b) such other information as may be required for the purpose of making an offer under section 14 to contract with that generator.
- (2) A CFD notification must not be given if regulations made by virtue of section 23 prevent the giving of the notification.
- (3) Regulations may make further provision about CFD notifications and in particular provision about—
  - (a) the circumstances in which a CFD notification may or must be given;
  - (b) the kinds of information mentioned in subsection (1)(b) that must be specified in a CFD notification;
  - (c) appeals against decisions not to give CFD notifications.
- (4) A CFD notification may not be given by virtue of regulations under this section in relation to an electricity generating station in Northern Ireland unless the Department of Enterprise, Trade and Investment consent to the CFD notification.
- (5) But regulations may, with the consent of that Department, include provision for circumstances in which consent under subsection (4) is not required.
- (6) In subsection (4) “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

## **13 Allocation of CFDs**

- (1) Provision that may be included in regulations by virtue of section 12 includes in particular provision about how CFDs are to be allocated to eligible generators (and for this purpose a CFD is “allocated” to a generator if the generator is specified in a CFD notification).

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- (2) Provision made by virtue of subsection (1) may include provision—
  - (a) conferring power on the Secretary of State to make rules (an “allocation framework”) about how CFDs are to be allocated;
  - (b) for different periods within which CFDs are to be allocated (“allocation rounds”);
  - (c) for different allocation frameworks to apply in respect of different allocation rounds;
  - (d) for the publication of allocation frameworks;
  - (e) about matters in relation to which provision may or must be made in an allocation framework.
- (3) Provision made by regulations by virtue of subsection (2) may impose requirements on the Secretary of State, including in particular—
  - (a) requirements as to the giving of notice before an allocation round is commenced;
  - (b) restrictions on the circumstances in which amendments may be made during an allocation round to an allocation framework or to any other matter relevant to an allocation round (including any amount by reference to which a limit on the CFDs allocated during the round is to be determined).
- (4) An allocation framework may—
  - (a) confer functions on the national system operator with respect to the allocation of CFDs;
  - (b) specify targets to be met or taken into account by the national system operator in giving CFD notifications by virtue of section 12, including targets relating to—
    - (i) the means by which electricity is generated;
    - (ii) the generating capacity of electricity generating stations;
    - (iii) the geographical location of electricity generating stations;
  - (c) make any provision that may be made by regulations by virtue of subsection (3).
- (5) An allocation framework may include provision for—
  - (a) the determination of a matter on a competitive basis;
  - (b) calculations or determinations to be made under the framework, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the framework.
- (6) An allocation framework may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision and savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Any power conferred by virtue of subsection (2) to make an allocation framework includes a power to amend, add to or remove an allocation framework.
- (8) Subsections (4) to (7) are subject to any provision contained in regulations.

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#### **14 CFD notification: offer to contract on standard terms**

- (1) Where a CFD notification is given to a CFD counterparty under section 12, the CFD counterparty must, in accordance with provision made by regulations, offer to contract with the eligible generator specified in the notification on—
  - (a) standard terms, or
  - (b) standard terms as modified in accordance with any modification agreement entered into between the CFD counterparty and the eligible generator for the purposes of the CFD notification (see section 15).
- (2) Regulations may make further provision about an offer to contract made under this section, including provision about—
  - (a) how a CFD counterparty is to apply or complete standard terms in relation to the offer in accordance with information specified in a CFD notification;
  - (b) the time within which the offer must be made;
  - (c) how the eligible generator to whom it is made may enter into a CFD as a result of the offer;
  - (d) what is to happen if the eligible generator does not enter into a CFD as a result of it.
- (3) In this section, “standard terms”, in relation to a CFD notification, means standard terms published under section 11, determined in accordance with regulations as the standard terms that are to apply in relation to the CFD notification.

#### **15 Modification of standard terms**

- (1) This section applies where a person wishes to be specified as an eligible generator in a CFD notification (“the potential CFD notification”).
- (2) A CFD counterparty and the person may, in accordance with provision made by regulations, agree to modify standard terms for the purposes of any offer that would be required under section 14 if the potential CFD notification is given (a “modification agreement”).
- (3) A CFD counterparty may enter into a modification agreement providing for the modification of any particular standard term only if—
  - (a) the CFD counterparty is satisfied that—
    - (i) the effect of the modification is minor, and
    - (ii) the modification is necessary; and
  - (b) the standard term has not been designated under section 11 as a term that may not be modified under this section.
- (4) Regulations may make further provision about modification agreements, including—
  - (a) the circumstances in which a person may make an application for a modification agreement;
  - (b) the time by which an application must be made;
  - (c) the procedure to be followed, and the information to be given, by the person in making an application;
  - (d) how a CFD counterparty is to determine an application (including how it is to determine whether the effect of a modification is minor and whether it is necessary);
  - (e) the time by which determinations must be made;

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- (f) the form of modification agreements.
- (5) Provision made by virtue of subsection (4)(d) may include provision under which the CFD counterparty may make alternative proposals for modifications in response to an application.
- (6) In this section “modify” includes add to, alter or omit, and “modification” is to be read accordingly.

## **16 Sections 12 to 15: further provision**

Provision made by regulations by virtue of any of sections 12 to 15 may include provision for—

- (a) the determination of a matter on a competitive basis;
- (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

## **17 Payments to electricity suppliers**

- (1) Regulations may make provision about the amounts which must be paid by a CFD counterparty to electricity suppliers.
- (2) Provision made by virtue of this section may—
  - (a) include provision for a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by the CFD counterparty;
  - (b) provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (3) In this section “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
  - (a) section 6(1)(d) of EA 1989; or
  - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)).

## **18 Application of sums held by a CFD counterparty**

- (1) Regulations may make provision for apportioning sums—
  - (a) received by a CFD counterparty from electricity suppliers under provision made by virtue of section 9;
  - (b) received by a CFD counterparty under a CFD, in circumstances where the CFD counterparty is unable fully to meet its liabilities under a CFD.
- (2) Provision made by virtue of subsection (1) may include provision about the meaning of “unable fully to meet its liabilities under a CFD”.

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- (3) In making provision by virtue of subsection (1) the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed.
- (4) Regulations may make provision about the application of sums held by a CFD counterparty.
- (5) Provision made by virtue of subsection (4) may include provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

## 19 Information and advice

- (1) Regulations may make provision about the provision and publication of information.
- (2) Provision made by virtue of subsection (1) may include provision—
  - (a) for the Secretary of State to require the national system operator to provide advice to the Secretary of State;
  - (b) for the Secretary of State to require a CFD counterparty, the Authority, the Northern Ireland Authority for Utility Regulation or the Northern Ireland system operator to provide advice to the Secretary of State or any other person specified in the regulations;
  - (c) for the Secretary of State to require a CFD counterparty, the national system operator, the Authority, the Northern Ireland Authority for Utility Regulation, the Northern Ireland system operator or a generator who is party to a CFD to provide information to the Secretary of State or any other person specified in the regulations;
  - (d) for the national system operator to require information to be provided to it by a CFD counterparty, a generator who is party to a CFD or the Northern Ireland system operator;
  - (e) for a CFD counterparty to require information to be provided to it by electricity suppliers or the Northern Ireland system operator;
  - (f) for the classification and protection of confidential or sensitive information;
  - (g) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (f).
- (3) In subsection (2)—
  - (a) “Northern Ireland system operator” means the holder of a licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
  - (b) “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
    - (i) section 6(1)(d) of EA 1989; or
    - (ii) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).
- (4) The prohibition on disclosure of information by—
  - (a) section 105(1) of the Utilities Act 2000;
  - (b) Article 63(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
 does not apply to a disclosure required by virtue of this section.

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## **20 Functions of the Authority**

Regulations may make provision conferring functions on the Authority for the purpose of offering advice to, or making determinations on behalf of, a party to a CFD.

## **21 Regulations: further provision**

- (1) Regulations may make provision—
  - (a) to require a CFD counterparty to enter into arrangements or to offer to contract for purposes connected to a CFD;
  - (b) specifying things that a CFD counterparty may or must do, or things that a CFD counterparty may not do;
  - (c) conferring on the Secretary of State further powers to direct a CFD counterparty to do, or not to do, things specified in the regulations or the direction.
- (2) Provision made by virtue of subsection (1)(b) or (c) includes provision requiring consultation with, or the consent of, the Secretary of State in relation to—
  - (a) the determination of an application for a modification agreement under section 15;
  - (b) the enforcement of obligations under a CFD;
  - (c) a variation or termination of a CFD;
  - (d) the settlement or compromise of a claim under a CFD;
  - (e) the conduct of legal proceedings relating to a CFD;
  - (f) the exercise of rights under a CFD.
- (3) Regulations must include such provision as the Secretary of State considers necessary to ensure that a CFD counterparty can meet its liabilities under any CFD to which it is a party.

## **22 Enforcement**

- (1) Regulations may make provision for requirements under the regulations to be enforceable—
  - (a) by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (b) by the Northern Ireland Authority for Utility Regulations as if they were relevant requirements on a regulated person for the purposes of Article 41A of the [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#).
- (2) Provision made by virtue of subsection (1)(a) may include provision about the enforcement of requirements imposed on the national system operator.
- (3) Provision made by virtue of subsection (1)(b) may be made in relation only to the enforcement of requirements imposed on the holder of a licence under Article 10(1)(c) of the [Electricity \(Northern Ireland\) Order 1992 \(S.I. 1992/231 \(N.I. 1\)\)](#).

## **23 Limits on costs to be incurred**

- (1) Regulations may make provision for—
  - (a) the power to give a notification under section 12 not to be exercisable if a maximum cost incurred or to be incurred by a CFD counterparty has been

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reached (such cost to be calculated in accordance with provision made by or under the regulations);

- (b) a power for the Secretary of State to direct the national system operator not to give a notification under that section if the Secretary of State believes that by virtue of the notification being given a cost greater than the maximum cost provided for by the regulations would be incurred.
- (2) If more than one designation has effect under section 7, the reference in subsection (1)(a) is a reference to all CFD counterparties.
- (3) Provision made by virtue of subsection (1)(a) may provide for anything which is to be calculated under the regulations to be calculated by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

## 24 Consultation

- (1) Before making regulations under this Chapter the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the Department of Enterprise, Trade and Investment,
  - (d) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989,
  - (e) any person who is a holder of a licence under Article 10(1)(b) or (c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) (transmission or supply licence),
  - (f) the Authority,
  - (g) the national system operator, and
  - (h) such other persons as the Secretary of State considers it appropriate to consult.
- (2) Before publishing standard terms under section 11 the Secretary of State must consult such persons as the Secretary of State considers it appropriate to consult.
- (3) A requirement under this section to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

## 25 Shadow directors, etc.

Neither the Secretary of State nor the national system operator is, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—

- (a) a person occupying in relation to a CFD counterparty the position of director;
- (b) being a person in accordance with whose directions or instructions the directors of a CFD counterparty are accustomed to act;
- (c) exercising any function of management in a CFD counterparty;
- (d) a principal of a CFD counterparty.

## 26 Licence modifications

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(a), (b) or (c) of EA 1989 (generation, transmission and distribution licences);



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- (b) the standard conditions incorporated in licences under that provision by virtue of section 8A(1A) of that Act;
  - (c) a document maintained in accordance with the conditions of licences under that provision, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of—
- (a) conferring functions on the national system operator in connection with its functions by or by virtue of this Chapter;
  - (b) allowing or requiring services to be provided to a CFD counterparty;
  - (c) enforcing obligations under a CFD.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the power under subsection (1) may in particular include provision of a kind that may be included in regulations.
- (4) Before making a modification under this section, the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the holder of any licence being modified,
  - (d) any person who is a holder of a licence to supply electricity under section 6(1) (d) of EA 1989,
  - (e) any person who is a holder of a licence to supply electricity under Article 10(1) (c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)),
  - (f) the Department of Enterprise, Trade and Investment,
  - (g) the Authority, and
  - (h) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

## CHAPTER 3

### CAPACITY MARKET

#### 27 Power to make electricity capacity regulations

- (1) The Secretary of State may by regulations make provision for the purpose of providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.
- (2) Regulations under this section are referred to in this Chapter as “electricity capacity regulations”.
- (3) In subsection (1) “providing capacity” means providing electricity or reducing demand for electricity; and electricity capacity regulations may make further provision about the meaning of “providing electricity” or “reducing demand for electricity”.
- (4) The provision which may be made about the meaning of “reducing demand for electricity” includes provision that reducing the consumption of electricity reduces demand for electricity.

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- (5) The provision that may be made in electricity capacity regulations includes, but is not limited to, the provision described in this Chapter.
- (6) In this Chapter “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

## **28 Capacity agreements**

- (1) Electricity capacity regulations may make provision about capacity agreements.
- (2) Subject to any further provision made under this Chapter, a capacity agreement is an instrument by virtue of which—
  - (a) the holder of the capacity agreement (“the capacity provider”) may be required to provide capacity;
  - (b) all electricity suppliers may be required to make payments (“capacity payments”) for the benefit of capacity providers;
  - (c) capacity providers may be required to make payments (“capacity incentives”) for the benefit of all electricity suppliers.
- (3) Provision included in electricity capacity regulations for the purposes of subsection (2) may make provision about the meaning of “electricity supplier”.
- (4) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision about—
  - (a) the terms of a capacity agreement;
  - (b) the circumstances in which, and the process by which, a capacity agreement may or must be issued;
  - (c) the persons who may be capacity providers;
  - (d) the circumstances in which capacity must be available;
  - (e) the duration of a capacity agreement;
  - (f) the means by which capacity payments or capacity incentives are to be calculated;
  - (g) a person or body who is to administer the settlement of capacity payments or capacity incentives (“a settlement body”);
  - (h) the enforcement of the terms of a capacity agreement;
  - (i) the resolution of disputes relating to a capacity agreement;
  - (j) the circumstances in which a capacity agreement may be terminated or varied;
  - (k) the circumstances in which a capacity agreement may be assigned or traded.
- (5) Provision falling within subsection (4) includes provision—
  - (a) conferring on the national system operator the function of issuing capacity agreements;
  - (b) relating to the outcome of a capacity auction (see section 29);
  - (c) about any conditions that must be satisfied by or in relation to a person before that person may enter a capacity auction or become a capacity provider;
  - (d) about any matters in relation to which a person must satisfy the national system operator before the person may enter a capacity auction or become a capacity provider.
- (6) Provision made by virtue of subsection (4)(f) and (g) may—

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- (a) include provision for a settlement body to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed as capacity payments or capacity incentives;
  - (b) provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (7) Provision made by virtue of this section may include provision requiring a person to consent to the inspection of plant or premises, either before or after that person becomes a capacity provider.

## **29 Capacity auctions**

- (1) Electricity capacity regulations may make provision for the determination on a competitive basis of who may be a capacity provider (referred to in this Chapter as a “capacity auction”).
- (2) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision—
  - (a) for the national system operator to run a capacity auction;
  - (b) about the circumstances in which a capacity auction may or must be held;
  - (c) about the amount of capacity in relation to which a determination may be made;
  - (d) about the intervals at which a capacity auction may or must be held;
  - (e) about the process by which a capacity auction may or must be run;
  - (f) about the manner in which the Secretary of State may decide whether and how to exercise any function in relation to capacity auctions;
  - (g) about appeals relating to eligibility for, or the outcome of, capacity auctions.
- (3) Provision falling within subsection (2)(a) may include provision—
  - (a) requiring the national system operator to prepare and publish rules or guidance about capacity auctions;
  - (b) about any process to be followed in preparing and publishing any such rules or guidance.
- (4) Provision falling within subsection (2)(c) may confer on the Secretary of State or the Authority (but not on any other person) the function of deciding the amount of capacity in relation to which a determination may be made.
- (5) Provision falling within subsection (2)(f) may include provision about—
  - (a) the frequency with which a decision will be made and reviewed;
  - (b) the persons who will be consulted before a decision is made;
  - (c) the matters to be taken into account in reaching a decision.

## **30 Settlement body**

- (1) Electricity capacity regulations may make provision for payments to be made by electricity suppliers or capacity providers to a settlement body (see section 28(4)(g)) for the purpose of enabling the body—

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- (a) to meet such descriptions of its costs as the Secretary of State considers appropriate;
  - (b) to hold sums in reserve;
  - (c) to cover losses in the case of insolvency or default of an electricity supplier or capacity provider.
- (2) In subsection (1)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Chapter.
- (3) Electricity capacity regulations may make provision to require electricity suppliers or capacity providers to provide financial collateral to a settlement body (whether in cash, securities or any other form).
- (4) Provision made by virtue of this section may include provision for—
- (a) a settlement body to determine the form and terms of any financial collateral;
  - (b) a settlement body to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or capacity provider or are to be provided as financial collateral by an electricity supplier or capacity provider;
  - (c) the issuing of notices by a settlement body to require the payment or provision of such amounts.
- (5) Provision made by virtue of subsection (4)(b) may provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

### **31 Functions of the Authority or the national system operator**

Electricity capacity regulations may make provision to confer functions on the Authority or the national system operator.

### **32 Other requirements**

- (1) Electricity capacity regulations may impose requirements otherwise than under a capacity agreement.
- (2) The persons on whom requirements may be imposed by virtue of subsection (1) include—
- (a) any person who is a holder of a licence under section 6(1) of EA 1989;
  - (b) any other person carrying out functions in relation to capacity agreements;
  - (c) any other person who is, or has ceased to be, a capacity provider.
- (3) Requirements which may be imposed by virtue of subsection (1) include requirements—
- (a) relating to the manner in which functions are to be exercised;
  - (b) relating to restrictions on the use of generating plant;
  - (c) relating to participation in a capacity auction;
  - (d) relating to the inspection of plant or property.

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### **33 Electricity capacity regulations: information and advice**

- (1) Electricity capacity regulations may make provision about the provision and publication of information.
- (2) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision—
  - (a) for the Secretary of State to require the Authority, the national system operator or any other person specified in the regulations to provide information or advice to the Secretary of State or any other person so specified;
  - (b) for the Authority or the national system operator to require information to be provided to it by any person specified in the regulations for any purpose so specified;
  - (c) for the Secretary of State to require capacity providers and electricity suppliers to share information about the operation of capacity agreements with each other or with any other person so specified;
  - (d) for the publication by any person so specified of any information or advice so specified;
  - (e) for the classification and protection of confidential or sensitive information.
- (3) The prohibition on disclosure of information by section 105(1) of the Utilities Act 2000 does not apply to a disclosure required by virtue of this section.

### **34 Power to make capacity market rules**

- (1) The Secretary of State may make capacity market rules which, subject to subsection (2), may contain any provision that may be made by electricity capacity regulations.
- (2) Capacity market rules may not make—
  - (a) provision falling within—
    - (i) section 27(3);
    - (ii) section 28(3);
    - (iii) paragraphs (f) or (g) of section 28(4);
    - (iv) section 28(5)(a);
    - (v) paragraphs (b), (c), (d) or (f) of section 29(2);
    - (vi) section 30;
    - (vii) section 35;
  - (b) provision for the Secretary of State to require a person to provide information or advice to the Secretary of State.
- (3) Electricity capacity regulations may make provision to confer on the Authority, to such extent and subject to such conditions as may be specified in the regulations, the power to make capacity market rules.
- (4) The conditions may in particular include conditions about consultation; and provision made by virtue of subsection (3) must provide that, before any exercise of the power to make capacity market rules, the Authority must consult—
  - (a) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989;
  - (b) any person who is a capacity provider.

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- (5) Provision made by virtue of subsection (3) must secure that capacity market rules made by the Authority may not confer functions on the Authority except with the consent of the Secretary of State.
- (6) Provision made by virtue of subsection (3) may include provision—
  - (a) for the reference to the Secretary of State in section 33(2)(c) to have effect, for the purposes of capacity market rules and to such extent as may be specified in the regulations, as a reference to the Authority;
  - (b) for section 33(3) to apply in relation to a disclosure required by virtue of the capacity market rules.

### **35 Provision about electricity demand reduction**

- (1) This section applies where provision made by electricity capacity regulations relates to the provision of capacity by reducing demand for electricity.
- (2) Where this section applies, the Secretary of State may, instead of conferring functions on the national system operator, confer functions on such other person or body as the Secretary of State considers appropriate.
- (3) For the purposes of provision made by virtue of subsection (2), the references to the national system operator in—
  - (a) section 28(5)(a) and (d);
  - (b) section 29(2)(a) and (3)(a);
  - (c) section 31;
  - (d) section 33(2)(a) and (b);
  - (e) section 37,
 are to be read as if they included a reference to a person or body on whom a function is conferred by virtue of this section.

### **36 Enforcement and dispute resolution**

- (1) Electricity capacity regulations may make provision about the enforcement of any obligation or requirement imposed by the regulations or by capacity market rules.
- (2) Capacity market rules may make provision about the enforcement of any obligation or requirement imposed by the rules.
- (3) Provision in electricity capacity regulations or in capacity market rules about enforcement or the resolution of disputes may include provision conferring functions on any public body or any other person.
- (4) Provision made by virtue of this section may include provision—
  - (a) about powers to impose financial penalties;
  - (b) for requirements under the electricity capacity regulations or under capacity market rules to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (c) about reference to arbitration;
  - (d) about appeals.

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### **37 Licence modifications for the purpose of the capacity market**

- (1) The Secretary of State may, for any purpose related to provision that is made by this Chapter, or any purpose for which provision may be made under this Chapter, modify—
  - (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under those provisions, or an agreement that gives effect to a document so maintained.
- (2) A modification under this section may in particular include a modification—
  - (a) to provide for a new document to be prepared and maintained in accordance with the conditions of a licence;
  - (b) to provide for an agreement to give effect to a document so maintained;
  - (c) to confer functions on the national system operator.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the modification power may in particular include provision of any kind that may be included in electricity capacity regulations.
- (4) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

### **38 Amendment of enactments**

The Secretary of State may by regulations, for the purpose of or in connection with any provision made by or by virtue of this Chapter—

- (a) amend or repeal section 47ZA of EA 1989 (annual report by Authority on security of electricity supply);
- (b) amend section 172 of the Energy Act 2004 (annual report on security of energy supplies);
- (c) amend section 25 of and Schedule 6A to EA 1989 (enforcement of obligations of regulated persons);
- (d) make such provision amending, repealing or revoking any other enactment as the Secretary of State considers appropriate in consequence of provision made by or by virtue of this Chapter.

### **39 Principal objective and general duties**

Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Authority conferred by or by virtue of this Chapter as they apply in relation to functions under Part 1 of that Act.

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#### **40 Regulations under Chapter 3**

- (1) Regulations under this Chapter may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (2) Before making any regulations under this Chapter, the Secretary of State must consult—
  - (a) the Authority,
  - (b) any person who is a holder of a licence to supply electricity under section 6(1) of EA 1989,
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (4) Regulations under this Chapter must be made by statutory instrument.
- (5) Subject to subsection (6), an instrument containing (whether alone or with other provision) regulations under this Chapter may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) An instrument containing only regulations within subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The regulations within this subsection are—
  - (a) electricity capacity regulations which—
    - (i) only make provision within section 33, and
    - (ii) are not the first set of electricity capacity regulations to make such provision;
  - (b) regulations under section 38 which do not make provision amending or repealing a provision of an enactment contained in primary legislation.
- (8) If, but for this subsection, an instrument containing electricity capacity regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

#### **41 Capacity market rules: procedure**

- (1) Before the first exercise by the Secretary of State of the power to make capacity market rules, the Secretary of State must lay a draft of the rules before Parliament.
- (2) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed rules.
- (3) If no such resolution is made within that period, the Secretary of State may make the rules in the form of the draft.



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- (4) Subsection (3) does not prevent a new draft of proposed capacity market rules being laid before Parliament.
- (5) In this section “40-day period”, in relation to a draft of proposed capacity market rules, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (6) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (7) Before any exercise by the Secretary of State of a power to make capacity market rules, the Secretary of State must consult—
  - (a) the Authority;
  - (b) any person who is a holder of a licence to supply electricity under section 6(1) of EA 1989;
  - (c) any person who is a capacity provider;
  - (d) such other persons as the Secretary of State considers it appropriate to consult.
- (8) Subsection (7) may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (9) In relation to any exercise by the Secretary of State or the Authority of a power to make capacity market rules, the person making the rules must, as soon as reasonably practicable after they are made, lay them before Parliament and publish them.

#### **42 Capacity market rules: further provision**

- (1) Capacity market rules may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (2) A power to make capacity market rules includes a power to amend, add to or remove capacity market rules (and a person exercising such a power may amend, add to or remove provision in capacity market rules made by another person).
- (3) But subsection (2) is subject to provision made by electricity capacity regulations.

#### **43 Pilot scheme for electricity demand reduction**

- (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State in connection with arrangements made—
  - (a) for the purpose of reducing demand for electricity, and
  - (b) wholly or partly for the purpose of determining provision to be included in electricity capacity regulations;and such arrangements are referred to in this section as “a pilot scheme”.
- (2) The Secretary of State must review the operation and effectiveness of any pilot scheme.

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- (3) The Secretary of State must set out the results and conclusions of the review in a report to Parliament—
- (a) by laying a copy of the report before each House of Parliament, or
  - (b) if the Secretary of State determines that the report should be made orally, by making a statement to the House of Parliament of which that Secretary of State is a member.
- (4) A report under subsection (3) must be made as soon as reasonably practicable after the conclusion of the pilot scheme to which the report relates.

## CHAPTER 4

### INVESTMENT CONTRACTS

#### 44 Investment contracts

Schedule 2 (which makes provision about investment contracts) has effect.

## CHAPTER 5

### CONFLICT OF INTEREST AND CONTINGENCY ARRANGEMENTS

#### 45 Modifications of transmission and other licences: business separation

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) to (e) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of imposing measures for or in connection with securing an appropriate degree of business separation between the carrying on of—
- (a) system operation functions (or any particular such function), and
  - (b) any other functions (including, in a case where a measure relates to a particular system operation function, other system operation functions).
- (3) “System operation functions” are—
- (a) functions authorised under a transmission licence of co-ordinating and directing the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, and
  - (b) EMR functions.
- (4) A degree of business separation is “appropriate” for the purposes of subsection (2) if the Secretary of State determines it to be necessary or desirable as a consequence of the conferral of EMR functions.

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- (5) In making that determination, the Secretary of State must have regard to the extent to which a measure of the kind mentioned in subsection (2) may affect the efficient and effective carrying on of system operation functions and other functions authorised under a transmission licence.
- (6) The measures referred to in subsection (2) include, in particular, measures for or in connection with securing any of the following—
- (a) the body corporate that carries on EMR functions does not carry on other functions;
  - (b) limitations are in place in respect of the control or influence that may be exercised over that body by another group undertaking (within the meaning of the Companies Acts - see section 1161 of the Companies Act 2006);
  - (c) separations are in place between—
    - (i) the locations where system operation functions, and other functions, are carried on;
    - (ii) the information technology systems used for the purposes of the carrying on of system operation functions and other functions;
  - (d) the accounting arrangements in relation to system operation functions are separate from those in relation to other functions;
  - (e) persons who participate in the carrying on of system operation functions do not participate in the carrying on of other functions;
  - (f) persons with access to information obtained in the carrying on of system operation functions do not have access to information obtained in the carrying on of other functions.
- (7) The power conferred by subsection (1) may be exercised so as to impose a requirement on a person holding a transmission licence—
- (a) to prepare annual reports about how measures within subsection (2) have been put in place for the year in question, and
  - (b) to submit such reports to either or both of the Secretary of State and the Authority.
- (8) Before making a modification under subsection (1), the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (10) In this section—
- “EMR functions” means functions conferred by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
  - “transmission”, “transmission licence” and “transmission system” have the same meaning as in Part 1 of EA 1989.

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#### **46 Power to transfer EMR functions**

- (1) The Secretary of State may by order provide that EMR functions carried out by the national system operator are instead to be carried out by an alternative delivery body.
- (2) An order under subsection (1) may be made only if—
  - (a) the national system operator has requested the making of the order,
  - (b) an energy administration order is in force in relation to the national system operator,
  - (c) the unsatisfactory performance condition is met (see subsection (3)),
  - (d) it appears to the Secretary of State necessary or desirable to make the order as a result of a change, occurring after the coming into force of this section, in the persons having control of the national system operator (see subsection (4)), or
  - (e) it otherwise appears to the Secretary of State necessary or desirable to make the order in connection with furthering the purposes of—
    - (i) encouraging low carbon electricity generation (within the meaning of Chapter 2), or
    - (ii) providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.
- (3) The unsatisfactory performance condition is met if—
  - (a) it appears to the Secretary of State that the national system operator has been failing to carry out its EMR functions in an efficient and effective manner,
  - (b) the Secretary of State has given notice in writing to the national system operator providing particulars of the failure,
  - (c) a period of at least 6 months has passed since the giving of the notice, and
  - (d) it appears to the Secretary of State that the failure so specified is continuing.
- (4) “Control”, in relation to the national system operator, means the power of a person to secure—
  - (a) by means of the holding of shares or the possession of voting power in relation to the national system operator or any other body corporate, or
  - (b) as a result of any powers conferred by the articles of association or other document regulating the national system operator or any other body corporate,
 that the affairs of the national system operator are conducted in accordance with the person’s wishes.
- (5) The Secretary of State must, subject to subsection (6), consult the national system operator before making an order under subsection (1) on the grounds mentioned in subsection (2)(e).
- (6) Subsection (5) does not apply where the Secretary of State considers the urgency of the case makes it inexpedient to consult the national system operator before making the order.
- (7) Where an EMR function has previously been transferred from the national system operator to an alternative delivery body by an order under subsection (1), the Secretary of State may by a further order provide that the function is instead to be carried out by—
  - (a) a different alternative delivery body, or
  - (b) the national system operator.

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- (8) “Alternative delivery body”, in relation to an order under subsection (1) or (7), means such person as may be specified in the order.
- (9) An order under subsection (1) or (7) that specifies as the alternative delivery body a person other than the Secretary of State requires the consent of that person.
- (10) An order under subsection (7) providing for EMR functions to be carried out by the national system operator requires the consent of the national system operator.
- (11) In this section—
  - “EMR functions” means functions conferred on the national system operator by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
  - “energy administration order” has the same meaning as in Chapter 3 of Part 3 of the Energy Act 2004 (see section 154(1) of that Act);
  - “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

#### **47 Orders under section 46: fees and other supplementary provision**

- (1) A transfer of functions order may provide for an alternative delivery body to require fees to be paid for, or in connection with, the performance of any EMR functions conferred on the body by virtue of the order.
- (2) The amount of any such fee is the amount specified in, or determined by or in accordance with, the order.
- (3) A transfer of functions order may relate—
  - (a) to all EMR functions that the national system operator or the alternative delivery body is carrying out, or
  - (b) only to such of those functions as are specified in the order.
- (4) A transfer of functions order may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision and savings;
  - (c) make different provision for different cases or circumstances or for different purposes.
- (5) Consequential provision made under subsection (4)(a) may amend, repeal or revoke any provision made by or under an Act, whenever passed or made (including this Act).
- (6) A transfer of functions order is to be made by statutory instrument.
- (7) A statutory instrument containing a transfer of functions order is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Schedule 3 (which confers power on the Secretary of State to make transfer schemes in connection with the making of transfer of functions orders) has effect.
- (9) If the Secretary of State makes a transfer of functions order under which any EMR functions of the national system operator are transferred to an alternative delivery body, the Secretary of State must consider the extent to which (if at all) a licence

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modification power should be exercised as a consequence of the national system operator ceasing to carry out the functions that are transferred.

- (10) In subsection (9) “licence modification power” means a power conferred by section 26, 37 or 45 to modify—
- (a) a condition of a transmission licence granted to the national system operator under section 6(1)(b) of EA 1989,
  - (b) the standard conditions incorporated in such licences under section 8A of that Act, or
  - (c) a document maintained in accordance with the conditions of such licences, or an agreement that gives effect to a document so maintained.
- (11) In this section—
- “alternative delivery body”, “EMR functions” and “national system operator” have the same meaning as in section 46;
- “transfer of functions order” means an order under section 46(1) or (7).

#### **48 Energy administration orders**

- (1) The Energy Act 2004 is amended as follows.
- (2) In section 154 (energy administration orders), in subsection (3) for “section 155” substitute “—
- (a) section 155(1), and
  - (b) section 155(9) (if and to the extent that section 155(9) applies in relation to the company).”
- (3) In section 155 (objective of an energy administration), after subsection (7) insert—
- “(8) Subsection (9) applies if the company in relation to which an energy administration order is made has functions conferred by or by virtue of—
- (a) Chapter 2, 3 or 4 of Part 2 of the Energy Act 2013, or
  - (b) an order made under section 46 of that Act (power of Secretary of State to transfer certain functions).
- (9) The objective of an energy administration (in addition to the objective mentioned in subsection (1)) is to secure—
- (a) that those functions are and continue to be carried out in an efficient and effective manner; and
  - (b) that it becomes unnecessary, by one or both of the means mentioned in subsection (2), for the energy administration order to remain in force for that purpose.
- (10) The duty under section 154(3), so far as it relates to the objective mentioned in subsection (9)—
- (a) applies only to the extent that securing that objective is not inconsistent with securing the objective mentioned in subsection (1);
  - (b) ceases to apply in respect of any function of a company if an order is made under section 46 of the Energy Act 2013 as a result of which the function is transferred from that company to another person.”

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## CHAPTER 6

### ACCESS TO MARKETS ETC

#### *Market participation and liquidity*

#### **49 Power to modify licence conditions etc: market participation and liquidity**

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(a) or (d) of EA 1989 (generation and supply licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) or (d) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) only for the following purposes—
- (a) facilitating participation in the wholesale electricity market in Great Britain, whether by licence holders or others;
  - (b) promoting liquidity in that market.
- (3) Modifications made by virtue of that power may include—
- (a) provision imposing obligations in relation to the sale or purchase of electricity, including, in particular, obligations as to—
    - (i) the terms on which electricity is sold or purchased, and
    - (ii) the circumstances or manner in which electricity is sold or purchased;
  - (b) provision imposing restrictions on the sale or purchase of electricity to or from group undertakings;
  - (c) provision imposing obligations in relation to the disclosure or publication of information.
- (4) For the purposes of subsection (3)(b), electricity is sold to or purchased from a group undertaking if the transaction is between undertakings one of which is a group undertaking in relation to the other.

For this purpose, “undertaking” and “group undertaking” have the same meanings as in the Companies Acts (see section 1161 of the Companies Act 2006).

#### *Power purchase agreement scheme*

#### **50 Power to modify licence conditions etc to facilitate investment in electricity generation**

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(d) of EA 1989 (supply licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;

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- (c) a document maintained in accordance with the conditions of licences under section 6(1)(d) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) only for the purpose of facilitating investment in electricity generation by means of a power purchase agreement scheme.
- (3) For the purposes of this section and section 51—
- (a) a power purchase agreement scheme is a scheme established by supply licence conditions and regulations under section 51 for promoting the availability to electricity generators of power purchase agreements, and
  - (b) “power purchase agreement” means an arrangement under which a licensed supplier agrees to purchase electricity generated by an electricity generator at a discount to a prevailing market price.
- For this purpose, “supply licence condition” means any condition, document or agreement of a kind mentioned in subsection (1).
- (4) Provision that may be made under subsection (1) in relation to a power purchase agreement scheme includes provision—
- (a) as to the eligibility of an electricity generator to enter into a power purchase agreement under the scheme;
  - (b) as to the terms of any power purchase agreement to be entered into under the scheme, including provision—
    - (i) for determining the price at which electricity is to be purchased under the agreement (including provision for determining a market price and the amount of a discount at any time);
    - (ii) as to the duration of any such agreement;
  - (c) as to the circumstances in which a licensed supplier is or may be required or permitted to enter, or offer to enter, into a power purchase agreement under the scheme;
  - (d) for the provision of information in connection with the scheme.
- (5) Provision within subsection (4)(c) includes provision for determining which licensed supplier or suppliers is or are to be required or permitted to enter, or offer to enter, into a power purchase agreement with an electricity generator in any particular case.
- (6) Such provision may in particular include provision for the licensed supplier or suppliers in question to be determined—
- (a) by a process involving a determination or determinations by one or more of the following—
    - (i) the Secretary of State;
    - (ii) the Authority;
    - (iii) the electricity generator;
  - (b) by auction or other competitive process;
- and provision that may be made by virtue of paragraph (b) includes provision as to the circumstances in which a licensed supplier is or may be required or permitted to participate in an auction or other process.
- (7) For the purposes of this section and section 51, “licensed supplier” means the holder of a licence under section 6(1)(d) of EA 1989.



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## **51 Power purchase agreement scheme: regulations**

- (1) The Secretary of State may by regulations make provision, in connection with any modifications made under section 50, for or in connection with a power purchase agreement scheme.
- (2) Any such regulations may in particular—
  - (a) make provision for apportioning amongst licensed suppliers, or any of them, all or any part of the value of any or all of the costs or benefits of any licensed supplier in connection with the scheme;
  - (b) confer functions on the Secretary of State or the Authority (which may include provision for directions to be given to the Authority by the Secretary of State);
  - (c) make provision for the delegation of functions conferred on the Secretary of State or the Authority by the regulations or by virtue of section 50;
  - (d) include provision for obligations imposed by the regulations on licensed suppliers to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (e) make provision about the provision of information in connection with the scheme.
- (3) Provision that may be included in regulations under this section by virtue of subsection (2)(a) includes, in particular, provision—
  - (a) for requiring licensed suppliers to pay a levy to the Authority at specified times;
  - (b) specifying how such a levy is to be calculated;
  - (c) conferring an entitlement on a licensed supplier to receive a payment from the Authority.
- (4) Provision which may be included in regulations by virtue of subsection (3) includes provision for the Secretary of State or the Authority to determine what is to be taken into account as a cost or benefit of any licensed supplier in connection with the scheme and its value.
- (5) Regulations under this section may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (6) Before making any regulations under this section, the Secretary of State must consult—
  - (a) licensed suppliers,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (7) Subsection (6) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (8) Regulations under this section must be made by statutory instrument.
- (9) An instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

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## **52 Power purchase agreement scheme: disclosure of information**

In section 105 of the Utilities Act 2000 (general restrictions on disclosure of information)—

- (a) in subsection (1)(a), after “2010” insert “or section 50 or 51 of the Energy Act 2013”;
- (b) in subsection (3)(a), after “2010” insert “, section 50 or 51 of the Energy Act 2013”.

## **53 Principal objective and general duties: power purchase agreement scheme**

Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Secretary of State or the Authority conferred by or by virtue of section 50 or 51, or section 54 so far as it relates to a power purchase agreement scheme, as they apply in relation to functions under Part 1 of that Act.

*Supplementary*

## **54 Licence modifications under sections 49 and 50: further provisions**

- (1) A modification of a licence under section 49(1) or 50(1) may in particular include a modification—
  - (a) to provide for a new document to be required to be prepared and maintained in accordance with the conditions of such a licence;
  - (b) to provide for an agreement to give effect to a document so maintained.
- (2) Before making modifications under section 49(1) or 50(1), the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

## **CHAPTER 7**

### THE RENEWABLES OBLIGATION: TRANSITIONAL ARRANGEMENTS

## **55 Closure of support under the renewables obligation**

- (1) After section 32L of EA 1989 insert—

### **“32LA Renewables obligation closure order**

- (1) The Secretary of State may make a renewables obligation closure order.
- (2) A renewables obligation closure order is an order which provides that no renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after a specified date.

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- (3) Provision made under subsection (2) may specify different dates in relation to different cases or circumstances.
- (4) The cases or circumstances mentioned in subsection (2) may in particular be described by reference to—
  - (a) accreditation of a generating station, or
  - (b) the addition of generating capacity to a generating station.
- (5) A renewables obligation closure order may include provision about—
  - (a) the meaning of “accreditation” and “generating capacity” in subsection (4);
  - (b) when generating capacity is to be treated as added to a generating station for the purposes of that subsection.
- (6) References in this section to a renewables obligation order are references to any renewables obligation order made under section 32 (whenever made, and whether or not made by the Secretary of State).
- (7) Power to make provision in a renewables obligation order (and any provision contained in such an order) is subject to provision contained in a renewables obligation closure order; but this section is not otherwise to be taken as affecting power to make provision in a renewables obligation order of the kind mentioned in subsection (2).
- (8) Section 32K applies in relation to a renewables obligation closure order as it applies in relation to a renewables obligation order (and subsection (3) above is not to be taken as limiting the application of that section).

### **32LB Renewables obligation closure orders: procedure**

- (1) Before making a renewables obligation closure order, the Secretary of State must consult—
    - (a) the Authority,
    - (b) the Council,
    - (c) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and
    - (d) such other persons, if any, as the Secretary of State considers appropriate.
  - (2) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.
  - (3) A renewables obligation closure order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.”
- (2) In section 32M(1) of EA 1989 (interpretation of sections 32 to 32M)—
- (a) for “32L” substitute “32LB”;
  - (b) after the definition of “renewables obligation order” insert—

“renewables obligation closure order” is to be construed in accordance with section 32LA;”;
  - (c) in the definition of “specified”, after “renewables obligation order” insert “or a renewables obligation closure order”.

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- (3) In section 106 of EA 1989 (regulations and orders), in subsection (2)(b) after “32,” insert “[32LA](#),”.
- (4) In Article 56(1) of the Energy (Northern Ireland) Order 2003 ([S.I. 2003/419 \(N.I. 6\)](#)) (power to amend Part 7 of that Order to take account of amendments of corresponding Great Britain provisions), the reference to amendments made to sections 32 to 32C of EA 1989 includes a reference to subsections (1) and (2) of this section.

## 56 Transition to certificate purchase scheme

- (1) EA 1989 is amended as follows.
- (2) After section 32M insert—

### “32N The certificate purchase obligation

- (1) The Secretary of State may make a certificate purchase order.
- (2) A certificate purchase order is an order which imposes the certificate purchase obligation on—
  - (a) the purchasing body of GB certificates;
  - (b) the purchasing body of NI certificates.
- (3) The certificate purchase obligation is that—
  - (a) the purchasing body of GB certificates must pay the redemption value of a GB certificate to the person presenting it;
  - (b) the purchasing body of NI certificates must pay the redemption value of a NI certificate to the person presenting it.
- (4) The purchasing body of GB certificates is—
  - (a) the Authority, or
  - (b) such other eligible person as may be designated by the order as the purchasing body of GB certificates.
- (5) The purchasing body of NI certificates is—
  - (a) the Northern Ireland authority, or
  - (b) such other eligible person as may be designated by the order as the purchasing body of NI certificates.
- (6) A person is an “eligible person” for the purposes of designation under subsection (4)(b) if the person is—
  - (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Secretary of State.
- (7) A person is an “eligible person” for the purposes of designation under subsection (5)(b) if the person is a CFD counterparty at the time when the designation is made.
- (8) Subsection (3) is subject to sections 32O to [32Z2](#).

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### **32O Further provision about the certificate purchase obligation**

- (1) A certificate purchase order may make provision generally in relation to the certificate purchase obligation.
- (2) A certificate purchase order may, in particular—
  - (a) specify the redemption value of certificates or provide for how the redemption value is to be calculated;
  - (b) provide for different redemption values for successive periods of time;
  - (c) authorise the adjustment of redemption values from time to time for inflation by a method specified in the order (including by reference to a specified scale or index, as it has effect from time to time, or to other specified data of any description);
  - (d) require the relevant purchasing body or the Secretary of State (if not the relevant purchasing body) to publish the redemption value of certificates by a specified deadline;
  - (e) provide for the manner in which a certificate is to be presented to the relevant purchasing body;
  - (f) provide for the certificate purchase obligation in relation to certificates issued in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating stations,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances,to apply only up to a specified number of the certificates that are presented for payment in any specified period;
  - (g) provide that certificates in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating stations,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances,are to be issued only up to such number of certificates in any specified period as may be specified or determined in accordance with the order;
  - (h) provide that the certificate purchase obligation is not to apply on presentation of a certificate unless—
    - (i) the certificate is presented by such a deadline as may be specified or determined in accordance with the order, and
    - (ii) any other specified conditions are met (whether in relation to the certificate, the person presenting it or other matters);
  - (i) provide for how the relevant purchasing body is to determine whether specified conditions are met;
  - (j) provide that the certificate purchase obligation in relation to a certificate is to be discharged by such a deadline as may be specified or determined in accordance with the order;

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- (k) authorise the relevant purchasing body to determine the manner in which payments under the certificate purchase obligation are to be made;
  - (l) authorise the relevant purchasing body to deduct from payments specified descriptions of fees or charges incurred in making the payments;
  - (m) provide for a certificate purchase levy (see section 32P);
  - (n) authorise the Secretary of State to make payments for the purpose of enabling the certificate purchase obligation to be discharged;
  - (o) impose such other obligations, or confer such other functions, on the relevant purchasing body as the Secretary of State considers appropriate.
- (3) Once the redemption value in relation to a certificate is paid (less any deductions permitted under the order by virtue of subsection (2)(l)), the certificate purchase obligation in relation to that certificate is discharged (and the certificate is not to be presented for payment again).
- (4) For the purposes of carrying out its functions under a certificate purchase order, the relevant purchasing body may—
- (a) require a person presenting a certificate to provide such information or documentation as the body may reasonably need for such purposes, and
  - (b) determine the form in which, and the time by which, such information or documentation is to be supplied.
- (5) The certificate purchase obligation does not apply in relation to a certificate unless the person presenting the certificate has complied with any requirements imposed under subsection (4).

### **32P Certificate purchase levy**

- (1) A certificate purchase order may provide for a certificate purchase levy to be charged in connection with the provision of payments to the relevant purchasing body.
- (2) A certificate purchase levy is a levy—
  - (a) charged in respect of supplies of electricity that have been, or are expected to be, made in each specified period, and
  - (b) payable in respect of each such period by persons who make, or are expected to make, the supplies.
- (3) The order may (without limiting the generality of section 32Z(1)(d)) provide for different rates or different amounts of levy to be charged—
  - (a) in different cases or circumstances;
  - (b) in relation to different specified periods.
- (4) The order may secure that the levy is not to be charged in respect of particular descriptions of supplies of electricity.
- (5) The order may provide for amounts of the levy received in respect of any period to be applied for the purpose of discharging the certificate purchase obligation in another period.

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- (6) The order may, in particular, make provision about any of the following matters—
- (a) what is a supply of electricity for the purposes of the levy;
  - (b) when a supply of electricity is, or is expected to be, made for those purposes;
  - (c) who makes, or is expected to make, a supply of electricity for those purposes;
  - (d) the rates or amounts of the levy, or how such rates or amounts are to be determined;
  - (e) payment of the levy, including deadlines for payment in respect of each period and interest in respect of late payment;
  - (f) administration of the levy;
  - (g) audit of information (whether by the administrator of the levy or a third party) including requirements for audits to be paid by the person whose information is subject to the audit;
  - (h) provision of information, including its provision to third parties in specified circumstances;
  - (i) enforcement of the levy;
  - (j) insolvency of persons liable to pay the levy;
  - (k) reviews and appeals;
  - (l) the functions of the administrator in connection with the levy.
- (7) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Great Britain, is—
- (a) the Authority, or
  - (b) such other eligible person as may be designated by the order as the administrator in the case of such persons.
- (8) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Northern Ireland, is—
- (a) the Northern Ireland authority, or
  - (b) such other eligible person as may be designated by the order as the administrator in the case of such persons.
- (9) A person is an “eligible person” for the purposes of designation under subsection (7)(b) if the person is—
- (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Secretary of State.
- (10) A person is an “eligible person” for the purposes of designation under subsection (8)(b) if the person is—
- (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Northern Ireland department.
- (11) In a case where a person liable to pay the levy has made any overpayment or underpayment (whether arising because an estimate turns out to be wrong or otherwise), provision under subsection (6)(e) may require the amount of the overpayment or underpayment (including interest) to be set off against, or added to, any subsequent liability of the person to pay the levy.

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- (12) In a case where the amount received in respect of levy payments for a period falls short of the amount due for that period, provision under subsection (6) (e) or (j) may include a requirement on persons liable to pay the levy to make further payments, by the time and in the circumstances specified, of an amount calculated in the manner specified or determined in accordance with the order.
- (13) Provision under subsection (6)(h) may provide for the administrator to determine the form in which any information that a person is required to give is to be given and the time by which it is to be given.
- (14) Provision under subsection (6)(i) may—
  - (a) if the Authority is the administrator, apply sections 25 to 28 in relation to a requirement in respect of the levy imposed under the order on a person who is not a licence holder as if the person were a licence holder;
  - (b) in any other case, include provision for the imposition of penalties if a requirement in respect of the levy is breached (whether financial or not, but not including the creation of criminal offences).

### **32Q Use of levy payments**

- (1) Amounts payable in respect of the certificate purchase levy are to be paid to the administrator of the levy.
- (2) Amounts received by the administrator under subsection (1) must be paid to—
  - (a) the purchasing body of GB certificates, or
  - (b) the purchasing body of NI certificates,in accordance with such provision as may be contained in the order.
- (3) Amounts paid to a purchasing body under subsection (2) may be used by that body only for the purpose of discharging the certificate purchase obligation.
- (4) The order may contain further provision about—
  - (a) the calculation of amounts received by the administrator that are to be paid to a relevant purchasing body;
  - (b) the time by which the administrator must make payments of such amounts to a relevant purchasing body;
  - (c) the manner in which any such payments are to be made;
  - (d) how amounts are to be dealt with for the purposes of subsection (2) where the administrator and a relevant purchasing body to whom they are to be paid are the same person.
- (5) Subsections (2) to (4) are subject to subsections (6) to (10).
- (6) The order may provide for amounts received by the administrator under subsection (1) to be used by the administrator to make payments—
  - (a) into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred—
    - (i) by the Authority,
    - (ii) by the Secretary of State, or
    - (iii) by a relevant designated person,



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- in connection with the performance of functions conferred by or under sections 32N to 32Z2;
- (b) into the Consolidated Fund of Northern Ireland in respect of costs (or a proportion of costs) which have been or are expected to be incurred—
- (i) by the Northern Ireland authority, or
- (ii) by the Northern Ireland department,
- in connection with the performance of functions conferred by or under sections 32N to 32Z2.
- (7) For the purposes of subsection (6)(a), “relevant designated person” means a person who is designated—
- (a) as the purchasing body of GB certificates by virtue of being an eligible person within section 32N(6)(a) (CFD counterparty);
- (b) as the purchasing body of NI certificates by virtue of being an eligible person within section 32N(7) (CFD counterparty);
- (c) as an administrator of the levy by virtue of being an eligible person within section 32P(9)(a) or (10)(a) (CFD counterparty).
- (8) The order—
- (a) may exclude amounts of a specified description from being used as mentioned in subsection (6);
- (b) may prevent the administrator using amounts to make payments in respect of costs of a specified description.
- (9) The purchasing body of GB certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of GB certificates.
- (10) The purchasing body of NI certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund of Northern Ireland any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of NI certificates.
- (11) In this section “the order”, in relation to the certificate purchase levy, means the certificate purchase order that imposes the levy.

### **32R Designation of a CFD counterparty as purchasing body or administrator**

- (1) This section applies in relation to the designation of a person who is a CFD counterparty—
- (a) as a relevant purchasing body under section 32N(4)(b) or (5)(b), or
- (b) as the administrator of the levy under section 32P(7)(b) or (8)(b).
- (2) A designation may be made only with the consent of the person designated.
- (3) A designation does not cease to have effect if the person’s designation as a CFD counterparty ceases to have effect by virtue of section 7(6)(a) or (b) of the Energy Act 2013.

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- (4) A designation ceases to have effect if—
  - (a) the Secretary of State by order revokes the designation, or
  - (b) the person withdraws consent to the designation by giving not less than 3 months' notice in writing to the Secretary of State.
- (5) The Secretary of State may by order make transitional provision in connection with a designation ceasing to have effect.
- (6) An order under subsection (5) may in particular make provision about how obligations, imposed by virtue of a certificate purchase order on a person whose designation ceases to have effect, are to be discharged in any period before or after the time when the designation ceases to have effect.
- (7) Subsection (5) is not to be taken as limiting the power to make transitional provision in a certificate purchase order by virtue of section [32Z\(1\)\(b\)](#).

### **32S GB certificates**

- (1) A certificate purchase order may (subject to subsection (3)) provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a GB certificate”) to—
  - (a) the operator of a generating station, or
  - (b) if the order so provides, a person of any other description specified in the order.
- (2) A GB certificate is to certify—
  - (a) the matters within subsection (4) or (5), or
  - (b) if the order provides that a certificate may certify the matters within subsection (6), (7), (8) or (9), the matters within that subsection.
- (3) A GB certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—
  - (a) a renewables obligation order is in force, and
  - (b) a renewables obligation certificate has been, or could be, issued under the order in respect of the generation in that period of the same electricity.
- (4) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (5) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that the generating station in question is not in Northern Ireland, and

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- (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (6) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (7) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that none of them is a generating station in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (8) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (9) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (10) For the purposes of subsections (8) and (9), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in subsection (11), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or
    - (ii) in relation to generating stations of that description.
- (11) Those ways are—
- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
  - (b) being supplied to customers in Great Britain through a private wire network;
  - (c) being provided to a distribution system or a transmission system in circumstances in which its supply to customers cannot be demonstrated;
  - (d) being used, as respects part, as mentioned in one of paragraphs (a), (b) or (c) and as respects the remainder—
    - (i) as mentioned in one of the other paragraphs, or

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- (ii) as respects part, as mentioned in one of the other paragraphs and, as respects the remainder, as mentioned in the other;
  - (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and, as respects the remainder, by being supplied by an electricity supplier to customers in Great Britain or by a Northern Ireland supplier to customers in Northern Ireland, or both.
- (12) Subsection (11) of section 32B (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (11)(b) as it applies for the purposes of subsection (10)(b) of that section.

### **32T NI certificates**

- (1) A certificate purchase order may (subject to subsection (3)) provide for the Northern Ireland authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a NI certificate”) to—
- (a) the operator of a generating station in Northern Ireland, or
  - (b) if the order so provides, a person of any other description.
- (2) A NI certificate is to certify—
- (a) the matters within subsection (4), or
  - (b) if the order provides that a certificate may certify the matters within subsection (5), (6) or (7), the matters within that subsection.
- (3) A NI certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—
- (a) an order under Article 52 of the Energy (Northern Ireland) Order 2003 is in force, and
  - (b) a Northern Ireland RO certificate has been, or could be, issued under that order in respect of the same electricity.
- (4) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (5) The matters within this subsection are—
- (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (6) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station in Northern Ireland specified in the certificate, has generated

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- from renewable sources the amount of electricity stated in the certificate, and
- (b) that the electricity has been used in a permitted way.
- (7) The matters within this subsection are—
- (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
- (b) that the electricity has been used in a permitted way.
- (8) For the purposes of subsections (6) and (7), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in subsection (9), and
- (b) that way is specified in the order as a permitted way—
- (i) in relation to all generating stations, or
- (ii) in relation to generating stations of that description.
- (9) Those ways are—
- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
- (b) being supplied to customers in Northern Ireland through a private wire network;
- (c) being provided to a distribution system located in Northern Ireland, or to transmission system located in Northern Ireland, in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated;
- (d) being used, as respects part, as mentioned in one of paragraphs (a), (b) or (c) and as respects the remainder—
- (i) as mentioned in one of the other paragraphs, or
- (ii) as respects part, as mentioned in one of the other paragraphs and, as respects the remainder, as mentioned in the other;
- (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and, as respects the remainder, by being supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (10) Paragraph (9) of Article 54 of the Energy (Northern Ireland) Order 2003 (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (9)(b) as it applies for the purposes of paragraph (8) (b) of that Article.

### **32U Sections 32S and 32T: supplemental provision**

- (1) A certificate purchase order may provide—
- (a) that no certificates are to be issued in respect of electricity generated in specified cases or circumstances, or
- (b) that certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.
- (2) In particular, provision made by virtue of subsection (1) may specify—

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- (a) electricity generated using specified descriptions of renewable sources,
  - (b) electricity generated by specified descriptions of generating station, or
  - (c) electricity generated in specified ways.
- (3) Provision made by virtue of subsection (1)(b) may include—
- (a) provision about how the proportion is to be determined;
  - (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;
  - (c) provision authorising the relevant authority, in specified circumstances, to require an operator of a generating station to arrange —
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the relevant authority, and
    - (ii) for the results of that analysis to be made available to the relevant authority.
- (4) In the case of electricity generated by a generating station fuelled or driven—
- (a) partly by renewable sources, and
  - (b) partly by fossil fuel (other than waste which constitutes a renewable source),
- only the proportion attributable to the renewable sources is to be regarded as generated from such sources.
- (5) A certificate purchase order may specify—
- (a) how the proportion referred to in subsection (4) is to be determined, and
  - (b) the consequences for the issuing of certificates if a generating station of the type mentioned in that subsection uses more than a specified proportion of fossil fuel during a specified period.
- (6) Those consequences may include the consequences that no certificates are to be issued in respect of any electricity generated by that generating station during that period.
- (7) A certificate purchase order may provide that ownership of a certificate may be transferred—
- (a) only to persons of a specified description;
  - (b) only if other specified conditions are met.
- (8) A certificate purchase order may specify circumstances in which the relevant authority may revoke a certificate before the certificate purchase obligation in respect of the certificate is discharged (whether before or after the certificate is presented for payment).
- (9) A certificate purchase order must—
- (a) prohibit the issue of GB certificates certifying that electricity has been supplied to customers in Northern Ireland by virtue of section 32S(5)

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- or (7) where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland, and
- (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its presentation for payment for the purposes of the certificate purchase obligation.
- (10) A certificate purchase order may make provision requiring a person to whom a certificate is issued to pay to the relevant authority an amount equal to any amount that has been paid in respect of the certificate under the certificate purchase obligation if it appears to the authority that—
- (a) the certificate should not have been issued to that person, and
  - (b) it is not possible to secure the recovery of such an amount by refusing to issue another certificate to the person.
- (11) Provision under subsection (10) may include provision about enforcement and appeals.
- (12) The Authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund.
- (13) The Northern Ireland authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund of Northern Ireland.

### **32V Certificate purchase orders: amounts of electricity stated in certificates**

- (1) A certificate purchase order may specify the amount of electricity to be stated in each certificate, and different amounts may be specified in relation to different cases or circumstances.
- (2) In particular, different amounts may be specified in relation to—
  - (a) electricity generated from different renewable sources;
  - (b) electricity generated by different descriptions of generating station;
  - (c) electricity generated in different ways.
- (3) In this section “banding provision” means provision made in a certificate purchase order by virtue of subsection (1).
- (4) Before making any banding provision, the Secretary of State must have regard to the following matters—
  - (a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;
  - (b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;
  - (c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (supplies of electricity from renewable sources exempted from the climate change levy) in relation to electricity generated from each of those sources;

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- (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
  - (e) the likely effect of the proposed banding provision on the number of certificate issued by the relevant authority, and the impact this will have on consumers;
  - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, an EU obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—
- (a) the acquisition of the renewable source;
  - (b) the supply of heat produced in connection with the generation;
  - (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made by the Secretary of State, no subsequent order containing such provision may be made by the Secretary of State except following a review held by virtue of subsection (8).
- (8) A certificate purchase order may authorise the Secretary of State to review the whole or any part of the banding provision at any time when the Secretary of State is satisfied that one or more of the specified conditions is satisfied.

### **32W Section 32V: transitional provision and savings**

- (1) This section applies where a certificate purchase order contains banding provision.
- (2) The order may provide for the effect of any banding provision made in an earlier such order to continue, in such circumstances as may be specified, in relation to—
- (a) the electricity generated by generating stations of such descriptions as may be specified, or
  - (b) so much of the electricity as may be determined in accordance with the order.
- (3) The order may provide for—
- (a) the effect of any banding provision made in a renewables obligation order by virtue of section 32D(1) to apply, in such circumstances as may be specified, in relation to GB certificates as it applied in relation to renewables obligation certificates;
  - (b) the effect of any banding provision made in an order under Article 52 of the Energy (Northern Ireland) Order 2003, by virtue of Article 54B(1) of the Order, to apply, in such circumstances as may be specified, in relation to NI certificates as it applied in relation to Northern Ireland RO certificates.



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- (4) Section 32V(4) and (7) do not apply in relation to provision of the kind mentioned in subsection (2) or (3) above.
- (5) Subsection (7) applies to a generating station in respect of which a statutory grant has been awarded if—
  - (a) the generating station is of a specified description, or
  - (b) the circumstances of the case meet specified requirements.
- (6) The requirements specified under subsection (5)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (7) A certificate purchase order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—
  - (a) if the grant or any part of it has been paid, to repay to the person who made the grant (“the payer”) the whole or a specified part of the grant or part before the repayment date,
  - (b) to pay to the payer interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined in accordance with the order (which may confer the function of making the determination on a person), and
  - (c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.
- (8) For the purposes of subsection (7)—
  - (a) “the repayment date” means the date specified in or determined in accordance with the order, and
  - (b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid.
- (9) In this section “statutory grant” means—
  - (a) a grant awarded under section 5(1) of the Science and Technology Act 1965 (grants to carry on or support scientific research), or
  - (b) any other grant which is payable out of public funds and awarded under or by virtue of an Act or other statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954).
- (10) This section is without prejudice to section [32Z\(1\)\(b\)](#).

### **32X Certificate purchase orders: information**

- (1) A certificate purchase order may provide for—
  - (a) the Authority to require a person to provide it with information, or with information of a particular kind, which in the Authority’s opinion is relevant to the question whether a GB certificate is, or was or will in future be, required to be issued to the person;
  - (b) the Northern Ireland authority to require a person to provide it with information, or with information of a particular kind, which in the

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authority's opinion is relevant to the question whether a NI certificate is, or was or will in future be, required to be issued to the person.

- (2) That information must be given to the relevant authority in whatever form it requires.
- (3) A certificate purchase order may—
  - (a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the relevant authority;
  - (b) specify what, for this purpose, constitutes “biomass”;
  - (c) require the information to be given in a specified form and within a specified period;
  - (d) authorise or require the relevant authority to postpone the issue of certificates to the operator of a generating station who fails to comply with a requirement imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;
  - (e) authorise or require the relevant authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a specified period.
- (4) The relevant authority may publish information obtained by virtue of subsection (3).
- (5) No person is required by virtue of this section to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.

### **32Y Certificate purchase orders: corresponding provision**

- (1) This section applies where the Secretary of State exercises a listed power in the making of a certificate purchase order.
- (2) The Secretary of State must—
  - (a) so far as the order is made for a GB purpose, exercise the listed power in the way that the Secretary of State considers will replicate the effect of provision contained in a renewables obligation order (whenever made, and whether or not made by the Secretary of State) by virtue of the equivalent GB power;
  - (b) so far as the order is made for a NI purpose, exercise the listed power in the way that the Secretary of State considers will replicate the effect of provision contained in an order under Article 52 of the 2003 NI Order (whenever made) by virtue of the equivalent NI power.
- (3) The duty in subsection (2) to exercise any listed power in the way mentioned in that subsection applies only to the extent that it appears to the Secretary of State that—
  - (a) it is reasonably practicable to exercise the listed power in that way, and
  - (b) exercising the power in that way is not inconsistent with other duties or requirements of the Secretary of State (whether arising under this Act or another enactment, by virtue of any EU obligation or otherwise).

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(4) In the Table—

- (a) a “listed power” is any power specified in the first column;
- (b) the “equivalent GB power”, in relation to a listed power, is the power specified in the corresponding entry in the second column;
- (c) the “equivalent NI power”, in relation to a listed power, is the power specified in the corresponding entry in the third column, and in that column references to an Article are to an Article of the 2003 NI Order.

<i>Listed power</i>	<i>Equivalent GB power</i>	<i>Equivalent NI power</i>
Section 32O(2)(a)	Sections 32A(2)(a) and 32G(2)(a)	Articles 53(2)(a) and 55(2)(a)
Section 32O(2)(b)	Sections 32A(2)(b) and 32G(2)(c)	Articles 53(2)(b) and 55(2)(c)
Section 32O(2)(c)	Section 32G(2)(e)	Article 55(2)(e)
Section 32O(2)(f)	Section 32A(2)(c)	Article 53(2)(c)
Section 32S	Section 32B	---
Section 32T	---	Article 54
Section 32U(5) and (6)	Section 32C(5) and (6)	Article 54A(5) and (6)
Section 32V(1)	Section 32D(1)	Article 54B(1)
Section 32W(5) to (8)	Section 32E(4) to (6) and (8)	Article 54C(4) to (7)
Section 32X	Section 32J	Article 55C
Section 32Z2(2) (so far as relating to definition of “renewable sources”) and (3)	Section 32M (so far as relating to that definition) and (2)	Article 55F(1) (so far as relating to that definition) and (2)
Section 32Z2(9)	Section 32M(7)	Article 55F(3)

- (5) The duty in subsection (2), so far as it has effect in relation to the exercise of the listed power under section 32V(1) to specify different amounts of electricity in relation to different cases or circumstances, applies only to the first exercise of that listed power.
- (6) The relevant part of Great Britain to which a renewables obligation order relates may be ignored for the purposes of subsection (2)(a).
- (7) It does not matter for the purposes of subsection (2) whether or not a renewables obligation order, or an order made under Article 52 of the 2003 NI Order, is in force at the time when the listed powers in question are being exercised.
- (8) In this section—

“2003 NI Order” means the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));

“GB purpose” means the purpose of imposing the certificate purchase obligation on the purchasing body of GB certificates;

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“NI purpose” means the purpose of imposing the certificate purchase obligation on the purchasing body of NI certificates.

### **32Z Certificate purchase orders: general provision**

- (1) A certificate purchase order may—
  - (a) make further provision as to the functions of the relevant authority in relation to matters dealt with by the order;
  - (b) make transitional provision and savings;
  - (c) provide for anything falling to be calculated or otherwise determined under the order to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the order;
  - (d) make different provision for different cases or circumstances.
- (2) Provision made by virtue of subsection (1)(b) may, in particular, include provision for—
  - (a) renewables obligation certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were GB certificates issued in respect of a subsequent period for which the order is in force;
  - (b) Northern Ireland RO certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were NI certificates issued in respect of a subsequent period for which the order is in force.
- (3) Provision made by virtue of subsection (1)(d) may, in particular, make—
  - (a) different provision in relation to different suppliers;
  - (b) different provision in relation to generating stations of different descriptions;
  - (c) different provision in relation to different localities or different parts of the United Kingdom.
- (4) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.
- (5) The Authority and the Northern Ireland authority may enter into arrangements for the Authority to act on behalf of the Northern Ireland authority for, or in connection with, the carrying out of any functions conferred on the Northern Ireland authority under, or for the purposes of, a certificate purchase order.
- (6) The duties imposed on the Secretary of State—
  - (a) by section 3A (principal objective and general duties in carrying out functions under this Part), and
  - (b) by section 132(2) of the Energy Act 2013 (duties in relation to strategy and policy statement),

do not apply in relation to the exercise of a power under section 32N to make a certificate purchase order so far as it is made for or in connection with imposing the certificate purchase obligation on the purchasing body of NI certificates.

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### **32Z1 Certificate purchase orders: procedure**

- (1) Before making a certificate purchase order, the Secretary of State must consult—
  - (a) the Authority,
  - (b) the Northern Ireland authority,
  - (c) the Council,
  - (d) the General Consumer Council for Northern Ireland,
  - (e) such electricity suppliers and Northern Ireland suppliers that may be required to pay the certificate purchase levy as the Secretary of State considers appropriate,
  - (f) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and
  - (g) such other persons, if any, as the Secretary of State considers appropriate.
- (2) A certificate purchase order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (3) The Secretary of State must, subject to subsection (5), consult the Scottish Ministers before making a certificate purchase order that extends to Scotland.
- (4) The Secretary of State must, subject to subsection (5), obtain the consent of the Northern Ireland department before making a certificate purchase order that extends to Northern Ireland.
- (5) Except as provided by subsection (6), the Secretary of State is not required to—
  - (a) consult the Scottish Ministers under subsection (3), or
  - (b) obtain the consent of the Northern Ireland department under subsection (4),in respect of any provision of a certificate purchase order that is made by virtue of section 32O(2)(m), 32P or 32Q (which together confer power to make provision about the certificate purchase levy).
- (6) Designation of the Northern Ireland department as the administrator of the certificate purchase levy by virtue of section 32P(8)(b) requires the consent of that department.

### **32Z2 Interpretation of sections 32N to 32Z1**

- (1) In this section and sections 32N to 32Z1 (“the relevant sections”), the following terms have the meanings given in section 32M(1)—
  - “fossil fuel” (but see subsection (4));
  - “generated”;
  - “Northern Ireland authority”;
  - “Northern Ireland supplier”;
  - “renewables obligation certificate”;
  - “renewables obligation order”.

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(2) In the relevant sections—

“administrator”, in relation to the certificate purchase levy, is to be construed in accordance with section 32P(7) to (10);

“banding provision” is to be construed in accordance with section 32V(3);

“CFD counterparty” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2013 (see section 7 of that Act);

“certificate purchase levy” is to be construed in accordance with section 32P;

“certificate purchase order” is to be construed in accordance with section 32N;

“the certificate purchase obligation” is to be construed in accordance with section 32N(3);

“distribution system” includes a distribution system within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992, and “distributing” is to be construed accordingly;

“GB certificate” is to be construed in accordance with section 32S;

“NI certificate” is to be construed in accordance with section 32T;

“the Northern Ireland department” means the Department of Enterprise, Trade and Investment;

“Northern Ireland RO certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included in an order under Article 52 of the Energy (Northern Ireland) Order 2003;

“the purchasing body of GB certificates” is to be construed in accordance with section 32N(4);

“the purchasing body of NI certificates” is to be construed in accordance with section 32N(5);

“relevant authority” means—

(a) in relation to GB certificates, the Authority;

(b) in relation to NI certificates, the Northern Ireland authority;

“relevant purchasing body” means—

(a) in relation to GB certificates, the purchasing body of GB certificates;

(b) in relation to NI certificates, the purchasing body of NI certificates;

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

“specified”, in relation to a certificate purchase order, means specified in the order;

“transmission system” includes a transmission system within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992, and “transmitting” is to be construed accordingly.

(3) For the purposes of the definition of “renewable sources”, a certificate purchase order may make provision—

(a) about what constitutes “waste”;

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- (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
  - (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
  - (d) authorising the relevant authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the relevant authority;
    - (ii) for the results of that analysis to be made available to the relevant authority.
- (4) In the application of the relevant sections to Northern Ireland, “fossil fuel” includes peat.
- (5) In the relevant sections “Northern Ireland” does not include any part of the territorial sea of the United Kingdom, but this is subject to subsection (6).
- (6) A certificate purchase order may provide that “Northern Ireland” includes the territorial sea adjacent to Northern Ireland.
- (7) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—
  - (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (8) References in the relevant sections to the supply of electricity to customers in Northern Ireland are to be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.
- (9) A certificate purchase order may make provision, for the purposes of the relevant sections, about the circumstances in which electricity is to be regarded as having been supplied—
  - (a) to customers in Great Britain;
  - (b) to customers in Northern Ireland.”
- (3) In section 106 (regulations and orders), in subsection (2)(b) after “[32LA](#),” (as inserted by section 55(3))” insert “[32N](#), [32R\(4\)](#),”.
- (4) In section 113 (extent etc), in subsection (3), at the beginning of the list (before the entry for sections 65 to 70) insert “Sections [32N](#) to [32Z2](#),”.

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## CHAPTER 8

### EMISSIONS PERFORMANCE STANDARD

#### 57 Duty not to exceed annual carbon dioxide emissions limit

- (1) The operator of any fossil fuel plant must secure that the emissions of carbon dioxide from it that are attributable to the use of fossil fuel do not exceed EL tonnes of carbon dioxide (“the emissions limit”) in any year, where—

$$EL = R \times C \times 7.446$$

and—

R is the statutory rate of emissions, in g/kWh;

C is the installed generating capacity, in MW, of the electricity generating station comprised in the fossil fuel plant.

- (2) Until (and including) 2044, the statutory rate of emissions is 450 g/kWh.
- (3) In this Chapter, “fossil fuel plant” means an electricity generating station which satisfies the conditions in subsection (4), together with any associated gasification plant and any associated CCS plant.
- (4) Those conditions are that the generating station—
- (a) is constructed pursuant to a relevant consent given or made on or after the date on which subsection (1) comes into force, and
  - (b) uses—
    - (i) fossil fuel, or
    - (ii) fuel produced by gasification plant.
- (5) Subsection (1) is subject to—
- (a) section 58, and
  - (b) any provision made by or under regulations made under subsection (6).
- (6) The Secretary of State may by regulations—
- (a) make provision about the interpretation of the duty imposed by subsection (1) (“the emissions limit duty”);
  - (b) make any provision mentioned in Schedule 4 (application of emissions limit duty to additional cases or subject to modifications).
- (7) Regulations under subsection (6)(a) may, in particular, make provision—
- (a) for determining whether gasification plant or CCS plant (including any CCS plant associated with gasification plant) is associated with a generating station;
  - (b) for determining the emissions from fossil fuel plant;
  - (c) for the use of fossil fuel—
    - (i) for operating plant that is ancillary to a generating station for safety purposes, or in an emergency, or
    - (ii) by a network generating station at a time when it is not exporting to a network,
 to be disregarded for any of the purposes of this Chapter;



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- (d) for determining (whether by apportionment or otherwise) which emissions from fossil fuel plant are attributable to the use of fossil fuel;
  - (e) for determining when plant ceases to be, or to be part of, fossil fuel plant;
  - (f) specifying the meaning of any of the following expressions—
    - (i) “operator”, in relation to fossil fuel plant;
    - (ii) “installed generating capacity”;
    - (iii) “constructed pursuant to a relevant consent”, in relation to an electricity generating station;
  - (g) specifying any category of emissions by reference to provision made, or that may from time to time be made, by or under regulations implementing the ETS Directive.
- (8) Provision that may be made by virtue of subsection (7)(d) includes provision for treating emissions attributable to the supply of heat to customers from combined heat and power plant as not being attributable to the use of fossil fuel.

## **58 Introduction of carbon capture and storage: exemption from emissions limit**

- (1) The emissions limit duty does not apply during the exemption period in relation to fossil fuel plant for which there is a complete CCS system.
- (2) For this purpose, a complete CCS system, in relation to fossil fuel plant, is a system of plant and facilities for—
  - (a) capturing some or all of the carbon dioxide (or any substance consisting primarily of carbon dioxide) that is produced by, or in connection with, generation of electricity by the generating station comprised in the fossil fuel plant,
  - (b) transporting the carbon dioxide (or substance) captured, and
  - (c) disposing of it by way of permanent storage.
- (3) The exemption period for any fossil fuel plant is the period—
  - (a) beginning with the first day on which the fossil fuel plant and its complete CCS system are ready for use, and
  - (b) ending with—
    - (i) the expiry of 3 years beginning with that day, or
    - (ii) 31 December 2027,whichever is earlier.
- (4) In subsection (3), “use” includes testing in connection with the generation of electricity on a commercial scale.
- (5) Subsection (1) is subject to any provision made by regulations under section 57(6)(b).

## **59 Suspension etc of emissions limit in exceptional circumstances**

- (1) This section applies where an appropriate authority considers that there is an electricity shortfall, or a significant risk of an electricity shortfall.
- (2) Where this section applies, the appropriate authority may direct that, in relation to relevant plant, the emissions limit duty is to be treated as—
  - (a) suspended for a period specified in the direction, or
  - (b) modified for a period specified in the direction.

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- (3) For the purposes of this section, there is an electricity shortfall when—
- (a) the electricity available in Great Britain is insufficient to meet demands in Great Britain, or
  - (b) the electricity available in Northern Ireland is insufficient to meet demands in Northern Ireland.
- (4) For this purpose—
- (a) electricity available in Great Britain or Northern Ireland includes electricity that is available there by virtue of an electricity interconnector (within the meaning of Part 1 of EA 1989), and
  - (b) subject to that, it is for the appropriate authority to determine what is to be regarded as available electricity.
- (5) Before giving a direction under this section, the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (6) As soon as practicable after giving a direction under this section, the Secretary of State must lay before Parliament a document containing—
- (a) a copy of the direction, and
  - (b) a statement of the Secretary of State’s reasons for making the direction.
- (7) Before giving a direction under this section, the Department of Enterprise, Trade and Investment must consult such persons as it considers it appropriate to consult.
- (8) As soon as practicable after giving a direction under this section, the Department of Enterprise, Trade and Investment must lay before the Northern Ireland Assembly a document containing—
- (a) a copy of the direction, and
  - (b) a statement of the Department’s reasons for making the direction.
- (9) A direction under this section—
- (a) is to be made in writing;
  - (b) may include incidental, supplementary and transitional provision;
  - (c) may be varied or revoked by a further direction under this section.
- (10) Provision that may be made by virtue of subsection (9)(b) includes, in particular, provision imposing requirements on enforcing authorities (within the meaning of Schedule 5) for Great Britain or Northern Ireland, as the case may be.
- (11) Each appropriate authority—
- (a) must issue (and may from time to time revise) a statement of the Secretary of State’s or, as the case may be, the Department’s policy in relation to making directions under this section,
  - (b) must publish the up-to-date text of the statement whenever it is issued or revised, and
  - (c) must have regard to the statement in making any direction under this section.
- (12) For the purposes of this section—
- “appropriate authority” means—
- (a) the Secretary of State, or

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- (b) the Department of Enterprise, Trade and Investment;  
“relevant generating station” means a generating station which satisfies paragraphs (a) and (b) of section 57(4);  
“relevant plant” means—
  - (a) in relation to a direction by the Secretary of State, fossil fuel plant which consists of or includes a relevant generating station in Great Britain;
  - (b) in relation to a direction by the Department of Enterprise, Trade and Investment, fossil fuel plant which consists of or includes a relevant generating station in Northern Ireland.

## 60 Monitoring and enforcement

- (1) It is the duty of the appropriate national authority to make arrangements for monitoring compliance with, and enforcement of, the emissions limit duty.
- (2) The appropriate national authority may by regulations make any provision mentioned in Schedule 5 (monitoring compliance with, and enforcement of, the emissions limit duty).
- (3) The arrangements under subsection (1) must include arrangements for giving effect to directions under section 59 (and, in particular, for compliance by enforcing authorities with any requirements imposed on them under subsection (10) of that section).
- (4) In this section (and Schedule 5), the “appropriate national authority” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Scotland, the Scottish Ministers;
  - (c) in relation to Wales, the Welsh Ministers;
  - (d) in relation to Northern Ireland, the Department of Environment.
- (5) Subsection (4) is subject to paragraph 5 of Schedule 5 (which provides for the Secretary of State to make certain provision for Scotland, Wales and Northern Ireland).

## 61 Interpretation of Chapter 8

- (1) In this Chapter—
  - “carbon capture and storage technology” means technology for doing, or contributing to the doing of, any of the following things—
    - (a) capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that has been produced by, or in connection with, generation of electricity on a commercial scale;
    - (b) transporting such carbon dioxide (or substance) that has been captured;
    - (c) disposing of such carbon dioxide (or substance) that has been captured, by way of permanent storage;
  - “CCS plant” means plant, or a system of plant and facilities, that uses, or is capable of using, carbon capture and storage technology;
  - “distribution system” has the meaning given by section 4(4) of EA 1989 (and “distributed” is to be read accordingly);
  - “emissions limit duty” means the duty imposed by section 57(1);
  - “ETS Directive” means Directive 2003/87/EC of the European Parliament and of the Council (as amended from time to time);
  - “fossil fuel” means—

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- (a) coal;
  - (b) lignite;
  - (c) peat;
  - (d) natural gas (within the meaning of the Energy Act 1976);
  - (e) crude liquid petroleum;
  - (f) bitumen;
  - (g) any substance which—
    - (i) is produced directly or indirectly from a substance mentioned in paragraphs (a) to (f) for use as a fuel, and
    - (ii) when burned, produces a greenhouse gas (within the meaning given in section 92 of the Climate Change Act 2008);
- “fossil fuel plant” has the meaning given by section 57(3);
- “gasification plant” means plant which—
- (a) uses fossil fuel, and
  - (b) produces fuel for use in an electricity generating station;
- “network generating station” means a station that exports to a network;
- “relevant consent” means—
- (a) consent granted under section 36 of EA 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), or
  - (b) an order granting development consent under the Planning Act 2008;
- “transmission system” has the meaning given by section 4(4) of EA 1989;
- “year”, except in section 58, means any calendar year for which the emissions limit is defined by section 57.

- (2) For the purposes of this Chapter, a generating station exports to a network when it is generating any electricity that is conveyed from it by means of a transmission system or is distributed by means of a distribution system.

## 62 Regulations under Chapter 8

- (1) Any regulations made by the Secretary of State or the Welsh Ministers under this Chapter must be made by statutory instrument.
- (2) Any power to make regulations under this Chapter that is exercisable by the Department of Environment is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) An instrument containing—
  - (a) regulations under section 57 (whether or not also containing regulations by the Secretary of State under section 60), or
  - (b) regulations by the Secretary of State under section 60 which amend or repeal any provision of primary legislation,
 may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.
- (4) Any other instrument containing regulations made by the Secretary of State under section 60 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) If, but for this subsection, an instrument containing regulations by the Secretary of State under this Chapter would be treated for the purposes of the standing orders of

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either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

- (6) Regulations by the Scottish Ministers under section 60 are—
  - (a) if they amend or repeal any provision of primary legislation, subject to the affirmative procedure;
  - (b) otherwise, subject to the negative procedure.
- (7) An instrument containing regulations by the Welsh Ministers under section 60—
  - (a) may not be made if the regulations amend or repeal any provision of primary legislation unless a draft has been laid before, and approved by a resolution of, the National Assembly for Wales;
  - (b) otherwise, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) Statutory rules containing regulations by the Department of Environment under section 60 are—
  - (a) if the regulations amend or repeal any provision of primary legislation, subject to affirmative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954), and
  - (b) otherwise, subject to negative resolution (within the meaning of section 41(4) of that Act).
- (9) Any regulations under this Chapter may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (10) Regulations under section 57 that apply in relation to Northern Ireland may be made only with the consent of the Department of Enterprise, Trade and Investment.
- (11) Before making any regulations under section 57 or 60, the Secretary of State must consult—
  - (a) in the case of regulations under section 57 that will apply in relation to Scotland or Wales, the Scottish Ministers or the Welsh Ministers, respectively, and
  - (b) in any case, such persons (or such other persons) as the Secretary of State considers it appropriate to consult.
- (12) Before making any regulations under section 60, the Scottish Ministers or the Welsh Ministers must consult such persons as they think appropriate.
- (13) Subsections (11) and (12) may be satisfied by consultation before, as well as after, the passing of this Act.

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## CHAPTER 9

### MISCELLANEOUS

#### 63 Exemption from liability in damages

- (1) The Secretary of State may include in regulations under section 6 or 27, or under paragraph 6 of Schedule 2, provision that—
  - (a) the national system operator,
  - (b) any director of the national system operator, or
  - (c) any employee, officer or agent of the national system operator,
 is not liable in damages for anything done or omitted in the exercise or purported exercise of a relevant function specified in the regulations.
- (2) A relevant function is a function conferred by or by virtue of Chapter 2, 3 or 4.
- (3) Provision made by virtue of subsection (1) may not exempt a person from liability for an act or omission which—
  - (a) is shown to be in bad faith;
  - (b) is unlawful by virtue of section 6(1) of the Human Rights Act 1998 (public authorities not to act incompatibly with convention rights);
  - (c) is a breach of a duty owed by virtue of section 27(4) of EA 1989 (compliance with final or provisional order under that Act).
- (4) Whenever—
  - (a) the Secretary of State makes or revokes regulations of a kind mentioned in subsection (1) or exercises a modification power under section 26 or 37 or paragraph 19 of Schedule 2, and
  - (b) provision is not in force under subsection (1) in respect of a relevant function,
 the Secretary of State must publish a statement of the reasons why no such provision is in force.
- (5) In this section “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

#### 64 Licence modifications: general

- (1) This section applies in relation to a power to make modifications conferred by—
  - (a) section 26, 37, 45, 49 or 50, or
  - (b) paragraph 19 of Schedule 2.
- (2) Before making modifications under a power to which this section applies (“a relevant power”) the Secretary of State must lay a draft of the modifications before Parliament.
- (3) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (4) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.

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- (5) Subsection (3) does not prevent a new draft of proposed modifications being laid before Parliament.
- (6) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (7) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (8) A relevant power—
  - (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently in different cases or circumstances;
  - (c) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (9) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a relevant power—
  - (a) may make different provision for different cases;
  - (b) need not relate to the activities authorised by the licence;
  - (c) may do any of the things authorised for licences of that type by section 7(2A), (3), (4) or (6A) of EA 1989.
- (10) The Secretary of State must publish details of any modifications made under a relevant power as soon as reasonably practicable after they are made.
- (11) If under a relevant power the Secretary of State makes modifications of the standard conditions of a licence, the Authority must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (12) A modification made under a relevant power of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of EA 1989.
- (13) The power conferred by a relevant power to “modify” (in relation to licence conditions or a document) includes a power to amend, add to or remove, and references to modifications are to be construed accordingly.

## **65 Consequential amendments**

- (1) In section 3A of EA 1989 (principal objective and general duties), in subsection (2) (b) for “or sections 26 to 29 of the Energy Act 2010” substitute “, sections 26 to 29 of the Energy Act 2010 or Part 2 of the Energy Act 2013”.
- (2) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences)—
  - (a) after paragraph (e) omit “or”;
  - (b) after paragraph (f) insert “or

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- (g) under the Energy Act 2013.”.
- (3) In section 137(3) of the Energy Act 2004 (standard conditions of transmission licences)—
- (a) after paragraph (d) omit “or”;
  - (b) after paragraph (e) insert “, or
  - (f) under the Energy Act 2013,”.
- (4) In section 146(5) of the Energy Act 2004 (standard conditions for electricity interconnectors), for “or under section 98 of the Energy Act 2011” substitute “, under section 98 of the Energy Act 2011 or under section 37 or 45 of the Energy Act 2013.”.

## 66 Review of certain provisions of Part 2

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the day on which this Act is passed, the Secretary of State must carry out a review of the provisions of the following Chapters of this Part—
- (a) Chapter 2 (contracts for difference);
  - (b) Chapter 3 (capacity market);
  - (c) Chapter 5 (conflicts of interest and contingency arrangements);
  - (d) Chapter 6 (access to markets);
  - (e) Chapter 7 (the renewables obligation: transitional arrangements);
  - (f) Chapter 8 (emissions performance standard).
- (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 each Chapter subject to review,
  - (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.

## PART 3

### NUCLEAR REGULATION

## CHAPTER 1

### THE ONR’S PURPOSES

## 67 The ONR’s purposes

In this Part, “the ONR’s purposes” means—

- (a) the nuclear safety purposes (see section 68),
- (b) the nuclear site health and safety purposes (see section 69),
- (c) the nuclear security purposes (see section 70),



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- (d) the nuclear safeguards purposes (see section 72), and
- (e) the transport purposes (see section 73).

## **68 Nuclear safety purposes**

(1) In this Part, the “nuclear safety purposes” means the purposes of protecting persons against risks of harm from ionising radiations from GB nuclear sites, including through

- (a) the design and construction of relevant nuclear installations and their associated sites,
- (b) arrangements for the operation and decommissioning of, and other processes connected with, relevant nuclear installations,
- (c) arrangements for the storage and use of nuclear matter on GB nuclear sites, and
- (d) arrangements to minimise those risks in the event of an escape or release of such ionising radiations.

(2) For this purpose, ionising radiations from GB nuclear sites are ionising radiations from

- (a) relevant nuclear installations, or
- (b) nuclear matter stored or used on a GB nuclear site;

and an escape or release of ionising radiations from a GB nuclear site includes ionising radiations from nuclear matter that has escaped or been released on or from a GB nuclear site.

(3) In this section—

“GB nuclear site” means a nuclear site in England, Wales or Scotland;

“nuclear installation” has the same meaning as in the Nuclear Installations Act 1965 (see section 26 of that Act);

“nuclear matter” has the same meaning as in that Act (see section 26 of that Act);

“relevant nuclear installation” means a nuclear installation on a site (its “associated site”) in England, Wales or Scotland for which a nuclear site licence is required by virtue of the installation (and includes a proposed or former nuclear installation in respect of which such a licence would be or has ever been so required).

## **69 Nuclear site health and safety purposes**

(1) In this Part, the “nuclear site health and safety purposes” means so much of the general purposes of Part 1 of the 1974 Act as consists of the following purposes—

- (a) securing the health, safety and welfare of persons at work on GB nuclear sites;
- (b) protecting persons, other than persons at work on GB nuclear sites, against risks to health or safety arising out of or in connection with the activities of persons at work on GB nuclear sites;
- (c) controlling the storage and use on GB nuclear sites of dangerous substances and generally preventing the unlawful acquisition, possession and use of such substances on or from such sites.

(2) In this section—

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- (a) “dangerous substances” means radioactive, explosive, highly flammable or otherwise dangerous substances, other than nuclear matter;
  - (b) “GB nuclear site” and “nuclear matter” have the same meanings as in section 68.
- (3) Section 1(3) of the 1974 Act (interpretation of references to risks relating to persons at work) applies for the purposes of this section as it applies for the purposes of Part 1 of the 1974 Act.

## 70 Nuclear security purposes

- (1) In this Part, the “nuclear security purposes” means the purposes of ensuring the security of—
- (a) civil nuclear premises;
  - (b) nuclear material used or stored on civil nuclear premises and equipment or software used or stored on such premises in connection with activities involving nuclear material;
  - (c) other radioactive material used or stored on civil nuclear sites and equipment or software used or stored on civil nuclear sites in connection with activities involving such other radioactive material;
  - (d) civil nuclear construction sites and equipment used or stored on civil nuclear construction sites;
  - (e) equipment or software in the United Kingdom which—
    - (i) is capable of being used in, or in connection with, the enrichment of uranium, and
    - (ii) is in the possession or control of a person involved in uranium enrichment activities;
  - (f) sensitive nuclear information which is in the United Kingdom in the possession or control of—
    - (i) a person who is involved in activities on or in relation to civil nuclear premises or who is proposing or likely to become so involved;
    - (ii) a person involved in uranium enrichment activities; or
    - (iii) a person who is storing, transporting or transmitting the information for or on behalf of a person falling within sub-paragraph (i) or (ii);
  - (g) nuclear material which is being (or is expected to be)—
    - (i) transported within the United Kingdom or its territorial sea,
    - (ii) transported (outside the United Kingdom and its territorial sea) to or from any civil nuclear premises in the United Kingdom, or
    - (iii) carried on board a United Kingdom ship,
 other than material being (or expected to be) so transported or carried for defence purposes;
  - (h) information relating to the security of anything mentioned in paragraphs (a) to (g).
- (2) For the purposes of subsection (1), ensuring the security of any site or premises includes doing so by means of the design of, or of anything on, the site or premises.
- (3) In this section—
- “civil nuclear construction site” means a site—

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- (a) on which works are being carried out with a view to its becoming a civil nuclear site, and
- (b) which is situated within 5 kilometres of an existing nuclear site;  
“civil nuclear premises” means—
  - (a) a civil nuclear site, or
  - (b) other premises on which nuclear material is used or stored which are not controlled or operated wholly or mainly for defence purposes;“civil nuclear site” means a nuclear site other than one controlled or operated wholly or mainly for defence purposes;  
“defence purposes” means the purposes of the department of the Secretary of State with responsibility for defence;  
“enrichment of uranium” means a treatment of uranium that increases the proportion of isotope 235 contained in the uranium;  
“equipment” includes equipment that has not been assembled and its components;  
“nuclear material” means any fissile material in the form of—
  - (a) uranium metal, alloy or compound, or
  - (b) plutonium metal, alloy or compound,or any other fissile material prescribed by regulations made by the Secretary of State;  
“sensitive nuclear information” means—
  - (a) information relating to, or capable of use in connection with, the enrichment of uranium, or
  - (b) information of a description for the time being specified in a notice under section 71;“United Kingdom ship” means a ship registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995.

## **71 Notice by Secretary of State to ONR specifying sensitive nuclear information**

- (1) This section applies where the Secretary of State considers that information of any description relating to activities carried out on or in relation to civil nuclear premises is information which needs to be protected in the interests of national security.
- (2) The Secretary of State may give a notice to the ONR under this section specifying that description of information.
- (3) The Secretary of State may vary or revoke any notice given under this section by giving a further notice to the ONR.
- (4) Before giving a notice under this section, the Secretary of State must consult the ONR.
- (5) In this section “civil nuclear premises” has the same meaning as in section 70.

## **72 Nuclear safeguards purposes**

- (1) In this Part, the “nuclear safeguards purposes” means the purposes of—
  - (a) ensuring compliance by the United Kingdom or, as the case may be, enabling or facilitating compliance by a Minister of the Crown, with the safeguards obligations, and
  - (b) the development of any future safeguards obligations.

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(2) In subsection (1)(a) “the safeguards obligations” has the meaning given by section 93.

### 73 **Transport purposes**

- (1) In this Part, the “transport purposes” means the purposes of—
- (a) protecting against risks relating to the civil transport of radioactive material in Great Britain by road, rail or inland waterway which arise out of, or in connection with, the radioactive nature of the material, and
  - (b) ensuring the security of radioactive material during civil transport in Great Britain by road, rail or inland waterway.
- (2) For this purpose—
- (a) “civil transport” means transport otherwise than for the purposes of the department of the Secretary of State with responsibility for defence;
  - (b) “radioactive material”—
    - (i) in relation to transport by road, has the same meaning as in ADR,
    - (ii) in relation to transport by rail, has the same meaning as in RID, and
    - (iii) in relation to transport by inland waterway, has the same meaning as in ADN;
  - (c) the transport of material begins with any preparatory process (such as packaging) and continues until the material has been unloaded at its destination.
- (3) In subsection (2)(b)—
- “ADN” means the Regulations annexed to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway (signed at Geneva on 26 May 2000);
- “ADR” means Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road (signed at Geneva on 30 September 1957);
- “RID” means the Annex to Appendix C to the Convention concerning International Carriage by Rail (signed at Berne on 9 May 1980) (the Regulation concerning the International Carriage of Dangerous Goods by Rail);
- and any reference to, or to an appendix to, an Agreement, a Convention or a Treaty, or to an annex to any of them, is to it as it has effect for the time being.
- (4) The Secretary of State may by regulations modify the definition of “radioactive material”.

## CHAPTER 2

### NUCLEAR REGULATIONS

### 74 **Nuclear regulations**

- (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;

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- (b) the nuclear security purposes;
  - (c) the nuclear safeguards purposes;
  - (d) the transport purposes.
- (2) Schedule 6 (which gives examples of particular kinds of provision that may be made by nuclear regulations) has effect.
- (3) Nuclear regulations may—
  - (a) confer functions on the ONR;
  - (b) create powers which inspectors may be authorised to exercise by their instruments of appointment under paragraph 2 of Schedule 8;
  - (c) create offences (as to which see section 75);
  - (d) modify—
    - (i) any of the provisions of the Nuclear Installations Act 1965 that are relevant statutory provisions;
    - (ii) any provision of the Nuclear Safeguards Act 2000;
  - (e) provide for exemptions (including conditional exemptions) from any prohibition or requirement imposed by or under any of the relevant statutory provisions;
  - (f) provide for defences in relation to offences under any of the relevant statutory provisions;
  - (g) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.
- (4) Provision that may be included by virtue of subsection (3)(a) includes, in particular,—
  - (a) provision requiring compliance with directions by the ONR;
  - (b) provision conferring power for the ONR to authorise other persons to exercise functions relating to the grant of exemptions of a kind mentioned in subsection (3)(e).
- (5) Nuclear regulations may make provision—
  - (a) applying to acts done outside the United Kingdom by United Kingdom persons;
  - (b) for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of conferring jurisdiction on any court in relation to any such offence.
- (6) In subsection (5) “United Kingdom person” means—
  - (a) an individual who is—
    - (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
    - (ii) a person who under the British Nationality Act 1981 is a British subject, or
    - (iii) a British protected person within the meaning of that Act,
  - (b) a Scottish partnership, or
  - (c) a body incorporated under the law of any part of the United Kingdom.
- (7) Before making nuclear regulations, the Secretary of State must consult—
  - (a) the ONR,

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- (b) if the regulations would modify any provision of health and safety regulations (within the meaning of Part 1 of the 1974 Act), the Health and Safety Executive, and
  - (c) such other persons (if any) as the Secretary of State considers it appropriate to consult.
- (8) Subsection (7)(a) does not apply if the regulations give effect, without modification, to proposals submitted by the ONR under section 81(1)(a)(i).
- (9) Nuclear regulations which include any provisions to which any paragraph of subsection (10) applies must identify those provisions as such.
- (10) This subsection applies to any provisions of nuclear regulations which are made for—
- (a) the nuclear security purposes,
  - (b) the nuclear safeguards purposes, or
  - (c) both of those purposes,
- and for no other purpose.
- (11) In this section (and Schedule 6) “specified” means specified in nuclear regulations.

## 75 Nuclear regulations: offences

- (1) Nuclear regulations may provide for an offence under the regulations to be triable—
- (a) only summarily, or
  - (b) either summarily or on indictment.
- (2) Nuclear regulations may provide for an offence under the regulations that is triable either way to be punishable—
- (a) on conviction on indictment—
    - (i) with imprisonment for a term not exceeding the period specified, which may not exceed 2 years,
    - (ii) with a fine, or
    - (iii) with both,
  - (b) on summary conviction—
    - (i) with imprisonment for a term not exceeding the period specified,
    - (ii) with, in England and Wales, a fine or, in Scotland or Northern Ireland, a fine not exceeding the amount specified (which must not exceed £20,000), or
    - (iii) with both.
- (3) A period specified under subsection (2)(b)(i) may not exceed—
- (a) in relation to England and Wales—
    - (i) 6 months, in relation to offences committed before the date on which section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s power to imprison) comes into force,
    - (ii) 12 months, in relation to offences committed after that date,
  - (b) in relation to Scotland, 12 months,
  - (c) in relation to Northern Ireland, 6 months.
- (4) Nuclear regulations may provide for a summary offence under the regulations to be punishable—

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- (a) with imprisonment for a term not exceeding the period specified,
  - (b) with—
    - (i) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale, or
  - (c) with both.
- (5) A period specified under subsection (4)(a) may not exceed—
- (a) in relation to England and Wales—
    - (i) 6 months, in relation to offences committed before the date on which section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences) comes into force, or
    - (ii) 51 weeks, in relation to offences committed after that date,
  - (b) in relation to Scotland, 12 months,
  - (c) in relation to Northern Ireland, 6 months.
- (6) In this section “specified” means specified in nuclear regulations.

## **76 Nuclear regulations: civil liability**

- (1) Nuclear regulations may provide for breach of a relevant nuclear duty to be actionable (whether or not they also provide for it to be an offence).
- (2) Except so far as nuclear regulations provide, any such breach does not give rise to a claim for breach of statutory duty.
- (3) Nuclear regulations may provide for—
  - (a) defences in relation to any action for breach of a relevant nuclear duty;
  - (b) any term of an agreement which purports to exclude or restrict liability for breach of a relevant nuclear duty to be void.
- (4) For this purpose “relevant nuclear duty” means a duty imposed by—
  - (a) nuclear regulations, or
  - (b) any provision of, or made under, the Nuclear Installations Act 1965 that is a relevant statutory provision.
- (5) Nothing in this section affects any right of action or defence which otherwise exists or may be available.

## **CHAPTER 3**

### **OFFICE FOR NUCLEAR REGULATION**

## **77 The Office for Nuclear Regulation**

- (1) There is to be a body corporate known as the Office for Nuclear Regulation.
- (2) In this Part that body is referred to as “the ONR”.
- (3) Schedule 7 makes further provision about the ONR.

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## CHAPTER 4

### FUNCTIONS OF THE ONR

#### *Functions of ONR: general*

#### **78 Principal function**

- (1) The ONR must do whatever it considers appropriate for the ONR's purposes.
- (2) That includes, so far as it considers appropriate, assisting and encouraging others to further those purposes.

#### **79 Codes of practice**

- (1) The ONR may, in accordance with section 80—
  - (a) issue codes of practice giving practical guidance as to the requirements of any provision of the relevant statutory provisions;
  - (b) revise or withdraw a code of practice issued under this section.
- (2) A code of practice (including a revised code) must specify the relevant statutory provisions to which it relates.
- (3) References in this Part to an approved code of practice are references to a code issued under this section as it has effect for the time being.
- (4) A person's failure to observe any provision of an approved code of practice does not of itself make the person liable to any civil or criminal proceedings.
- (5) But subsections (6) to (8) apply to any proceedings for an offence where—
  - (a) the offence consists of failing to comply with any requirement or prohibition imposed by or under any of the relevant statutory provisions, and
  - (b) at the time of the alleged failure, there was an approved code of practice relating to the provision.
- (6) Any provision of the code of practice which appears to the court to be relevant to the alleged offence is admissible in evidence in the proceedings.
- (7) Where—
  - (a) in order to establish that the defendant failed to comply with the requirement or prohibition, the prosecution must prove any matter,
  - (b) the court is satisfied that a provision of the code of practice is relevant to that matter, and
  - (c) the prosecution prove that, at a material time, the defendant failed to observe that provision of the code of practice,
 that matter is to be taken as proved unless the defendant proves that the requirement or prohibition was complied with in some other way.
- (8) A document purporting to be an approved code of practice is to be taken to be such an approved code unless the contrary is proved.



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## **80 Procedure for issue, revision or withdrawal of codes of practice**

- (1) The ONR may—
  - (a) issue or revise a code of practice under section 79 only in accordance with subsection (8);
  - (b) withdraw a code of practice under that section only in accordance with subsection (11).
- (2) Before issuing, or revising or withdrawing, a code of practice, the ONR must submit a proposal to the Secretary of State.
- (3) Before submitting a proposal to the Secretary of State the ONR must consult—
  - (a) any government department or other person that the Secretary of State has directed the ONR to consult, and
  - (b) any other government department or other person that the ONR considers it appropriate to consult,  
about the proposal.
- (4) A direction under subsection (3)(a) may be general or may relate to a particular code, or codes of a particular kind.
- (5) A proposal for issuing or revising a code of practice must include a draft code of practice or, as the case may be, proposed revisions of a code of practice.
- (6) Where the ONR submits a proposal for issuing or revising a code of practice to the Secretary of State, the Secretary of State may approve the draft code of practice, or proposed revisions, as the case may be—
  - (a) without modification, or
  - (b) with the consent of the ONR, with modifications.
- (7) If the Secretary of State approves the draft code or proposed revisions, the Secretary of State must lay before Parliament the draft code or proposed revisions in the form approved.
- (8) Where—
  - (a) the Secretary of State has laid a draft code or proposed revisions of a code before Parliament, and
  - (b) no negative resolution is made within the 40-day period,  
the ONR may issue the code in the form of the draft laid before Parliament or, as the case may be, make the proposed revisions in the form so laid.
- (9) For the purpose of subsection (8)—
  - (a) a “negative resolution”, in relation to a draft code or proposed revisions, means a resolution of either House of Parliament not to approve the draft code or proposed revisions;
  - (b) the “40-day period”, in relation to a draft of a code or proposed revisions, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (10) For the purposes of calculating the 40-day period, no account is to be taken of any period during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses are adjourned for more than 4 days.

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- (11) Where—
- (a) the ONR submits to the Secretary of State a proposal for the withdrawal of a code of practice, and
  - (b) the Secretary of State approves the proposal,
- it may withdraw the code.
- (12) The ONR must—
- (a) publish any code of practice issued under section 79;
  - (b) when it revises such a code, publish—
    - (i) a notice to that effect, and
    - (ii) a copy of the revised code;
  - (c) when it withdraws such a code, publish a notice to that effect.

## 81 Proposals about orders and regulations

- (1) The ONR may from time to time—
- (a) submit proposals to the Secretary of State for—
    - (i) nuclear regulations,
    - (ii) regulations under section 85,
    - (iii) regulations under section 101,
    - (iv) health and safety fees regulations, or
    - (v) orders or regulations under a relevant enactment;
  - (b) submit proposals to the Health and Safety Executive for relevant health and safety regulations.
- (2) In this section—
- “health and safety fees regulations” means regulations under section 43(2) of the 1974 Act in relation to fees payable for or in connection with the performance of a function by or on behalf of—
- (a) the ONR, or
  - (b) a health and safety inspector;
- “relevant enactment” means—
- (a) section 3 of the Nuclear Safeguards and Electricity (Finance) Act 1978 (regulations for giving effect to certain provisions of Safeguards Agreement);
  - (b) section 3 of the Nuclear Safeguards Act 2000 (identifying persons who have information);
  - (c) section 5(3) of that Act (rights of access for Agency inspectors);
  - (d) section 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition of disclosures of uranium enrichment technology);
- “relevant health and safety regulations” means regulations under section 15 of the 1974 Act so far as they can be made for the nuclear site health and safety purposes.
- (3) Before submitting any such proposal, the ONR must consult—
- (a) any government department or other person that the Secretary of State has directed the ONR to consult, and
  - (b) any other government department or other person that the ONR considers it appropriate to consult.

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- (4) A direction under subsection (3)(a) may be general or may relate to a particular proposal, or to proposals of a particular kind.

## **82 Enforcement of relevant statutory provisions**

- (1) The ONR must make adequate arrangements for the enforcement of the relevant statutory provisions.
- (2) In this Part, “relevant statutory provisions” means—
- (a) the provisions of—
    - this Part, and
    - nuclear regulations;
  - (b) the provisions made by or under the following sections of the Nuclear Installations Act 1965, so far as they have effect in England and Wales or Scotland—
    - section 1;
    - sections 3 to 6;
    - section 22;
    - section 24A; and
  - (c) the provisions of the Nuclear Safeguards Act 2000.

## **83 Inspectors**

Schedule 8 (appointment and powers of inspectors) has effect.

## **84 Investigations**

- (1) The ONR may—
- (a) investigate and make a report (“a special report”) on any relevant matter, or
  - (b) authorise another person to do so.
- (2) The ONR may publish or arrange for the publication of—
- (a) a special report, or
  - (b) so much of a special report as the ONR considers appropriate.
- (3) In this section “relevant matter” means any accident, occurrence, situation or other matter which the ONR considers it necessary or desirable to investigate—
- (a) for any of the ONR’s purposes, or
  - (b) with a view to the making of—
    - (i) nuclear regulations, or
    - (ii) regulations under section 15 of the 1974 Act (health and safety regulations) so far as they can be made for the nuclear site health and safety purposes.
- (4) The ONR may pay such remuneration, expenses and allowances as it may determine to a person who—
- (a) is not a member or member of staff of the ONR, and
  - (b) investigates a relevant matter or makes a special report under subsection (1), or assists in doing so.

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- (5) The ONR may make such payments as it may determine to meet the other costs (if any) of an investigation or special report under subsection (1).
- (6) The ONR must consult the Office of Rail Regulation before taking any step under subsection (1) in relation to a matter which appears to the ONR to be, or likely to be, relevant to the railway safety purposes (within the meaning given in paragraph 1 of Schedule 3 to the Railways Act 2005).
- (7) Subsection (2) is subject to section 94.

## 85 Inquiries

- (1) The ONR may, with the consent of the Secretary of State, direct an inquiry to be held into any matter if it considers the inquiry necessary or desirable for any of the ONR's purposes.
- (2) In this Part "ONR inquiry" means an inquiry under this section.
- (3) An ONR inquiry must be held in accordance with regulations made by the Secretary of State.
- (4) Except as provided by the regulations—
  - (a) an ONR inquiry is to be held in public; and
  - (b) any report made by the person holding an ONR inquiry is to be published.
- (5) The regulations may in particular make provision—
  - (a) conferring on the person holding an ONR inquiry and any person assisting that person—
    - (i) powers of entry and inspection;
    - (ii) powers of summoning witnesses to give evidence or produce documents;
    - (iii) power to take evidence on oath and to administer oaths;
    - (iv) power to require the making of declarations;
  - (b) as to circumstances in which—
    - (i) an ONR inquiry or any part of it is to be held in private;
    - (ii) any report, or part of a report, made by the person holding an ONR inquiry is not to be published;
  - (c) conferring functions on the ONR or the Secretary of State;
  - (d) creating summary offences.
- (6) An offence under the regulations may be made punishable with—
  - (a) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
  - (b) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale.
- (7) Subsection (8) applies where—
  - (a) the ONR directs an ONR inquiry to be held into a matter arising in Scotland, and
  - (b) the matter in question causes the death of a person.

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- (8) Unless the Lord Advocate otherwise directs, no inquiry is to be held with regard to the death of that person under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

## **86 Inquiries: payments and charges**

- (1) The ONR may pay such remuneration, expenses and allowances as it may determine to—
- (a) a person holding an ONR inquiry;
  - (b) any assessor appointed to assist a person holding an ONR inquiry.
- (2) The ONR may pay to persons attending an ONR inquiry as witnesses such expenses as it may determine.
- (3) The ONR may make such payments as it may determine to meet the other costs (if any) of an ONR inquiry.
- (4) The ONR may require such person or persons to make such payments to it as it considers appropriate in connection with an ONR inquiry.
- (5) The aggregate of the payments required under subsection (4) must not exceed the ONR's costs that are attributable to the ONR inquiry.
- (6) No payment may be required under subsection (4) except with the consent of the Secretary of State.

### *Other functions*

## **87 Provision of information**

- (1) The ONR must make such arrangements as it considers appropriate for providing information that it holds that is relevant to the ONR's purposes.
- (2) Arrangements that may be made under subsection (1) are arrangements of any description, including arrangements—
- (a) for providing information to any person or category of persons (whether or not concerned with matters relevant to the ONR's purposes);
  - (b) for providing information on request or on the ONR's initiative;
  - (c) for providing only such information as the ONR considers appropriate.
- (3) This section is subject to section 94.

## **88 Research, training etc**

- (1) The ONR—
- (a) may carry out research in connection with the ONR's purposes, or arrange for such research to be carried out on its behalf, and
  - (b) must, if it considers it appropriate to do so, publish the results of any such research or arrange for them to be published.
- (2) The ONR may make payments for research to be carried out in connection with the ONR's purposes and for the dissemination of information derived from such research.

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- (3) The ONR may provide, or make arrangements for the provision of, training to any person in connection with the ONR’s purposes.
- (4) Arrangements under subsection (3) may include provision for payments to be made to the ONR by or on behalf of—
  - (a) other parties to the arrangements,
  - (b) persons to whom the training is provided.

## 89 Provision of information or advice to relevant authorities

- (1) The ONR must, on request, provide a relevant authority with relevant information or relevant advice.
- (2) Relevant information is information about the ONR’s activities which is requested—
  - (a) in the case of information requested by a Minister of the Crown—
    - (i) for the purpose of monitoring the ONR’s performance of its functions, or
    - (ii) for the purpose of any proceedings in Parliament,
  - (b) in any case, in connection with any matter with which the relevant authority requesting it is concerned.
- (3) The reference in subsection (2) to the ONR’s activities includes a reference to—
  - (a) the activities of inspectors appointed by the ONR under—
    - (i) Schedule 8,
    - (ii) section 19 of the 1974 Act, or
    - (iii) Article 26 of the Regulatory Reform (Fire Safety) Order 2005 ([S.I. 2005/1541](#)),
 in their capacity as such inspectors, and
  - (b) the activities of enforcing officers appointed by the ONR under section 61(3) of the Fire (Scotland) Act 2005 ([asp. 5](#)) in their capacity as such enforcing officers.
- (4) Relevant advice is advice on a matter with which the relevant authority requesting it is concerned where the matter—
  - (a) is relevant to the ONR’s purposes, or
  - (b) is one on which expert advice is obtainable from any member or member of staff of the ONR.
- (5) The ONR may require a relevant authority to whom information or advice is provided under subsection (1) to pay a fee in respect of the ONR’s costs reasonably incurred in providing the authority with—
  - (a) relevant information requested under subsection (2)(b), or
  - (b) relevant advice.
- (6) The Secretary of State may by regulations provide that subsection (5) is not to apply in particular cases or classes of case or in particular circumstances.
- (7) The duty under subsection (1) is in addition to any other duty or power of the ONR to provide information or advice.
- (8) In this section “relevant authority” means any of the following—
  - (a) a Minister of the Crown;

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- (b) the Scottish Ministers;
- (c) the Welsh Ministers;
- (d) a Northern Ireland Department;
- (e) the Health and Safety Executive;
- (f) the Health and Safety Executive for Northern Ireland;
- (g) the Civil Aviation Authority;
- (h) the Office of Rail Regulation.

## **90 Arrangements with government departments etc**

- (1) If the condition in subsection (2) is met, the ONR may enter into an agreement with a Minister of the Crown, a government department or a public authority for the ONR to perform any function exercisable by the Minister, department or authority.
- (2) The condition is that—
  - (a) the function is—
    - (i) a function of the Health and Safety Executive of investigating or making a special report under section 14 of the 1974 Act, or
    - (ii) a function of the Office of Rail Regulation of investigating or making a special report under paragraph 4 of Schedule 3 to the Railways Act 2005, or
  - (b) the Secretary of State considers that the function in question can appropriately be performed by the ONR.
- (3) The functions to which an agreement under subsection (1) may relate—
  - (a) in the case of an agreement with a Minister of the Crown, include a function not conferred by an enactment;
  - (b) do not include any power to make regulations or other instruments of a legislative character.
- (4) An agreement under subsection (1) may provide for functions to be performed with or without payment.
- (5) The ONR may provide services or facilities, with or without payment, otherwise than for the ONR's purposes, to a government department or public authority in connection with the exercise of that department's or authority's functions.

## **91 Provision of services or facilities**

- (1) The ONR may provide services and facilities for the ONR's purposes to any person.
- (2) The ONR may, with the consent of the Secretary of State, provide any relevant services to any person, whether or not in the United Kingdom.
- (3) In subsection (2), "relevant services" means services which—
  - (a) are not relevant to the ONR's purposes, but
  - (b) are in a field in which any member or member of staff of the ONR has particular expertise.
- (4) The Secretary of State may give consent for the purposes of subsection (2)—
  - (a) in relation to particular arrangements for the provision of services, or
  - (b) generally in relation to such arrangements of a particular description.

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- (5) Arrangements for the provision of services to a person under subsection (2) are to be on such terms as to payment as that person and the ONR may agree.

*Exercise of functions: general*

**92 Directions from Secretary of State**

- (1) The Secretary of State may give the ONR a direction as to the exercise by it of—
  - (a) its functions generally, or
  - (b) any of its functions specifically.
- (2) A direction given by the Secretary of State under subsection (1)—
  - (a) may modify a function of the ONR, but
  - (b) must not confer functions on the ONR (other than a function of which it was deprived by a previous direction given under this section).
- (3) The Secretary of State may give the ONR such directions as appear to the Secretary of State to be necessary or desirable in the interests of national security.
- (4) A direction given by the Secretary of State under subsection (3) may—
  - (a) modify a function of the ONR,
  - (b) confer a function on the ONR.
- (5) A direction under subsection (1) or (3) must not be given in relation to the exercise of a regulatory function in a particular case.
- (6) If the Secretary of State is satisfied that there are exceptional circumstances relating to national security which justify giving a direction under this subsection, the Secretary of State may give the ONR a direction as to the exercise by the ONR of a regulatory function in a particular case.
- (7) A direction given under subsection (6) must be for the nuclear security purposes.
- (8) The Secretary of State must lay before Parliament a copy of any direction given under this section.
- (9) Subsection (8) does not apply to a direction under subsection (6) if the Secretary of State considers that publishing the direction would be contrary to the interests of national security; but, in that event, the Secretary of State must lay before Parliament a memorandum stating that such a direction has been given and the date on which it was given.

**93 Compliance with nuclear safeguards obligations**

- (1) The ONR must do such things as it considers best calculated to secure compliance by the United Kingdom or, as the case may be, to enable or facilitate compliance by a Minister of the Crown, with the safeguards obligations.
- (2) For the purposes of this Part “the safeguards obligations” are—
  - (a) Articles 77 to 85 of the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957,
  - (b) the agreement made on 6 September 1976 between the United Kingdom, the European Atomic Energy Community and the International Atomic Energy



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Agency for the application of safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons,

- (c) the protocol signed at Vienna on 22 September 1998 additional to the agreement mentioned in paragraph (b), and
- (d) such other obligations, agreements or arrangements relating to nuclear safeguards as may be specified in a notice given to the ONR by the Secretary of State;

and any reference in paragraphs (a) to (c) to a treaty, agreement or protocol is to it as it has effect for the time being.

- (3) The Secretary of State may vary or revoke a notice given under subsection (2)(d) by giving a further notice to the ONR.
- (4) Before giving a notice under this section, the Secretary of State must consult the ONR.
- (5) The ONR must publish any notice given under this section.
- (6) Subsection (1) is not to be taken to affect the generality of section 78.

#### **94 Consent of Secretary of State for certain communications**

- (1) The ONR must not issue any communication to which this section applies except with the consent of the Secretary of State.
- (2) This section applies to—
  - (a) any—
    - (i) security guidance, or
    - (ii) statement of the ONR’s nuclear security policy,that the ONR considers concerns any matter to which any government policy on national security relates;
  - (b) any other communication of a description that the Secretary of State has directed should be submitted to the Secretary of State before being issued.

This is subject to subsection (3).

- (3) This section does not apply to—
  - (a) a code of practice issued under section 79;
  - (b) the ONR’s strategy or annual plan or a report under paragraph 24 of Schedule 7;
  - (c) advice given in a particular case.

- (4) In this section—

“government policy on national security” means any current policy which relates to national security and—

- (a) has been published by or on behalf of Her Majesty’s Government, or
- (b) has been notified to the ONR by the Secretary of State;

“security guidance” means any guidance to which the ONR’s nuclear security policy is relevant;

“the ONR’s nuclear security policy” means the ONR’s policy with respect to the exercise of its functions, or the functions of inspectors, so far as relevant to the nuclear security purposes.

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- (5) The Secretary of State may give a direction under subsection (2)(b) in relation to a description of communication only if it appears to the Secretary of State—
- (a) that—
    - (i) a communication of that description might contain security guidance or information about the ONR’s nuclear security policy, or
    - (ii) the ONR’s nuclear security policy might otherwise be relevant to such a communication, and
  - (b) that such a communication might concern any matter to which any government policy on national security relates.
- (6) The Secretary of State may give the ONR a general consent in relation to the issue of a particular description of communication which would otherwise fall within subsection (2)(a).
- (7) If the Secretary of State has given such a general consent, the ONR need not seek the Secretary of State’s particular consent in relation to the issue of a communication of that description unless directed by the Secretary of State to do so.

**95 Power to arrange for exercise of functions by others**

- (1) If the condition in subsection (2) is satisfied, the ONR may make arrangements with a government department or other person for that department or person to perform any of the ONR’s functions, with or without payment.
- (2) That condition is that the Secretary of State considers that the function or functions in question can appropriately be performed by the government department or other person.

**96 Co-operation between ONR and Health and Safety Executive**

- (1) The Health and Safety Executive and the ONR must enter into and maintain arrangements with each other for securing co-operation and the exchange of information in connection with the carrying out of any of their functions.
- (2) The Health and Safety Executive and the ONR must—
  - (a) review the arrangements from time to time, and
  - (b) revise them when they consider it appropriate to do so.

*Information etc*

**97 Power to obtain information**

- (1) The ONR may by notice require a person to provide information which the ONR needs for carrying out its functions.  
 This is subject to subsection (4).
- (2) A notice may require information to be provided—
  - (a) in a specified form or manner;
  - (b) at a specified time;
  - (c) in respect of a specified period.

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- (3) In particular, a notice may require the person to whom it is given to make returns to the ONR containing information about matters specified in the notice at times or intervals so specified.
- (4) No notice may be given under this section which imposes a requirement which could be imposed by a notice served by the ONR under section 2 of the Nuclear Safeguards Act 2000 (information and records for purposes of the Additional Protocol).
- (5) It is an offence to refuse or fail to comply with a notice under this section.
- (6) A person who commits an offence under this section is liable—
  - (a) on summary conviction, to—
    - (i) in England and Wales, a fine, or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

## **98 Powers of HMRC in relation to information**

- (1) The Commissioners for Her Majesty’s Revenue and Customs may disclose information about imports to—
  - (a) the ONR,
  - (b) an inspector, or
  - (c) a health and safety inspector,for the purpose of facilitating the ONR, inspector or health and safety inspector to carry out any function.
- (2) For this purpose, “information about imports” means information obtained or held by the Commissioners for the purposes of the exercise of their functions in relation to imports.
- (3) Information may be disclosed to the ONR, an inspector or a health and safety inspector under subsection (1) whether or not the disclosure of the information has been requested by or on behalf of the ONR, inspector or health and safety inspector.

## **99 HMRC power to seize articles etc to facilitate ONR and inspectors**

- (1) An officer of Revenue and Customs may seize any imported article or substance and detain it for the purpose of facilitating the ONR or an inspector to carry out any function under the relevant statutory provisions.
- (2) It is an offence for a person intentionally to obstruct an officer of Revenue and Customs in the exercise of powers under subsection (1).
- (3) A person who commits an offence under subsection (2) is liable on summary conviction—
  - (a) to imprisonment for a term not exceeding 51 weeks (in England and Wales), 12 months (in Scotland) or 6 months (in Northern Ireland),
  - (b) to—
    - (i) in England and Wales, a fine, or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding level 5 on the standard scale, or

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- (c) to both.
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in subsection (3)(a), as it has effect in England and Wales, to 51 weeks is to be read as a reference to 6 months.
- (5) Anything seized and detained under subsection (1)—
  - (a) must not be detained for more than 2 working days, and
  - (b) must be dealt with during the period of detention in such manner as the Commissioners for Her Majesty’s Revenue and Customs may direct.
- (6) In subsection (5), the reference to 2 working days is a reference to the period of 48 hours beginning when the article or substance in question is seized but disregarding any time falling on a Saturday or Sunday, or on Good Friday or Christmas Day or on a day which is a bank holiday in the part of the United Kingdom where it is seized.

## 100 Disclosure of information

Schedule 9 (disclosure of information) has effect.

### *Fees*

## 101 Fees

- (1) The Secretary of State may by regulations provide for fees to be payable for, or in connection with, the performance of any of the following functions (whenever conferred)—
  - (a) any function of the ONR or an inspector under any of the relevant statutory provisions;
  - (b) any function of the ONR under regulations under section 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition of disclosures of uranium enrichment technology);
  - (c) any function of any other person under any of the relevant statutory provisions.
- (2) The amount of any fee under regulations under this section must be—
  - (a) specified in the regulations, or
  - (b) determined by or in accordance with the regulations.
- (3) Regulations under this section may provide for the amounts of fees to be different in different cases and, in particular, for fees in respect of the same function to be of different amounts in different circumstances.
- (4) Regulations under this section may not provide for a fee to be payable by anyone in the capacity of—
  - an employee,
  - a person seeking employment,
  - a person training for employment, or
  - a person seeking training for employment.
- (5) For the purposes of subsection (4)—

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- (a) “employee” and “employment” have the same meanings as in Part 1 of the 1974 Act, and
  - (b) an industrial rehabilitation course provided by virtue of the Employment and Training Act 1973 is to be treated as training for employment.
- (6) Before making regulations under subsection (1), the Secretary of State must consult—
- (a) the ONR, and
  - (b) such other persons (if any) as the Secretary of State considers it appropriate to consult.
- (7) Subsection (6)(a) does not apply if the regulations give effect, without modification, to any proposals submitted by the ONR under section 81(1)(a)(iii).

## CHAPTER 5

### SUPPLEMENTARY

#### *General duties of employers, employees and others*

#### **102 General duty of employees at work in relation to requirements imposed on others**

- (1) Every employee, while at work, must co-operate with any person (whether or not the employer) on whom a requirement is imposed by or under any relevant provision so far as necessary to enable the requirement to be complied with.
- (2) Failure to comply with the duty in subsection (1) is an offence.
- (3) A person who commits an offence under subsection (2) is liable—
  - (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding the statutory maximum (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (4) In the application of subsection (3) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s power to imprison), the reference in subsection (3)(a)(i) to 12 months is to be read as a reference to 6 months.
- (5) In this section—
  - (a) “employee” and “employer” have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act), and
  - (b) “relevant provision” means any of the relevant statutory provisions other than—
    - (i) any provision of the Nuclear Safeguards Act 2000,

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- (ii) any provision of nuclear regulations which is identified under section 74(9) as having been made solely for the nuclear safeguards purposes.

**103 Duty not to interfere with or misuse certain things provided under statutory requirements**

- (1) It is an offence intentionally or recklessly to interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.
- (2) A person who commits an offence under this section is liable—
  - (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in subsection (2)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

**104 Duty not to charge employees for certain things**

- (1) It is an offence for an employer to impose a charge, or allow a charge to be imposed, on an employee in respect of anything done or provided in pursuance of a specific requirement imposed by or under any relevant provision.
- (2) A person who commits an offence under this section is liable—
  - (a) on summary conviction to—
    - (i) in England and Wales, a fine, or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding £20,000;
  - (b) on conviction on indictment, to a fine.
- (3) In this section—
  - (a) “employer” and “employee” have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act), and
  - (b) “relevant provision” has the same meaning as in section 102.

*Offences*

**105 Offences relating to false information and deception**

- (1) It is an offence for a person—

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- (a) to make a statement which the person knows to be false, or
  - (b) recklessly to make a statement which is false,
- in the circumstances mentioned in subsection (2).
- (2) Those circumstances are where the statement is made—
- (a) in purported compliance with any requirement to provide information imposed by or under any of the relevant statutory provisions, or
  - (b) for the purposes of obtaining the issue of a document under any of the relevant statutory provisions (whether for the person making the statement or anyone else).
- (3) It is an offence for a person—
- (a) intentionally to make a false entry in a relevant document, or
  - (b) with intent to deceive, to make use of any such entry which the person knows to be false.
- (4) In subsection (3) “relevant document” means any register, record, notice or other document which is required to be kept or given by or under any of the relevant statutory provisions.
- (5) It is an offence for a person, with intent to deceive—
- (a) to use a relevant document,
  - (b) to make or have possession of a document so closely resembling a relevant document as to be calculated to deceive.
- (6) In subsection (5) “relevant document” means a document—
- (a) issued or authorised to be issued under any of the relevant statutory provisions, or
  - (b) required for the purpose of any of those provisions.
- (7) A person who commits an offence under this section is liable—
- (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (8) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s powers to imprison), the reference in subsection (7)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

## **106 Provision relating to offences under certain relevant statutory provisions**

- (1) Schedule 10 (provision relating to offences under certain relevant statutory provisions) has effect.

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- (2) That Schedule contains provision about the following matters—
- (a) the place where an offence involving plant or a substance may be treated as having been committed;
  - (b) the extension of time for bringing summary proceedings in certain cases;
  - (c) the continuation of offences;
  - (d) where an offence committed by one person is due to the act or default of another person, the liability of that other person;
  - (e) offences by bodies corporate or partnerships;
  - (f) restrictions on the persons who may institute proceedings in England and Wales;
  - (g) powers of inspectors to prosecute offences;
  - (h) the burden of proof in certain cases relating to what is practicable or what are the best means for doing something;
  - (i) reliance on entries in a register or other document as evidence;
  - (j) power of the court to order a defendant to take remedial action.

*Civil liability*

**107 Civil liability: saving for section 12 of the Nuclear Installations Act 1965**

Nothing in this Part affects the operation of section 12 of the Nuclear Installations Act 1965 (right to compensation by virtue of certain provisions of that Act).

*Supplementary*

**108 Reporting requirements of Secretary of State**

- (1) As soon as reasonably practicable after the end of the financial year, the Secretary of State must make a report to each House of Parliament on the use of the Secretary of State's powers under this Part during the year.
- (2) The Secretary of State must lay a copy of any such report before Parliament.

**109 Notices etc**

- (1) In this section references to a notice are to a notice or other document that is required or authorised to be given to any person under a relevant provision.
- (2) A notice to the person must be in writing.
- (3) A notice may be given by—
  - (a) delivering it to the person,
  - (b) leaving it at the person's proper address,
  - (c) sending it by post to the person at that address, or
  - (d) in the case of a notice to be given to the owner or occupier of any premises (whether or not a body corporate), in accordance with subsection (9), (10) or (11).
- (4) A notice may—



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- (a) in the case of a body corporate, be given in accordance with subsection (3) to a director, manager, secretary or other similar officer of the body corporate, and
  - (b) in the case of a partnership, be given in accordance with subsection (3) to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.
- (5) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the “proper address” is—
- (a) in the case of a notice to be given to a body corporate or an officer of the body, the address of the registered or principal office of the body;
  - (b) in the case of a notice to be given to a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership;
  - (c) in any other case, the last known address of the person to whom the notice is to be given.
- (6) For the purposes of subsection (5), the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (7) Subsection (8) applies if—
- (a) a person has specified an address in the United Kingdom as one at which the person, or someone on the person’s behalf, will accept documents of the same description as a notice, and
  - (b) the address so specified is not the person’s proper address (as determined under subsection (5)).
- (8) The specified address is also to be treated as the person’s proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section.
- (9) A notice that is to be given to the owner or occupier of any premises may be given by—
- (a) sending it by post to the person at those premises, or
  - (b) addressing it by name to the person and delivering it to some responsible person who is or appears to be resident or employed at the premises.
- (10) If the name or address of an owner or occupier of premises cannot be ascertained after reasonable inquiry, a notice to the owner or occupier may be given by—
- (a) addressing it by the description “owner” or “occupier” of the premises to which the notice relates (and describing the premises), and
  - (b) delivering it to some responsible person who is or appears to be resident or employed there.
- (11) If there is no person as mentioned in subsection (10)(b), then the notice may be given by fixing it, or a copy of it, to some conspicuous part of the premises.
- (12) This section is subject to provision made in regulations under this Part in respect of notices given under the regulations.
- (13) In this section—
- “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;
  - “employed” has the same meaning as in the 1974 Act;

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“relevant provision” means any of the relevant statutory provisions other than a provision of the Nuclear Safeguards Act 2000;  
and references to giving a notice include similar expressions (such as serving or sending).

## **110 Electronic delivery of notices etc**

- (1) This section applies where—
  - (a) section 109 authorises the giving of a notice or other document by its delivery to a particular person (“the recipient”), and
  - (b) the notice or other document is transmitted to the recipient—
    - (i) by means of an electronic communications network, or
    - (ii) by other means but in a form that requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of section 109 as a delivery of the notice or other document to the recipient, but only if the recipient has indicated to the person making the transmission (“the sender”) a willingness to receive the notice or other document in the form and manner used.
- (3) An indication to the sender for the purposes of subsection (2)—
  - (a) must be given to the sender in such manner as the sender may require,
  - (b) may be a general indication or an indication that is limited to notices or other documents of a particular description,
  - (c) must state the address to be used,
  - (d) must be accompanied by such other information as the sender requires for the making of the transmission, and
  - (e) may be modified or withdrawn at any time by a notice given to the sender in such manner as the sender may require.
- (4) In this section “electronic communications network” has the same meaning as in the Communications Act 2003; and the reference to giving a notice is to be read in accordance with section 109.

## **111 Crown application: Part 3**

- (1) Subject as follows, this Part, and regulations made under it, bind the Crown.
- (2) Part 2 of Schedule 8 (inspectors: improvement and prohibition notices) does not bind the Crown.
- (3) Any other provision of, or of regulations under, this Part under which a person may be prosecuted for an offence—
  - (a) does not bind the Crown, but
  - (b) applies to persons in the public service of the Crown as it applies to other persons.
- (4) So far as it applies to nuclear regulations, subsection (3) is subject to any provision made by those regulations.
- (5) For the purposes of this Part and regulations made under this Part, persons in the service of the Crown are to be treated as employees of the Crown (whether or not they would be so treated apart from this subsection).

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- (6) The Secretary of State may, by order—
- (a) amend this section so as to provide for any provision made by or under this Part to apply to the Crown, or not to apply to the Crown, to any extent;
  - (b) amend any provision of sections 68 to 73 so far as it affects the extent to which any of the ONR’s purposes relates to the Crown or any of the purposes of the Crown.
- (7) Provision that may be made under subsection (6) includes in particular provision altering whether, or the extent to which, any of the ONR’s purposes relates to—
- (a) sites or premises used or occupied by the Crown,
  - (b) sites controlled or occupied to any extent for defence purposes (within the meaning of section 70), or
  - (c) transport for those purposes.
- (8) Nothing in this section authorises proceedings to be brought against Her Majesty in her private capacity (within the meaning of the Crown Proceedings Act 1947).

## 112 Interpretation of Part 3

- (1) In this Part—
- “the 1974 Act” means the Health and Safety at Work etc. Act 1974;
  - “approved code of practice” has the meaning given by section 79(3);
  - “financial year”, in relation to the ONR, has the meaning given by paragraph 28 of Schedule 7;
  - “health and safety inspector” means a person appointed by the ONR under section 19 of the 1974 Act;
  - “improvement notice” has the meaning given by paragraph 3(2) of Schedule 8;
  - “inspector” means an inspector appointed under Part 1 of Schedule 8 (unless otherwise specified);
  - “member of staff”, in relation to the ONR, is to be read in accordance with paragraph 2(2) of Schedule 7;
  - “modify” includes amend, repeal or revoke (and “modification” is to be read accordingly);
  - “nuclear regulations” has the meaning given by section 74(1);
  - “nuclear site” means—
    - (a) a site in respect of which a nuclear site licence is in force, or
    - (b) a site in respect of which a period of responsibility has not ended;
  - “nuclear site licence” has the same meaning as in the Nuclear Installations Act 1965 (see section 1 of that Act);
  - “ONR” means the Office for Nuclear Regulation;
  - “ONR inquiry” has the meaning given by section 85(2);
  - “period of responsibility”, in relation to a site, means the period of responsibility (within the meaning given in section 5 of the Nuclear Installations Act 1965 (revocation and surrender of licences)) in respect of a nuclear site licence granted at any time in respect of the site;
  - “personal injury” includes—
    - (a) any disease, and
    - (b) any impairment of a person’s physical or mental condition;

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“prohibition notice” has the meaning given by paragraph 4(2) of Schedule 8;

“regulatory function”, in relation to the ONR, means—

- (a) a function of giving or revoking permission or approval in relation to any material, premises or activity;
- (b) a function of imposing conditions or requirements in relation to any material, premises or activity;
- (c) a function, other than a function under section 84 (investigations), which relates to securing, monitoring or investigating compliance with conditions or requirements (however imposed) in relation to any material, premises or activity;
- (d) a function which relates to the enforcement of such requirements;

“relevant power” has the meaning given by paragraph 2 of Schedule 8;

“relevant statutory provisions” has the meaning given by section 82(2) (unless otherwise specified).

- (2) The following apply for the purposes of this Part as they apply for the purposes of Part 1 of the 1974 Act—
  - (a) section 52(1) of that Act (meaning of “work” and “at work”);
  - (b) the power conferred by section 52(2)(a) of that Act to extend the meaning of “work” and “at work”.

### **113 Subordinate legislation under Part 3**

- (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.
- (6) Any power to make subordinate legislation under this Part includes power—
  - (a) to make different provision for different cases;

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- (b) to make provision for some cases only or subject to exceptions;
  - (c) to make provision generally or only in particular respects.
- (7) Any subordinate legislation under this Part may include—
- (a) consequential, incidental or supplementary provision;
  - (b) transitional, transitory or saving provision.
- (8) In this section “subordinate legislation” means an Order in Council, an order or regulations.
- (9) In relation to any modification of a provision of, or made under, any of the provisions of the Nuclear Installations Act 1965 that are relevant statutory provisions, the power conferred by subsection (7)(a) includes power to extend the modification to Northern Ireland for the purpose of ensuring that the text of the provision is uniform throughout the United Kingdom (but does not include power to alter the effect of the provision in relation to a site in Northern Ireland).

#### **114 Transitional provision etc**

- (1) The Secretary of State may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, this Part.
- (2) The provision which may be made by virtue of subsection (1) includes, in particular—
- (a) provision modifying any provision made by—
    - (i) primary legislation passed before the end of the session in which this Act was passed, or
    - (ii) an instrument made before the end of that session;
  - (b) provision for treating any regulations within subsection (3) as—
    - (i) relevant statutory provisions (or as relevant statutory provisions of a particular description),
    - (ii) regulations under section 85, or
    - (iii) regulations under section 101.
- (3) The regulations mentioned in subsection (2)(b) are regulations made under a provision within subsection (4) so far as they relate to, or to fees payable in respect of functions which relate to, any of the following purposes—
- (a) the nuclear safety purposes;
  - (b) the nuclear security purposes;
  - (c) the nuclear safeguards purposes;
  - (d) the transport purposes.
- (4) The provisions mentioned in subsection (3) are—
- (a) section 2(2) of the European Communities Act 1972 (general implementation of Treaties);
  - (b) section 14 of the 1974 Act (power to direct investigations and inquiries);
  - (c) section 15 of that Act (health and safety regulations);
  - (d) section 43 of that Act (fees);
  - (e) section 3 of the Nuclear Safeguards Act 2000 (identifying persons who have information);

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- (f) section 77 of the Anti-terrorism, Crime and Security Act 2001 (regulation of security of civil nuclear industry).
- (5) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

### **115 Transfer of staff etc**

Schedule 11 (which makes provision about schemes to transfer staff etc to the ONR) has effect.

### **116 Minor and consequential amendments**

- (1) Schedule 12 (minor and consequential amendments related to Part 3) has effect.
- (2) The Secretary of State may by order make such modifications of—
  - (a) primary legislation passed before the end of the session in which this Act is passed, or
  - (b) an instrument made before the end of that session,
 as the Secretary of State considers appropriate in consequence of this Part.
- (3) The power in subsection (2) includes power to make modifications of—
  - (a) paragraphs 17 to 30 of Schedule 12 (amendments of the Nuclear Installations Act 1965), or
  - (b) the provisions of the Nuclear Installations Act 1965 that are amended by those paragraphs.
- (4) The power conferred by virtue of subsection (3) is exercisable—
  - (a) before or after the date on which those paragraphs come into force, and
  - (b) only for the purpose of making provision corresponding to any amendments of the Nuclear Installations Act 1965 set out in an order made before that date (whether before or after this Act is passed) under section 76 of the Energy Act 2004 (amendments for giving effect to international obligations).

### **117 Application of Part 3**

- (1) Her Majesty may by Order in Council provide that the provisions of this Part apply, so far as specified, in relation to persons, premises, activities, articles, substances or other matters, outside the United Kingdom as they apply within the United Kingdom or a specified part of the United Kingdom.
- (2) Such an Order in Council may—
  - (a) provide for any provisions of this Part to apply subject to modifications;
  - (b) provide for any of those provisions, as applied by the Order, to apply—
    - (i) in relation to individuals, whether or not they are British citizens, and
    - (ii) in relation to bodies corporate, whether or not they are incorporated under the law of a part of the United Kingdom;
  - (c) make provision for conferring jurisdiction on a specified court or courts of a specified description in respect of—
    - (i) offences under this Part committed outside the United Kingdom, or

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- (ii) causes of action under section 76 in respect of acts or omissions that occur outside the United Kingdom;
  - (d) make provision for questions arising out of any acts or omissions mentioned in paragraph (c)(ii) to be determined in accordance with the law in force in any specified part of the United Kingdom;
  - (e) exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under any provision of this Part committed outside the United Kingdom.
- (3) In this section “specified”, in relation to an Order in Council, means specified in the Order.
- (4) Nothing in this section affects the application outside the United Kingdom of any provision of, or made under, this Part which so applies otherwise than by virtue of an Order in Council under this section.

### **118 Review of Part 3**

- (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,
  - (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.

## **PART 4**

### **GOVERNMENT PIPE-LINE AND STORAGE SYSTEM**

### **119 Meaning of “government pipe-line and storage system”**

- (1) In this Part “the government pipe-line and storage system” means any property to which subsection (2), (3), (4) or (5) applies and which is vested in the Secretary of State, including any land held by the Secretary of State for the purposes of such property.
- (2) This subsection applies to any oil installations—
- (a) which are government war works, within the meaning of the Requisitioned Land and War Works Act 1945, or
  - (b) to which section 28 of that Act applies by virtue of section 12(4) or (5) of the Requisitioned Land and War Works Act 1948.

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- (3) This subsection applies to any oil installations which have been, are being or are intended to be, laid, installed or constructed, in or on land acquired for the purpose by virtue of section 13(a) of the 1958 Act.
- (4) This subsection applies to anything which has been, is being or is intended to be, laid, installed or constructed by virtue of a wayleave order under the 1958 Act.
- (5) This subsection applies to any other oil installations or other property—
  - (a) relating to oil installations to which subsection (2) or (3) applies, or
  - (b) relating to anything to which subsection (4) applies.
- (6) In this section—
  - “the 1958 Act” means the Land Powers (Defence) Act 1958;
  - “oil installations” has the meaning given by section 25(1) of that Act.

## **120 Rights in relation to the government pipe-line and storage system**

- (1) The Secretary of State may maintain and use the government pipe-line and storage system or any part of it for any purpose for which it is suitable.
- (2) The Secretary of State may remove, replace or renew the system or any part of it.
- (3) The Secretary of State may restore land if the system or any part of it has been removed or abandoned.
- (4) The Secretary of State may inspect or survey the system, any part of it or any land on or under which the system or any part of it is situated.
- (5) The rights conferred by this section include in particular the right—
  - (a) to place, continue or renew markers for indicating the position of the system or any part of it in so far as it is placed under land;
  - (b) to erect and maintain stiles, gates, bridges or culverts for the facilitation of access to the system or any part of it;
  - (c) to construct works for the facilitation of maintenance or inspection, or protection from damage, of the system or any part of it;
  - (d) temporarily to place on land on or under which the system or any part of it is situated materials, plant or apparatus required in connection with the system or any part of it.

## **121 Right of entry**

- (1) For the purpose of exercising a right conferred by section 120, the Secretary of State may enter—
  - (a) any land on or under which is situated any part of the government pipe-line and storage system, or
  - (b) any land which is held with that land.
- (2) The right conferred by subsection (1) is a right to enter on foot or with vehicles and includes a right to transport materials, plant and apparatus.
- (3) For the purpose of accessing any land mentioned in subsection (1) (“the system land”), the Secretary of State may pass over any other land (“the access land”) so far as it is necessary to do so for that purpose.



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- (4) But the right conferred by subsection (3) may be exercised only if, and to the extent that, the occupier or owner of the system land is entitled to exercise a corresponding right of access (whether by virtue of an easement, under an agreement or otherwise) to pass over the access land.
- (5) Except in an emergency the rights conferred by this section may be exercised only—
  - (a) at a reasonable time and with the consent of the occupier of the land, or
  - (b) under the authority of a warrant (see section 122).
- (6) “An emergency” means that urgent action is required to prevent or limit serious damage to health or to the environment.
- (7) The rights conferred by this section do not include a right to enter premises used wholly or mainly as a private dwelling house.

## **122 Warrants for the purposes of section 121**

- (1) A justice of the peace or, in Scotland, a sheriff, may issue a warrant to authorise entry on to land in the exercise of a right conferred by section 121 (including such a right exercisable by virtue of provision made by or under section 125).
- (2) The justice of the peace or the sheriff must be satisfied, on information on oath—
  - (a) that—
    - (i) at least 7 days’ notice of intention to apply for a warrant has been given to the occupier of the land,
    - (ii) the occupier cannot be found, or
    - (iii) urgent action is required to prevent or limit serious damage to health or to the environment,
  - (b) (except where the occupier cannot be found) that entry to the land has been or is likely to be refused, and
  - (c) that there are reasonable grounds for exercising the right.
- (3) A warrant under this section may authorise the use of reasonable force.
- (4) It is an offence for a person intentionally to obstruct the exercise of any right conferred by a warrant under this section; and a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In the application of this section to Scotland the reference to information on oath is to be read as a reference to evidence on oath.

## **123 Registration of rights**

- (1) In this section a “GPSS right” is a right conferred by section 120, 121 or 125(1).
- (2) A GPSS right in respect of any land—
  - (a) is not subject to any enactment requiring the registration or recording of interests in, charges over or other obligations affecting land;
  - (b) binds any person who is at any time the owner or occupier of the land.
- (3) But a GPSS right in respect of any land in England or Wales is a local land charge and subsection (2)(a) does not apply to subsection (2) of section 5 of the Local Land Charges Act 1975 (duty to register local land charge).

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- (4) For the purposes of the operation in relation to a GPSS right of the duty under that subsection to register a local land charge, the Secretary of State is the originating authority.
- (5) A GPSS right in respect of any land in Scotland may be registered in the Land Register of Scotland or recorded in the Register of Sasines.

## **124 Compensation**

- (1) The Secretary of State must pay compensation to a person who proves that the value of a relevant interest to which the person is entitled is depreciated by reason of the coming into force of section 120, 121 or 125.
- (2) A “relevant interest” means an interest in land which—
  - (a) comprises, or is held with, land in respect of which a right conferred by section 120, 121 or 125 is exercisable, and
  - (b) subsisted at the time of the coming into force of the section.
- (3) The amount of compensation payable under subsection (1) is the amount that is equal to the amount of the depreciation.
- (4) If a person proves loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels (or in Scotland corporeal moveables) as a result of the exercise of any right conferred by section 120 or 121, the person on whose behalf the right is exercised must pay compensation in respect of that loss.
- (5) Any dispute about entitlement to, or amount of, compensation under this section is to be determined by—
  - (a) in the application of this Act to England and Wales, the Upper Tribunal;
  - (b) in the application of this Act to Scotland, the Lands Tribunal for Scotland.
- (6) In relation to the assessment of compensation under subsection (1)—
  - (a) for the purposes of an interest in land in England and Wales and the application of section 5A of the Land Compensation Act 1961 (relevant valuation date) the “relevant valuation date” is the date on which the section concerned comes into force;
  - (b) for the purposes of an interest in land in Scotland and the operation of rule 2 in section 12 of the Land Compensation (Scotland) Act 1963 (value of land) the valuation must be made as at the date the section concerned comes into force.

## **125 Right to transfer the government pipe-line and storage system**

- (1) The Secretary of State may—
  - (a) sell or lease the government pipe-line and storage system or any part of it;
  - (b) transfer for valuable consideration or otherwise the ownership of the system or any part of it;
  - (c) transfer for valuable consideration or otherwise any right relating to the system or any part of it (whether a right conferred by this Part or otherwise);
  - (d) transfer any liability relating to the system or any part of it.
- (2) Any sale, lease or transfer by virtue of subsection (1) may be subject to such conditions, if any, as the Secretary of State considers appropriate.

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## **126 Application of the Pipe-lines Act 1962**

- (1) Subsection (3) applies in relation to any part of the government pipe-line and storage system which is for the time being owned otherwise than by the Secretary of State.
- (2) In subsection (1) “owned” is to be construed in accordance with the definition of “owner” in section 66(1) of the Pipe-lines Act 1962.
- (3) The following sections of that Act, namely—
  - (a) section 10 (provisions for securing that a pipe-line is so used as to reduce necessity for construction of others),
  - (b) section 36 (notification of abandonment, cesser of use and resumption of use of pipe-lines or lengths thereof),apply in relation to any such part as if it were a pipe-line constructed pursuant to a pipe-line construction authorisation.
- (4) Section 40(2) of that Act (application of the electronic communications code) applies—
  - (a) for the purposes of GPSS works as it applies for the purposes of works in pursuance of a compulsory rights order,
  - (b) to a person executing GPSS works as it applies to a person authorised to execute works in pursuance of such an order.
- (5) In subsection (4) “GPSS works” means—
  - (a) works for inspecting, maintaining, adjusting, repairing, altering or renewing the government pipe-line and storage system or any part of it;
  - (b) works for changing the position of the system or any part of it;
  - (c) works for removing the system or any part of it;
  - (d) breaking up or opening land for the purpose of works falling within paragraph (a), (b) or (c), or tunnelling or boring for that purpose;
  - (e) other works incidental to anything falling within paragraph (a), (b), (c) or (d).
- (6) To the extent that anything done under or by virtue of this Part constitutes the execution of pipe-line works for the purposes of section 45 of the Pipe-lines Act 1962 (obligation to restore agricultural land), subsection (3) of that section has effect as if after “this Act” there were inserted “or any provision of Part 4 of the Energy Act 2013”.

## **127 Rights apart from Part 4**

- (1) Nothing in this Part affects any other rights of the Secretary of State in relation to the government pipe-line and storage system (whether conferred under another enactment, by agreement or otherwise, and whether or not existing upon the coming into force of this section).
- (2) For the purposes of sections 120, 121 and 125, it is immaterial whether a right corresponding to a right conferred by the section was exercisable by the Secretary of State before the coming into force of the section.

## **128 Repeals**

- (1) The provisions mentioned in subsection (2) cease to have effect.
- (2) The provisions are—

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- (a) section 12 of the Requisitioned Land and War Works Act 1948 (permanent power to maintain government oil pipe-lines);
- (b) section 13 of that Act (compensation in respect of government oil pipe-lines);
- (c) section 14 of that Act (registration of rights as to government oil pipe-lines);
- (d) section 15 of that Act (supplementary provisions as to government oil pipe-lines);
- (e) section 12 of the Land Powers (Defence) Act 1958 (extension of provisions of Requisitioned Land and War Works Acts).

### **129 Power to dissolve the Oil and Pipelines Agency by order**

- (1) The Secretary of State may provide by order for—
  - (a) the repeal of the Oil and Pipelines Act 1985;
  - (b) the dissolution of the Oil and Pipelines Agency.
- (2) If the Oil and Pipelines Agency is dissolved under subsection (1), the Secretary of State may make one or more schemes for the transfer to the Secretary of State of property, rights and liabilities (a “transfer scheme”).
- (3) Schedule 13 makes further provision about any transfer scheme under subsection (2).
- (4) An order under this section may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (5) An order under this section is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

### **130 Crown application: Part 4**

- (1) This Part binds the Crown.
- (2) No contravention by the Crown of section 122(4) makes the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) But subsection (2) does not affect the criminal liability of persons in the service of the Crown.

## **PART 5**

### STRATEGY AND POLICY STATEMENT

### **131 Designation of statement**

- (1) The Secretary of State may designate a statement as the strategy and policy statement for the purposes of this Part if the requirements set out in section 135 are satisfied (consultation and Parliamentary procedural requirements).

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- (2) The strategy and policy statement is a statement prepared by the Secretary of State that sets out—
  - (a) the strategic priorities, and other main considerations, of Her Majesty’s government in formulating its energy policy for Great Britain (“strategic priorities”),
  - (b) the particular outcomes to be achieved as a result of the implementation of that policy (“policy outcomes”), and
  - (c) the roles and responsibilities of persons (whether the Secretary of State, the Authority or other persons) who are involved in implementing that policy or who have other functions that are affected by it.
- (3) The Secretary of State must publish the strategy and policy statement (including any amended statement following a review under section 134) in such manner as the Secretary of State considers appropriate.
- (4) For the purposes of this section, energy policy “for Great Britain” includes such policy for—
  - (a) the territorial sea adjacent to Great Britain, and
  - (b) areas designated under section 1(7) of the Continental Shelf Act 1964.
- (5) In this Part—
  - “the 1986 Act” means the Gas Act 1986;
  - “policy outcomes” has the meaning given in subsection (2)(b);
  - “strategic priorities” has the meaning given in subsection (2)(a);
  - “the strategy and policy statement” means the statement for the time being designated under subsection (1) as the strategy and policy statement for the purposes of this Part.

## **132 Duties in relation to statement**

- (1) The Authority must have regard to the strategic priorities set out in the strategy and policy statement when carrying out regulatory functions.
- (2) The Secretary of State and the Authority must carry out their respective regulatory functions in the manner which the Secretary of State or the Authority (as the case may be) considers is best calculated to further the delivery of the policy outcomes.
- (3) Subsection (2) is subject to the application of the principal objective duty in the carrying out of any such function.
- (4) “Regulatory functions”, in relation to the Secretary of State, means—
  - (a) functions of the Secretary of State under Part 1 of the 1986 Act or Part 1 of EA 1989;
  - (b) other functions of the Secretary of State to which the principal objective duty is applied by any enactment.
- (5) “Regulatory functions”, in relation to the Authority, means—
  - (a) functions of the Authority under Part 1 of the 1986 Act or Part 1 of EA 1989;
  - (b) other functions of the Authority to which the principal objective duty is applied by any enactment.

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- (6) The “principal objective duty” means the duty of the Secretary of State or the Authority (as the case may be) imposed by—
  - (a) section 4AA(1B) and (1C) of the 1986 Act;
  - (b) section 3A(1B) and (1C) of EA 1989.
- (7) The Authority must give notice to the Secretary of State if at any time the Authority concludes that a policy outcome contained in the strategy and policy statement is not realistically achievable.
- (8) A notice under subsection (7) must include—
  - (a) the grounds on which the conclusion was reached;
  - (b) what (if anything) the Authority is doing, or proposes to do, for the purpose of furthering the delivery of the outcome so far as reasonably practicable.
- (9) In this section “enactment” includes—
  - (a) an enactment contained in this Act, and
  - (b) an enactment passed or made after the passing of this Act.

### **133 Exceptions from section 132 duties**

- (1) Section 132(1) and (2) do not apply in relation to functions of the Secretary of State under sections 36 to 37 of EA 1989.
- (2) Section 132(1) and (2) do not apply in relation to anything done by the Authority—
  - (a) in the exercise of functions relating to the determination of disputes;
  - (b) in the exercise of functions under section 36A(3) of the 1986 Act or section 43(3) of EA 1989.
- (3) The duties imposed by section 132(1) and (2) do not affect the obligation of the Authority or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any EU obligation or otherwise).

### **134 Review**

- (1) The Secretary of State must review the strategy and policy statement if a period of 5 years has elapsed since the relevant time.
- (2) The “relevant time”, in relation to the strategy and policy statement, means—
  - (a) the time when the statement was first designated under this Part, or
  - (b) if later, the time when a review of the statement under this section last took place.
- (3) A review under subsection (1) must take place as soon as reasonably practicable after the end of the 5 year period.
- (4) The Secretary of State may review the strategy and policy statement at any other time if—
  - (a) a Parliamentary general election has taken place since the relevant time,
  - (b) the Authority has given notice to the Secretary of State under section 132(7) since the relevant time,

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- (c) a significant change in the energy policy of Her Majesty's government has occurred since the relevant time, or
  - (d) the Parliamentary approval requirement in relation to an amended statement was not met on the last review (see subsection (12)).
- (5) The Secretary of State may determine that a significant change in the government's energy policy has occurred for the purposes of subsection (4)(c) only if—
  - (a) the change was not anticipated at the relevant time, and
  - (b) if the change had been so anticipated, it appears to the Secretary of State likely that the statement would have been different in a material way.
- (6) On a review under this section the Secretary of State may—
  - (a) amend the statement (including by replacing the whole or part of the statement with new content),
  - (b) leave the statement as it is, or
  - (c) withdraw the statement's designation as the strategy and policy statement.
- (7) The amendment of a statement under subsection (6)(a) has effect only if the Secretary of State designates under section 131 the amended statement as the strategy and policy statement (and the procedural requirements under section 135 apply in relation to any such designation).
- (8) For the purposes of this section, corrections of clerical or typographical errors are not to be treated as amendments made to the statement.
- (9) The designation of a statement as the strategy and policy statement ceases to have effect upon a subsequent designation of an amended statement as the strategy and policy statement in accordance with subsection (7).
- (10) The Secretary of State must consult the following persons before proceeding under subsection (6)(b) or (c)—
  - (a) the Authority,
  - (b) the Scottish Ministers,
  - (c) the Welsh Ministers, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (11) For the purposes of subsection (2)(b), a review of a statement takes place—
  - (a) in the case of a decision on the review to amend the statement under subsection (6)(a)—
    - (i) at the time when the amended statement is designated as the strategy and policy statement under section 131, or
    - (ii) if the amended statement is not so designated, at the time when the amended statement was laid before Parliament for approval under section 135(7);
  - (b) in the case of a decision on the review to leave the statement as it is under subsection (6)(b), at the time when that decision is taken.
- (12) For the purposes of subsection (4)(d), the Parliamentary approval requirement in relation to an amended statement was not met on the last review if—
  - (a) on the last review of the strategy and policy statement to be held under this section, an amended statement was laid before Parliament for approval under section 135(7), but

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- (b) the amended statement was not designated because such approval was not given.

### **135 Procedural requirements**

- (1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it as the strategy and policy statement.
- (2) In this section references to a statement include references to a statement as amended following a review under section 134(6)(a).
- (3) The Secretary of State must first—
  - (a) prepare a draft of the statement, and
  - (b) issue the draft to the required consultees for the purpose of consulting them about it.
- (4) The “required consultees” are—
  - (a) the Authority,
  - (b) the Scottish Ministers, and
  - (c) the Welsh Ministers.
- (5) The Secretary of State must then—
  - (a) make such revisions to the draft as the Secretary of State considers appropriate as a result of responses to the consultation under subsection (3)(b), and
  - (b) issue the revised draft for the purposes of further consultation about it to the required consultees and to such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must then—
  - (a) make any further revisions to the draft that the Secretary of State considers appropriate as a result of responses to the consultation under subsection (5)(b), and
  - (b) prepare a report summarising those responses and the changes (if any) that the Secretary of State has made to the draft as a result.
- (7) The Secretary of State must lay before Parliament—
  - (a) the statement as revised under subsection (6)(a), and
  - (b) the report prepared under subsection (6)(b).
- (8) The statement as laid under subsection (7)(a) must have been approved by a resolution of each House of Parliament before the Secretary of State may designate it as the strategy and policy statement under section 131.
- (9) The requirement under subsection (3)(a) to prepare a draft of a statement may be satisfied by preparation carried out before, as well as preparation carried out after, the passing of this Act.

### **136 Principal objective and general duties in preparation of statement**

- (1) Sections 4AA to 4B of the 1986 Act (principal objective and general duties) apply in relation to the relevant function of the Secretary of State under this Part as they apply in relation to functions of the Secretary of State under Part 1 of that Act.



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- (2) Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to the relevant function of the Secretary of State under this Part as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (3) The “relevant function” is the Secretary of State’s function of determining the policy outcomes to be set out in the strategy and policy statement (whether when the statement is first prepared under this Part or when it is reviewed under section 134).

### **137 Reporting requirements**

- (1) The Utilities Act 2000 is amended as follows.
- (2) After section 4 insert—

#### **“4A Information in relation to strategy and policy statement**

- (1) As soon as reasonably practicable after the designation of a statement as the strategy and policy statement, the Authority must publish a document setting out the required information in relation to the statement.
- (2) The Authority must include the required information in relation to a strategy and policy statement in the forward work programme for each financial year, subject to making such modifications to the information as the Authority considers appropriate from the version as last published under this subsection.
- (3) The required information in relation to a strategy and policy statement to be set out in a document or forward work programme is—
  - (a) the strategy the Authority intends to adopt for the purpose of furthering the delivery of the policy outcomes contained in the statement (both in respect of the year in or for which the document or programme is issued and beyond);
  - (b) the things the Authority proposes to do in implementing that strategy (including when the Authority proposes to do them);
  - (c) the ways in which the Authority has had regard to the strategic priorities contained in the statement in setting out the information required under paragraphs (a) and (b).
- (4) The duty under subsection (1) does not apply if—
  - (a) the Authority does not think it reasonably practicable to publish the document mentioned in that subsection before the time when the Authority is next required to publish a forward work programme, and
  - (b) the Authority includes the required information in that forward work programme.
- (5) The duty under subsection (2) does not apply in relation to the first financial year beginning after the designation of the statement if—
  - (a) the Authority does not think it reasonably practicable to include the required information in the forward work programme for that year, and
  - (b) the Authority includes the required information in a document published under subsection (1).

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- (6) The duty under subsection (2) does not apply in relation to a financial year if the Secretary of State gives notice to the Authority under this subsection that the statement’s designation—
- (a) will be withdrawn before the beginning of the year, or
  - (b) is expected to have been withdrawn before the beginning of the year.
- (7) Subsections (4) to (6) of section 4 (notice requirements) apply to a document published under subsection (1) as they apply to a forward work programme.
- (8) In this section—
- “designation”, in relation to a strategy and policy statement, means designation of the statement by the Secretary of State under Part 5 of the Energy Act 2013;
- “forward work programme” has the meaning given by section 4(1);
- “policy outcomes”, “strategic priorities” and “strategy and policy statement” have the same meaning as in Part 5 of the Energy Act 2013.”
- (3) In section 5 (annual and other reports of Authority), after subsection (2) insert—
- “(2A) The annual report for each year shall also include a report on—
- (a) the ways in which the Authority has carried out its duties under section 132(1) and (2) of the Energy Act 2013 in relation to the strategy and policy statement (so far as the statement’s designation was in effect during the whole or any part of the year), and
  - (b) the extent to which the Authority has done the things set out under section 4A in a forward work programme or other document as the things the Authority proposed to do during that year in implementing its strategy for furthering the delivery of the policy outcomes contained in the statement (see subsection (3)(b) of that section).
- (2B) The report mentioned in subsection (2A) must, in particular, include—
- (a) the Authority’s assessment of how the carrying out of its functions during the year has contributed to the delivery of the policy outcomes contained in the strategy and policy statement, and
  - (b) if the Authority has failed to do any of the things mentioned in subsection (2A)(b), an explanation for the failure and the actions the Authority proposes to take to remedy it.
- (2C) In subsections (2A) and (2B)—
- “forward work programme” has the meaning given by section 4(1);
- “policy outcomes” and “strategy and policy statement” have the same meaning as in Part 5 of the Energy Act 2013.”

### **138 Consequential provision**

- (1) The following provisions are repealed (guidance about the making by the Authority of a contribution towards the attainment of social or environmental policies)—
- (a) sections 4AB and 4B(1) of the 1986 Act, and
  - (b) sections 3B and 3D(1) of EA 1989.

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- (2) In section 4AA(5) of the 1986 Act, after “(2),” insert “and to section 132(2) of the Energy Act 2013 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)”.
- (3) In section 3A(5) of EA 1989, after “(2),” insert “and to section 132(2) of the Energy Act 2013 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)”.
- (4) In the 1986 Act—
  - (a) in section 4AA(7), for “sections 4AB and 4A” substitute “section 4A”;
  - (b) in section 7B(4), in paragraph (a) omit “, 4AB”;
  - (c) in section 23D(2)—
    - (i) at the end of paragraph (b) omit “and”,
    - (ii) in paragraph (c) for “sections 4AB and” substitute “section”, and
    - (iii) at the end of paragraph (c) insert “; and
  - (d) in the performance of its duties under section 132(1) and (2) of the Energy Act 2013.”;
  - (d) in section 28(5), in paragraph (a) omit “, 4AB”;
  - (e) in section 38(1A), omit “, 4AB”;
  - (f) in section 41E(6)—
    - (i) omit paragraph (b), and
    - (ii) at the end of paragraph (c) insert “; and
  - (d) any statement for the time being designated as the strategy and policy statement for the purposes of Part 5 of the Energy Act 2013.”
- (5) In EA 1989—
  - (a) in section 3A(7), for “sections 3B and 3C” substitute “section 3C”;
  - (b) in section 11E(2)—
    - (i) at the end of paragraph (b) omit “and”,
    - (ii) in paragraph (c) for “sections 3B and 3C” substitute “section 3C”, and
    - (iii) at the end of paragraph (c) insert “; and
  - (d) in the performance of its duties under section 132(1) and (2) of the Energy Act 2013.”;
  - (c) in section 28(2A), omit “, 3B”;
  - (d) in section 56C(6)—
    - (i) omit paragraph (b), and
    - (ii) at the end of paragraph (c) insert “; and
  - (d) any statement for the time being designated as the strategy and policy statement for the purposes of Part 5 of the Energy Act 2013.”

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## PART 6

### CONSUMER PROTECTION AND MISCELLANEOUS

#### CHAPTER 1

##### CONSUMER PROTECTION

###### *Domestic tariffs*

### 139 Power to modify energy supply licences: domestic supply contracts

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 7A(1) of the Gas Act 1986 (supply licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8 of that Act;
  - (c) a condition of a particular licence under section 6(1)(d) of EA 1989 (supply licences);
  - (d) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
- by making provision of any of the kinds specified in subsection (2).
- (2) The kinds of provision mentioned in subsection (1) are—
- (a) provision requiring a licence holder to adopt one or more standard domestic tariffs;
  - (b) provision for restricting the number of domestic tariffs, or domestic tariffs of a particular category, a licence holder may adopt;
  - (c) provision about discretionary terms (which may in particular require the same discretionary terms to be offered in connection with, or incorporated into, all domestic supply contracts of any particular category);
  - (d) provision for requiring a licence holder to provide information about its domestic tariffs and other supply contract terms, which may include information for enabling or facilitating the comparison—
    - (i) of different domestic tariffs or supply contract terms of the licence holder;
    - (ii) of domestic tariffs and supply contract terms of different licence holders;
  - (e) provision for requiring a licence holder to change the domestic tariff on which it supplies gas or electricity to a domestic customer who is on a closed tariff by—
    - (i) switching to a different domestic tariff for the time being offered by the licence holder, unless the customer objects, or
    - (ii) offering the customer, or inviting the customer to switch to, a different domestic tariff for the time being offered by the licence holder;
  - (f) provision for requiring a licence holder to provide information to domestic customers about the licence holder's costs, or profit, attributable to its domestic supply contracts, which may, in particular, include information about—

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- (i) particular kinds of those costs, and
  - (ii) the extent to which domestic customers' costs are attributable to any of those kinds of costs, or to profit.
- (3) Any limit imposed by virtue of subsection (2)(b) on the number of tariffs, or tariffs of any category, that a licence holder may adopt must be greater than the number of standard domestic tariffs, or (as the case may be) standard domestic tariffs of that category, that the licence holder is required to adopt.
- (4) Provision that may be included in a licence by virtue of subsection (2)(d) may in particular require a licence holder to provide each domestic customer with information—
  - (a) about the customer's existing domestic tariff and supply contract terms;
  - (b) about the expected cost to the customer of supplies under the customer's existing domestic supply contract and on one or more other domestic tariffs (including the lowest domestic tariff for the customer) or other supply contract terms of the licence holder;
  - (c) about how to switch to different supply contract terms.
- (5) Provision that may be included in a licence by virtue of subsection (2)(d) or (f) may in particular—
  - (a) require information to be provided in a form that is clear and easy to understand;
  - (b) make provision about the times at which information is to be provided;
  - (c) make provision about the format in which information is to be provided, which may in particular require information about a domestic tariff or supply contract terms to be provided in the form of a single figure or set of figures;
  - (d) make provision about the way in which information is to be provided, which may in particular require information to be provided—
    - (i) by means of a code or otherwise using a format readable by an electronic device, or
    - (ii) in a way which facilitates processing of the information by means of an electronic device.
- (6) Provision included in a licence by virtue of the power in subsection (1)—
  - (a) may make provision for determining when a licence holder is, or is not, to be regarded as offering to supply gas or electricity on a particular tariff (or as offering other terms in connection with domestic supply contracts) for the purpose of a relevant provision;
  - (b) may make provision for supplies (or proposed supplies) of gas or electricity to be regarded as being on the same tariff or different tariffs for the purpose of a relevant provision;
  - (c) may make provision for specifying how any domestic tariff (including a licence holder's lowest domestic tariff for a customer), or other supply contract terms, is or are to be identified for the purpose of any relevant provision;
  - (d) may make provision about the calculation or estimation of any amount or figure for the purpose of a relevant provision, which may, in particular, include provision—
    - (i) about assumptions to be made;

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- (ii) requiring information about a customer’s circumstances or previous consumption of gas or electricity to be taken into account;
  - (e) may confer functions on the Secretary of State or the Authority;
  - (f) may make different provision for different kinds of domestic customers or different supply contract terms, or otherwise in relation to different cases;
  - (g) may make provision generally or only in relation to specified categories of domestic customers, domestic tariffs or domestic supply contracts or otherwise only in relation to specified cases or subject to exceptions;
  - (h) need not relate to the activities authorised by the licence;
  - (i) may do any of the things authorised for licences of that type by section 7B(5)(a), (6) or (7) of the Gas Act 1986 or section 7(3), (4), (5) or (6A) of EA 1989.
- (7) The power in subsection (1)—
- (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently in different cases or circumstances;
  - (c) includes a power to make incidental, supplementary or consequential modifications.
- (8) In this section—
- “closed tariff” means a domestic tariff on which a licence holder—
    - (a) supplies gas or electricity to customers under existing domestic supply contracts, but
    - (b) no longer offers to supply gas or electricity to customers who are not already on the tariff;
  - “discretionary terms”, in relation to a domestic supply contract (or proposed domestic supply contract), means the supply contract terms other than the principal terms;
  - “domestic customer” means a customer under a domestic supply contract;
  - “domestic supply contract” means a contract for the supply of gas or electricity at domestic premises wholly or mainly for domestic purposes;
  - “domestic tariff” means the set of principal terms of a domestic supply contract (or proposed domestic supply contract);
  - “modify” includes amend, add to or remove, and references to modifications are to be construed accordingly;
  - “the principal terms”, in relation to a domestic supply contract, means the terms of the contract of the types specified in an order under subsection (11);
  - “relevant provision” means any provision included in a licence by virtue of subsection (1);
  - “standard domestic tariff” means a domestic tariff some or all of whose terms are specified by, or in accordance with, a relevant provision;
  - “supply contract terms” means the terms and conditions of a domestic supply contract.
- (9) For the purposes of the definition of “standard domestic tariff”, the terms that may be specified by, or in accordance with, a relevant provision—
- (a) may include a term providing for a charge or rate to be fixed for a period to be determined by the licence holder, but

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- (b) may not include any term setting the amount of a charge or rate or otherwise specifying how it is to be determined.
- (10) For the purposes of this section—
- (a) gas or electricity is supplied on a tariff if the supply is made under a contract whose principal terms are the terms of the tariff,
  - (b) a domestic customer is on a particular domestic tariff if gas or electricity is supplied to the customer on that tariff, and
  - (c) a licence holder adopts a tariff if it supplies or offers to supply gas or electricity on that tariff (and references to adopting a tariff include references to doing either or both of them).
- (11) The Secretary of State may by order specify types of terms of domestic supply contracts which are the principal terms of such contracts.
- (12) An order under subsection (11) may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different domestic supply contracts or otherwise for different purposes;
  - (d) make provision subject to exceptions.
- (13) An order under subsection (11) is to be made by statutory instrument.
- (14) A statutory instrument containing an order under subsection (11) is subject to annulment in pursuance of an order of either House of Parliament.

#### **140 Section 139: procedure etc**

- (1) Before making modifications of a licence under section 139(1) the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) Before making modifications under section 139(1) the Secretary of State must lay a draft of the modifications before Parliament.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (5) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (6) Subsection (4) does not prevent a new draft of proposed modifications being laid before Parliament.
- (7) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before

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Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).

- (8) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (9) The Secretary of State must publish details of any modifications made under section 139(1) as soon as reasonably practicable after they are made.
- (10) Where the Secretary of State makes a modification of the standard conditions of a licence of any type, the Authority must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (11) A modification of part of a standard condition of a particular licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or Part 1 of EA 1989.
- (12) The power in section 139(1) may not be exercised after 31 December 2018.

#### **141 General duties of Secretary of State**

- (1) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to functions of the Secretary of State under section 139 or 140 of this Act with respect to holders of licences under section 7A(1) of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (2) Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Secretary of State under section 139 or 140 of this Act with respect to holders of licences under section 6(1)(d) of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

#### **142 Consequential provision**

- (1) The Utilities Act 2000 is amended as follows.
- (2) In section 33 (standard conditions of electricity licences), in subsection (1)(f), omit “76 or”.
- (3) In section 81 (standard conditions of gas licences), in subsection (2), for “or under Chapter 1 of Part 1 or section 76 or 98 of the Energy Act 2011” substitute “, under Chapter 1 of Part 1 or section 98 of the Energy Act 2011 or under section 139 of the Energy Act 2013”.
- (4) In the Energy Act 2011, sections 76 to 78 (power to modify energy supply licences: information about tariffs) are repealed.



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### *Licensable activities*

#### **143 Powers to alter activities requiring licence: activities related to supply contracts**

- (1) In section 41C of the Gas Act 1986 (power to alter activities requiring licence), after subsection (4) insert—

“(4A) For the purposes of subsection (4), activities connected with the supply of gas include the following activities, whether or not carried on by a person supplying gas—

- (a) giving advice, information or assistance in relation to contracts for the supply of gas to persons who are or may become customers under such contracts, and
- (b) the provision of any other services to such persons in connection with such contracts.”

- (2) In section 56A of EA 1989 (power to alter activities requiring licence), after subsection (4) insert—

“(4A) For the purposes of subsection (4), activities connected with the supply of electricity include the following activities, whether or not carried on by a person supplying electricity—

- (a) giving advice, information or assistance in relation to contracts for the supply of electricity to persons who are or may become customers under such contracts, and
- (b) providing any other services to such persons in connection with such contracts.”

### *Consumer redress orders*

#### **144 Consumer redress orders**

Schedule 14 (which enables the Authority to impose requirements on a regulated person to take remedial action in respect of loss, damage or inconvenience caused to consumers of gas or electricity) has effect.

### *Fuel poverty*

#### **145 Fuel poverty**

- (1) The Warm Homes and Energy Conservation Act 2000 is amended as follows.
- (2) After section 1 insert—

##### **“1A Objective for addressing fuel poverty: England**

- (1) The Secretary of State must make regulations setting out an objective for addressing the situation of persons in England who live in fuel poverty.
- (2) The regulations must specify a target date for achieving the objective.

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- (3) Regulations under this section must be made by statutory instrument; and a statutory instrument containing such regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (4) The Secretary of State must lay a draft of the instrument before each House of Parliament within 6 months of the day on which section 145 of the Energy Act 2013 comes into force.

### **1B Strategy relating to fuel poverty: England**

- (1) The Secretary of State must prepare and publish a strategy setting out the Secretary of State's policies for achieving the objective set out in regulations under section 1A by the target date specified in the regulations.
- (2) The strategy must be published within 6 months of the day on which the first regulations under section 1A come into force.
- (3) The strategy must—
  - (a) describe the households to which it applies,
  - (b) specify a comprehensive package of measures for achieving the objective by the target date, and
  - (c) specify interim objectives to be achieved and target dates for achieving them.
- (4) The Secretary of State must take such steps as are in the Secretary of State's opinion necessary to implement the strategy.
- (5) The Secretary of State must—
  - (a) from time to time assess the impact of steps taken under subsection (4) and the progress made in achieving the objectives and meeting the target dates,
  - (b) make any revision of the strategy which the Secretary of State thinks appropriate in consequence of the assessment,
  - (c) from time to time publish reports on such assessments.
- (6) If—
  - (a) further regulations under section 1A are made revising an objective or the target date for achieving it, and
  - (b) the Secretary of State considers that changes to the strategy are necessary or desirable as a result of those regulations,
 the Secretary of State must revise the strategy within 6 months of the day on which those regulations come into force.
- (7) If the Secretary of State revises the strategy, the Secretary of State must publish the strategy as revised.
- (8) In preparing the strategy or any revision of the strategy, the Secretary of State must consult—
  - (a) local authorities or associations of local authorities,
  - (b) persons appearing to the Secretary of State to represent the interests of persons living in fuel poverty,
  - (c) the Gas and Electricity Markets Authority, and

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- (d) such other persons as the Secretary of State thinks fit.”
- (3) In section 2—
- (a) in the title, after “**poverty**” insert “: **Wales**”;
  - (b) in subsection (1), after “strategy” insert “as respects Wales”;
  - (c) in subsection (2)(d), omit “England or”;
  - (d) in subsection (8)—
    - (i) in the definition of “the appropriate authority”, omit paragraph (a), and
    - (ii) in the definition of “the relevant commencement”, omit paragraph (a).

## CHAPTER 2

### MISCELLANEOUS

#### *Feed-in tariffs*

#### **146 Feed-in tariffs: increase in maximum capacity of plant**

In section 41 of the Energy Act 2008 (power to amend licence conditions etc: feed-in tariffs), in subsection (4), in the definition of “specified maximum capacity” for “5” substitute “10”.

#### *Offshore transmission*

#### **147 Offshore transmission systems**

- (1) EA 1989 is amended as follows.
- (2) In section 4 (prohibition on unlicensed supply), after subsection (3A) insert—
- “(3AA) Subsection (3A) is subject to section 6F (offshore transmission during commissioning period).”
- (3) After section 6E insert—

#### **“6F Offshore transmission during commissioning period**

- (1) For the purposes of this Part a person is not to be regarded as participating in the transmission of electricity if the following four conditions are met.
- (2) The first condition is that the transmission takes place over an offshore transmission system (“the system”) or anything forming part of it.
- (3) The second condition is that the transmission takes place during a commissioning period (see section 6G).
- (4) The third condition is that—
- (a) a request has been made to the Authority in accordance with the tender regulations for a tender exercise to be held for the granting of an offshore transmission licence in respect of the system,

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- (b) the Authority has determined in accordance with those regulations that the request relates to a qualifying project, and
  - (c) the system, or anything forming part of it, has not been transferred as a result of the exercise to the successful bidder.
- (5) The fourth condition is that—
- (a) the person who is the developer in relation to the tender exercise is also the operator of a relevant generating station, and
  - (b) the construction or installation of the system is being or has been carried out by or on behalf of, or by or on behalf of a combination of, any of the following—
    - (i) the person mentioned in paragraph (a);
    - (ii) a body corporate associated with that person at any time during the period of construction or installation;
    - (iii) a previous developer;
    - (iv) a body corporate associated with a previous developer at any time during the period of construction or installation.
- (6) For the purposes of subsection (1), it does not matter whether or not the person mentioned in that subsection is the developer in relation to the tender exercise.
- (7) For the purposes of subsection (5)(b)(iii) and (iv), a person is a “previous developer” in relation to the system if—
- (a) the person does not fall within subsection (5)(a), but
  - (b) at any time during the period of construction or installation, the person was the developer in relation to the tender exercise.
- (8) In this section—
- “associated”, in relation to a body corporate, is to be construed in accordance with paragraph 37 of Schedule 2A;
- “developer”, in relation to a tender exercise, means any person within section 6D(2)(a) (person who makes the connection request, including any person who is to be so treated by virtue of section 6D(4));
- “offshore transmission” has the meaning given by section 6C(6);
- “offshore transmission licence” has the meaning given by section 6C(5);
- “offshore transmission system” means a transmission system used for purposes connected with offshore transmission;
- “operator”, in relation to a generating station, means the person who is authorised to generate electricity from that station—
- (a) by a generation licence granted under section 6(1)(a), or
  - (b) in accordance with an exemption granted under section 5(1);
- “qualifying project” is to be construed in accordance with the tender regulations;
- “successful bidder” and “tender exercise” have the same meanings as in section 6D;
- “relevant generating station”, in relation to an offshore transmission system, means a generating station that generates electricity transmitted over the system;

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“the tender regulations” means regulations made under section 6C.

#### **6G Section 6F: meaning of “commissioning period”**

- (1) For the purposes of section 6F(3), transmission over an offshore transmission system (or anything forming part of it) takes place during a “commissioning period” if it takes place at any time—
  - (a) before a completion notice is given in respect of the system, or
  - (b) during the period of 18 months beginning with the day on which such a notice is given.
- (2) A “completion notice”, in relation to a transmission system, is a notice which—
  - (a) is given to the Authority by the relevant co-ordination licence holder in accordance with the co-ordination licence, and
  - (b) states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system.
- (3) The Secretary of State may by order amend subsection (1) so as to specify a period of 12 months in place of the period of 18 months.
- (4) An order under subsection (3) may be made only so as to come into force during the period—
  - (a) beginning 2 years after the day on which section 147 of the Energy Act 2013 comes into force, and
  - (b) ending 5 years after that day.
- (5) An amendment made by an order under subsection (3) does not apply in relation to any transmission of electricity over a transmission system if—
  - (a) but for the making of the order, the person participating in the transmission would, by virtue of section 6F, have been regarded as not participating in the transmission, and
  - (b) the determination mentioned in subsection (4)(b) of that section in relation to the system was made on or before the day on which the order is made.
- (6) In this section—

“co-ordination licence” has the same meaning as in Schedule 2A (see paragraph 38(1) of that Schedule);

“relevant co-ordination licence-holder” has the meaning given by paragraph 13(4) of Schedule 2A.

#### **6H Sections 6F and 6G: modification of codes or agreements**

- (1) The Authority may—
  - (a) modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence;
  - (b) modify an agreement that gives effect to a code so maintained.
- (2) The Authority may make a modification under subsection (1) only if it considers it necessary or desirable for the purpose of implementing or facilitating the operation of section 6F or 6G.

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- (3) The power to make modifications under subsection (1) includes a power to make incidental, supplemental, consequential or transitional modifications.
  - (4) The Authority must consult such persons as the Authority considers appropriate before making a modification under subsection (1).
  - (5) Subsection (4) may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.
  - (6) As soon as reasonably practicable after making a modification under subsection (1), the Authority must publish a notice stating its reasons for making it.
  - (7) A notice under subsection (6) is to be published in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by it.
  - (8) A modification under subsection (1) may not be made after the end of the period of 7 years beginning with the day on which section 147 of the Energy Act 2013 comes into force.”
- (4) In section 64 (interpretation of Part 1), in subsection (1B) at the end insert “and section 6F”.

#### *Fees*

### **148 Fees for services provided for energy resilience purposes**

- (1) The Secretary of State may require fees to be paid for services or facilities provided or made available by the Secretary of State in the exercise of energy resilience powers.
- (2) “Energy resilience powers” are any powers exercised by the Secretary of State for the purposes of, or in connection with, preventing or minimising disruption to the energy sector in Great Britain (including disruption to the supply of fuel in Great Britain).
- (3) The amount of any fee charged under this section is—
  - (a) such amount as may be specified in, or determined by or in accordance with, regulations made by the Secretary of State, or
  - (b) if no such regulations are made, an amount specified in, or determined by or in accordance with, a direction given by the Secretary of State for the purposes of this section.
- (4) Regulations or a direction under this section may provide for the amounts of fees to be different in different cases and, in particular, for fees in respect of the exercise of the same power to be of different amounts in different circumstances.
- (5) Regulations under subsection (3)(a) must be made by statutory instrument and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The Secretary of State must lay before Parliament a statement of any fees specified in, or determined by or in accordance with, a direction given under subsection (3)(b).

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## **149 Fees in respect of decommissioning and clean-up of nuclear sites**

- (1) Chapter 1 of Part 3 of the Energy Act 2008 (nuclear sites: decommissioning and clean-up) is amended as follows.
- (2) After section 45 (duty to submit funded decommissioning programme) insert—

### **“45A Costs incurred in considering proposed programmes**

- (1) A person who informs the Secretary of State of a proposal to submit a funded decommissioning programme under section 45 must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (2), at a time determined in accordance with such regulations.
- (2) The costs are those incurred by the Secretary of State in relation to the consideration of the proposed programme (or any particular aspect of it), including, in particular, the costs of obtaining advice in relation to it.”
- (3) In section 46 (approval of programme), after subsection (3G) insert—
  - “(3H) Where the Secretary of State makes or amends an agreement under subsection (3A), or it is proposed that such an agreement be made or amended, the site operator must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (3I), at a time determined in accordance with such regulations.
  - (3I) The costs are those incurred by the Secretary of State in relation to the consideration of the agreement or amendment, including, in particular, the costs of obtaining advice in relation to the agreement or amendment.”
- (4) In section 49 (procedure for modifying approved programme)—
  - (a) in subsection (3), after “made,” insert “or advice is sought from the Secretary of State about the making of a proposal,” and
  - (b) in subsection (4), in the opening words after “proposal” insert “(or the making of a proposal)”.
- (5) In section 66 (disposal of hazardous material), after subsection (3) insert—
  - “(3A) The Secretary of State may make regulations providing for a person who makes a proposal to the Secretary of State to enter an agreement of the kind mentioned in subsection (1), or proposes an amendment to such an agreement, to pay a fee to the Secretary of State in respect of the costs incurred in relation to the consideration of the proposal, including, in particular, the costs of obtaining advice in relation to it.
  - (3B) The regulations may, in particular, make provision about—
    - (a) when the fee is to be paid;
    - (b) how the amount of the fee is to be determined.”

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### *Smoke and carbon monoxide alarms*

#### **150 Smoke and carbon monoxide alarms**

- (1) The Secretary of State may by regulations make provision imposing duties on a relevant landlord of residential premises in England for the purposes of ensuring that, during any period when the premises are occupied under a tenancy—
  - (a) the premises are equipped with a required alarm (or required alarms), and
  - (b) checks are made by or on behalf of the landlord in accordance with the regulations to ensure that any such alarm remains in proper working order.
- (2) “Required alarm” means—
  - (a) a smoke alarm, or
  - (b) a carbon monoxide alarm,
 that meets the appropriate standard.
- (3) Regulations may include provision about—
  - (a) the interpretation of terms used in subsections (1) and (2);
  - (b) the enforcement of any duty imposed by regulations.
- (4) Provision made by virtue of subsection (3)(b) may in particular—
  - (a) confer functions on local housing authorities in England;
  - (b) require a landlord who contravenes any such duty to pay a financial penalty.
- (5) Provision about penalties made by virtue of subsection (4)(b) includes provision—
  - (a) about the procedure to be followed in imposing penalties;
  - (b) about the amount of penalties;
  - (c) conferring rights of appeal against penalties;
  - (d) for the enforcement of penalties;
  - (e) about the application of sums paid by way of penalties (and such provision may permit or require the payment of sums into the Consolidated Fund).
- (6) Regulations may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Consequential provision made by virtue of subsection (6)(a) may amend, repeal or revoke any provision made by or under an Act.
- (8) Regulations are to be made by statutory instrument.
- (9) An instrument containing regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Subject to provision contained in regulations, in this section—
 

“the appropriate standard”, in relation to a smoke alarm or a carbon monoxide alarm, means the standard (if any) that is specified in, or determined under, regulations;



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“local housing authority” has the meaning given in section 261(2) of the Housing Act 2004;

“premises” includes land, buildings, moveable structures, vehicles and vessels;

“regulations” means regulations under this section;

“relevant landlord” means a landlord in respect of a tenancy of residential premises in England who is of a description specified in regulations;

“residential premises” means premises all or part of which comprise a dwelling;

“tenancy” includes any lease, licence, sub-lease or sub-tenancy (and “landlord” is to be read accordingly).

### *Review*

## **151 Review of certain provisions of Part 6**

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the relevant commencement date, the Secretary of State must carry out a review of—
  - (a) section 144 and Schedule 14 (consumer redress orders);
  - (b) section 149 (fees in respect of decommissioning etc).
- (2) The relevant commencement date—
  - (a) in relation to section 144 and Schedule 14, is the date on which that section and Schedule come into force;
  - (b) in relation to section 149, is the date on which that section comes into force.
- (3) The Secretary of State must set out the conclusions of the review in a report.
- (4) The report must, in particular—
  - (a) set out the objectives of the provisions subject to review,
  - (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.
- (5) The Secretary of State must lay the report before Parliament.

## **PART 7**

### FINAL

## **152 Interpretation of Act**

- (1) In this Act—
  - “the Authority” means the Gas and Electricity Markets Authority;
  - “EA 1989” means the Electricity Act 1989;
  - “functions” includes powers and duties;
  - “primary legislation” means—
    - (a) an Act of Parliament,

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- (b) an Act of the Scottish Parliament,
- (c) an Act or Measure of the National Assembly for Wales, or
- (d) Northern Ireland legislation.

- (2) A reference in this Act to—
- (a) the Department of Enterprise, Trade and Investment, or
  - (b) the Department of Environment,
- is to that Department in Northern Ireland.

### **153 Transfer schemes**

- (1) This section applies in relation to a scheme made by the Secretary of State under any of the following provisions (a “transfer scheme”)—
- (a) Schedule 1;
  - (b) paragraph 16 of Schedule 2;
  - (c) Schedule 3;
  - (d) Schedule 11;
  - (e) Schedule 13.
- (2) Subject to subsection (3), the Secretary of State may modify a transfer scheme.
- (3) If a transfer under the scheme has taken effect, any modification under subsection (2) that relates to the transfer may be made only with the agreement of the person (or persons) affected by the modification.
- (4) A modification takes effect from such date as the Secretary of State may specify; and that date may be the date when the original scheme came into effect.
- (5) A transfer scheme may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (6) In the provisions mentioned in subsection (1), “subordinate legislation” means—
- (a) subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act), or
  - (b) an instrument made under—
    - (i) an Act of the Scottish Parliament,
    - (ii) an Act or Measure of the National Assembly for Wales, or
    - (iii) Northern Ireland legislation.

### **154 Financial provisions**

- (1) The following are to be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Secretary of State by virtue of this Act;
  - (b) any expenditure incurred by the Authority by virtue of this Act;
  - (c) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

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- (2) The expenditure referred to in subsection (1)(a) includes expenditure incurred by the Secretary of State for the purposes of, or in connection with—
- (a) the establishment of a CFD counterparty;
  - (b) making payments or providing financial assistance to a CFD counterparty;
  - (c) obtaining advice and assistance in relation to the exercise of functions conferred on the Secretary of State by or by virtue of Chapter 2 or 3 of Part 2;
  - (d) making payments or providing financial assistance to a settlement body in relation to capacity agreements (see section 28(4)(g));
  - (e) making payments or providing financial assistance to the national system operator, a person or body on whom a function is conferred by virtue of section 35 or an alternative delivery body in connection with the exercise of EMR functions.
- (3) Financial assistance or payments includes financial assistance or payments given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State; and such conditions may in particular in the case of a grant include conditions for repayment in specified circumstances.
- (4) In this section—
- “alternative delivery body” and “EMR functions” have the same meaning as in section 46;
  - “CFD counterparty” and “national system operator” have the same meaning as in Chapter 2 of Part 2;
  - “financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance.

## 155 Extent

- (1) Subject to the rest of this section, this Act extends to England and Wales and Scotland.
- (2) The following also extend to Northern Ireland—
- (a) Part 1 (decarbonisation);
  - (b) in Part 2—
    - (i) Chapter 1 (general considerations),
    - (ii) Chapter 2 (contracts for difference),
    - (iii) Chapter 4 (investment contracts),
    - (iv) section 56 (transition to certificate purchase scheme),
    - (v) Chapter 8 (emissions performance standard), and
    - (vi) section 63 (exemption from liability in damages);
  - (c) subject to subsections (6) and (7), Part 3 (nuclear regulation);
  - (d) this Part.
- (3) Section 55(4) extends to Northern Ireland only.
- (4) Sections 145 and 150 extend to England and Wales only.
- (5) Section 149 extends to England and Wales and Northern Ireland only.
- (6) Part 2 of Schedule 8 extends to England and Wales and Scotland only.
- (7) The amendments made by Schedule 12 have the same extent as the provisions they amend, except that—

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- (a) paragraph 25 (amendment to section 24A of the Nuclear Installations Act 1965 as it has effect in England and Wales and Scotland) extends to England and Wales and Scotland only;
- (b) the other amendments in that Schedule of the Nuclear Installations Act 1965 extend to England and Wales, Scotland and Northern Ireland only;
- (c) paragraphs 39 to 49 (amendments of the Nuclear Safeguards and Electricity (Finance) Act 1978 and Nuclear Safeguards Act 2000) extend to England and Wales, Scotland and Northern Ireland only;
- (d) paragraphs 66 to 68 (amendments of the Radioactive Substances Act 1993) extend to Scotland only.

## 156 Commencement

- (1) The provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint, subject to subsections (2) and (3).
- (2) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
  - (a) Chapter 5 of Part 2 (conflicts of interest and contingency arrangements);
  - (b) Chapter 6 of Part 2 (access to markets);
  - (c) section 56 (transition to certificate purchase scheme);
  - (d) Chapter 8 of Part 2 (emissions performance standard);
  - (e) Part 5 (strategy and policy statement), other than section 138(1), (4) and (5);
  - (f) sections 139 to 142 (domestic tariffs: modifications of energy supply licences);
  - (g) section 143 (powers to alter activities requiring licences: activities related to supply contracts);
  - (h) section 144 (consumer redress orders);
  - (i) section 145 (fuel poverty);
  - (j) section 146 (feed-in tariffs: increase in maximum capacity of plant);
  - (k) section 147 (offshore transmission systems);
  - (l) section 149 (fees in respect of decommissioning and clean-up of nuclear sites).
- (3) The following provisions come into force on the day on which this Act is passed—
  - (a) Part 1 (decarbonisation);
  - (b) Chapter 1 of Part 2 (general considerations);
  - (c) Chapter 2 of Part 2 (contracts for difference);
  - (d) Chapter 3 of Part 2 (capacity market);
  - (e) Chapter 4 of Part 2 (investment contracts);
  - (f) section 55 (closure of support under the renewables obligation);
  - (g) Chapter 9 of Part 2 (miscellaneous);
  - (h) section 113 (subordinate legislation under Part 3);
  - (i) section 114(1) (power to make transitional provision in relation to Part 3);
  - (j) section 115 (transfer of staff etc for purposes of Part 3);
  - (k) section 116(2) (power to make consequential amendments in relation to Part 3);
  - (l) section 118 (review of Part 3);
  - (m) section 151 (review of certain provisions of Part 6);

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- (n) the provisions of this Part (including this section).
- (4) An order under subsection (1) may—
- (a) appoint different days for different purposes;
  - (b) make transitional provision and savings.

**157 Short title**

This Act may be cited as the Energy Act 2013.

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## SCHEDULES

### SCHEDULE 1

Section 7

#### CFD COUNTERPARTIES: TRANSFER SCHEMES

##### *Power to make transfer schemes*

- 1 (1) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be a CFD counterparty (“the transferor”) to a person who is a CFD counterparty (“the transferee”).
- (2) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme.
- (3) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (4) A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact.
- (5) In this Schedule—
- “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
  - “property” includes interests of any description;
  - “the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect.

##### *Contents of a scheme*

- 2 (1) A scheme may make provision—
- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
  - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
  - (c) about the continuation of legal proceedings;
  - (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
  - (e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;
  - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;

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- (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
  - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
  - (i) for apportioning property, rights or liabilities;
  - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
  - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (2) Sub-paragraph (1)(b) does not apply to references in primary legislation or in subordinate legislation.

### *Compensation*

- 3 A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.

## SCHEDULE 2

Section 44

### INVESTMENT CONTRACTS

#### PART 1

##### INTRODUCTORY

### *Meaning of “investment contract”*

- 1 (1) In this Schedule an “investment contract” means a contract with an electricity generator which—
- (a) is entered into by the Secretary of State, whether before or after this Schedule comes into force, on or before the earlier of 31st December 2015 and the date on which a definition of an “eligible generator” first comes into force by virtue of section 10(3),
  - (b) if it relates to an electricity generating station in Northern Ireland, is entered into with the consent of the Department of Enterprise, Trade and Investment,
  - (c) includes an obligation for the parties to make payments under the contract based on the difference between a strike price and a reference price in relation to electricity generated, and
  - (d) is laid before Parliament in accordance with sub-paragraph (5).
- (2) If the contract is entered into before the coming into force of this Schedule, the obligation referred to in sub-paragraph (1)(c) must be conditional on the being in force of this Schedule.
- (3) In sub-paragraph (1)—
- “electricity generator”, in relation to an investment contract, means—
- (a) a person who at the time the contract is entered into intends to establish an electricity generating station or alter an existing station;

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- (b) a person who at that time intends to operate or participate in the operation of an electricity generating station that is to be established or altered;
  - (c) a person who at that time has an interest in a company falling within paragraph (a) or (b);
    - “reference price” means the sum that is specified in, or determined under, the contract as the reference price in respect of electricity generated in the period specified in, or determined under, the contract;
    - “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland;
    - “strike price” means the sum that is specified in, or determined under, the contract as the strike price in respect of electricity generated in the period specified in, or determined under, the contract.
- (4) In the case of a contract entered into with more than one person, the reference in sub-paragraph (1)(c) to the parties is a reference to the Secretary of State and any of those persons who is an electricity generator.
- (5) A contract is laid before Parliament in accordance with this sub-paragraph if it is laid by the Secretary of State at any time after the introduction into Parliament of the Bill that becomes this Act—
- (a) with a statement falling within sub-paragraph (6), and
  - (b) after the Secretary of State has excluded from the contract any confidential information (see paragraph 3).
- (6) A statement falls within this sub-paragraph if it is a statement—
- (a) that the Secretary of State considers that payments falling within sub-paragraph (1)(c) which would be made under the contract would encourage low carbon electricity generation,
  - (b) that the Secretary of State considers that without the contract there is a significant risk that the electricity generation to which the contract relates will not occur or will be significantly delayed, and
  - (c) summarising the regard that the Secretary of State has had, in deciding to enter the contract, to the matters set out in subsection (2) of section 5.
- (7) In sub-paragraph (6) “low carbon electricity generation” means electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases; and “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.
- (8) The Secretary of State must publish an investment contract in the form in which it was laid before Parliament as soon as reasonably practicable after it is laid.

#### *Varied investment contract*

- 2 (1) An investment contract is a “varied investment contract” for the purposes of this paragraph if the variation—
- (a) is agreed at any time before or after this Schedule comes into force, and
  - (b) will, in the opinion of the Secretary of State, materially increase the likely cost to consumers of electricity.



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- (2) A varied investment contract is an “investment contract” for the purposes of this Schedule only if it is laid before Parliament (at any time after the introduction into Parliament of the Bill that becomes this Act)—
- (a) with a statement of why, having regard to the likely cost to consumers of electricity, the Secretary of State believes that the variation is appropriate, and
  - (b) after the Secretary of State has excluded from it any confidential information (see paragraph 3).
- (3) The Secretary of State must publish a varied investment contract in the form in which it was laid before Parliament as soon as reasonably practicable after it is laid.
- (4) This paragraph does not apply in respect of a variation which is made in accordance with the terms of an investment contract.

### *Confidential information*

- 3 (1) For the purposes of paragraphs 1 and 2, “confidential information” means specified information to which sub-paragraph (3) applies and in relation to which it is an initial term of the contract that it should not be disclosed.
- (2) For the purposes of sub-paragraph (1)—
- (a) a term is an initial term if it is agreed at the time the investment contract is entered into or, in relation to a varied investment contract, at the time the variation is agreed;
  - (b) “specified” means specified in the initial term.
- (3) This sub-paragraph applies to information if it is—
- (a) not the strike price or the reference price;
  - (b) information which, in the opinion of the Secretary of State at the time the initial term is agreed, constitutes a trade secret;
  - (c) information the disclosure of which, in the opinion of the Secretary of State at that time, would or would be likely to prejudice the commercial interests of any person;
  - (d) information the disclosure of which would, in the opinion of the Secretary of State at that time, constitute a breach of confidence actionable by any person.

### *Interpretation for the purposes of this Schedule*

- 4 (1) In this Schedule—
- “CFD” is to be construed in accordance with section 6(2);
  - “CFD counterparty” is to be construed in accordance with section 7(2);
  - “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
    - (a) section 6(1)(d) of EA 1989, or
    - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#));
  - “investment contract counterparty” is to be construed in accordance with paragraph 5;

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“national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act);  
“regulations” means regulations made under paragraph 6.

- (2) References in this Schedule to a CFD counterparty (apart from the references in paragraphs 9(1)(c) and (d) and 16) are to a CFD counterparty acting as a counterparty in relation to an investment contract (where any property, rights or liabilities under the contract have been transferred to the CFD counterparty by a scheme under paragraph 16).

*Investment contract counterparty*

- 5 (1) The Secretary of State may by order made by statutory instrument designate an eligible person to be a counterparty for investment contracts.
- (2) A person is eligible if the person is—
- (a) a company formed and registered under the Companies Act 2006, or
  - (b) a public authority, including any person any of whose functions are of a public nature.
- (3) A designation may be made only with the consent of the person designated.
- (4) The Secretary of State may exercise the power to designate so that more than one designation has effect under this paragraph, but only if the Secretary of State considers it necessary for the purpose of ensuring that—
- (a) liabilities under an investment contract are met,
  - (b) arrangements entered into for purposes connected to an investment contract continue to operate, or
  - (c) directions given to an investment contract counterparty continue to have effect.
- (5) A designation ceases to have effect if—
- (a) the Secretary of State by order made by statutory instrument revokes the designation, or
  - (b) the person withdraws consent to the designation by giving not less than 3 months’ notice in writing to the Secretary of State.
- (6) As soon as reasonably practicable after a designation ceases to have effect the Secretary of State must make a transfer scheme under paragraph 16 to ensure the transfer of all rights and liabilities under any investment contract to which the person who has ceased to be an investment contract counterparty was a party.
- (7) If necessary for the purposes of a transfer scheme required to be made by virtue of sub-paragraph (6), the Secretary of State must, so far as reasonably practicable, exercise the power to designate so as to ensure that at least one designation has effect under this paragraph.
- (8) Regulations may include provision about the period of time for which, and the circumstances in which, a person who has ceased to be an investment contract counterparty is to continue to be treated as an investment contract counterparty for the purposes of the regulations.

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## PART 2

### REGULATIONS: GENERAL

#### *Regulations for the purposes of investment contracts*

- 6
- (1) The Secretary of State may by regulations make further provision about or in connection with investment contracts.
  - (2) The provision which may be made by regulations includes, but is not limited to, the provision described in this Schedule.
  - (3) Regulations may—
    - (a) include incidental, supplementary and consequential provision;
    - (b) make transitory or transitional provision or savings;
    - (c) make different provision for different cases or circumstances or for different purposes;
    - (d) make provision subject to exceptions.
  - (4) Regulations are to be made by statutory instrument.
  - (5) An instrument containing regulations of any of the following kinds may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament (in each case, whether or not the regulations also make any other provision)—
    - (a) the first regulations which make provision falling within paragraph 10,
    - (b) the first regulations which make provision falling within paragraph 11, or
    - (c) regulations which make provision falling within any other paragraph of Parts 1 to 3 of this Schedule.
  - (6) Any other instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
  - (7) If, but for this sub-paragraph, an instrument containing regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

#### *Supplier obligation*

- 7
- (1) Regulations may make provision for electricity suppliers to pay the Secretary of State for the purpose of enabling payments to be made under investment contracts.
  - (2) Regulations must make provision for electricity suppliers to pay an investment contract counterparty or a CFD counterparty for the purpose of enabling payments to be made under investment contracts.
  - (3) Regulations may make provision for electricity suppliers to pay the Secretary of State, an investment contract counterparty or a CFD counterparty for the purpose of enabling the person to whom the payments are made—
    - (a) to meet such other descriptions of costs as the Secretary of State considers appropriate;
    - (b) to hold sums in reserve;
    - (c) to cover losses in the case of insolvency or default of an electricity supplier.

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- (4) In sub-paragraph (3)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Schedule.
- (5) Regulations may make provision to require electricity suppliers to provide financial collateral to the Secretary of State, an investment contract counterparty or a CFD counterparty (whether in cash, securities or any other form).
- (6) Regulations which make provision by virtue of sub-paragraph (1) or (2) for the payment of sums by electricity suppliers must impose on the person to whom such sums are to be paid a duty in relation to the collection of such sums.
- (7) Provision made by virtue of this paragraph may include provision for—
- (a) the Secretary of State, an investment contract counterparty or a CFD counterparty to determine the form and terms of any financial collateral;
  - (b) the Secretary of State, an investment contract counterparty or a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or are to be provided as financial collateral by an electricity supplier;
  - (c) the issuing of notices by the Secretary of State, an investment contract counterparty or a CFD counterparty to require the payment or provision of such amounts;
  - (d) the enforcement of obligations arising under such notices.
- (8) Provision made by virtue of sub-paragraph (7)(b) may provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (9) Provision made by virtue of sub-paragraph (7)(d) may include provision—
- (a) about costs;
  - (b) about interest on late payments under notices;
  - (c) about references to arbitration;
  - (d) about appeals.
- (10) Any sum which—
- (a) an electricity supplier is required by virtue of regulations to pay to the Secretary of State, an investment contract counterparty or a CFD counterparty, and
  - (b) has not been paid by the date on which it is required by virtue of regulations to be paid,
- may be recovered from the electricity supplier by the Secretary of State, the investment contract counterparty or the CFD counterparty (as the case may be) as a civil debt due to that person.

#### *Payments to electricity suppliers*

- 8 (1) Regulations may make provision about the amounts which must be paid by the Secretary of State, an investment contract counterparty or a CFD counterparty to electricity suppliers.
- (2) Provision made by virtue of this paragraph may—

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- (a) include provision for the person by whom sums are owed to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed;
- (b) provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

#### *Application of sums*

- 9 (1) Regulations may make provision for apportioning sums—
- (a) received by the Secretary of State, an investment contract counterparty or a CFD counterparty from electricity suppliers under provision made by virtue of paragraph 7;
  - (b) received by the Secretary of State, an investment contract counterparty or a CFD counterparty under an investment contract,
  - (c) received by a CFD counterparty from electricity suppliers under provision made by virtue of section 9;
  - (d) received by a CFD counterparty under a CFD,
- in circumstances where the Secretary of State, an investment contract counterparty or a CFD counterparty is unable fully to meet liabilities under an investment contract or a CFD.
- (2) Provision made by virtue of sub-paragraph (1) may include provision about the meaning of “unable fully to meet liabilities under an investment contract or a CFD”.
- (3) In making provision by virtue of sub-paragraph (1) the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed.
- (4) Regulations may make provision about the application of sums held by the Secretary of State, an investment contract counterparty or a CFD counterparty.
- (5) Provision made by virtue of sub-paragraph (4) may include provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

#### *Information and advice*

- 10 (1) Regulations may make provision about the provision and publication of information.
- (2) Provision made by virtue of sub-paragraph (1) may include provision—
- (a) for the Secretary of State to require the national system operator to provide advice to the Secretary of State;
  - (b) for the Secretary of State to require an investment contract counterparty, a CFD counterparty, the Authority, the Northern Ireland Authority for Utility Regulation or the Northern Ireland system operator to provide advice to the Secretary of State or any other person specified in the regulations;
  - (c) for the Secretary of State to require an investment contract counterparty, a CFD counterparty, the national system operator, electricity suppliers, the Authority, the Northern Ireland Authority for Utility Regulation, the Northern Ireland system operator or a generator who is party to an investment contract to provide information to the Secretary of State or any other person specified in the regulations;

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- (d) for the national system operator to require information to be provided to it by an investment contract counterparty, a CFD counterparty, a generator who is party to an investment contract or the Northern Ireland system operator;
  - (e) for an investment contract counterparty or a CFD counterparty to require information to be provided to it by electricity suppliers or the Northern Ireland system operator;
  - (f) for the classification and protection of confidential or sensitive information;
  - (g) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (f).
- (3) In sub-paragraph (2) “Northern Ireland system operator” means the holder of a licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).
- (4) The prohibition on disclosure of information by—
- (a) section 105(1) of the Utilities Act 2000;
  - (b) Article 63(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- does not apply to a disclosure required by virtue of this paragraph.

*Investment contracts: functions of the Authority*

- 11 Regulations may make provision conferring functions on the Authority for the purpose of offering advice to, or making determinations on behalf of, a party to an investment contract.

*Enforcement*

- 12 (1) Regulations may include provision for requirements under the regulations to be enforceable—
- (a) by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (b) by the Northern Ireland Authority for Utility Regulation as if they were relevant requirements on a regulated person for the purposes of Article 41A of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)).
- (2) Provision made by virtue of sub-paragraph (1)(b) may be made in relation only to the enforcement of requirements imposed on the holder of a licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).

*Consultation*

- 13 (1) Before making regulations the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the Department of Enterprise, Trade and Investment, and
  - (d) such other persons as the Secretary of State considers it appropriate to consult.
- (2) Before making regulations which contain provision falling within paragraph 7, 8 or 14(3), the Secretary of State must also consult electricity suppliers.

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- (3) Before making regulations which contain provision falling within paragraph 9, the Secretary of State must also consult electricity suppliers and any electricity generator who is party to an investment contract.
- (4) Before making regulations which contain provision falling within paragraph 11 or 12(1)(a), the Secretary of State must also consult the Authority.
- (5) Before making regulations which contain provision falling within paragraph 12(1)(a), the Secretary of State must also consult any person who is a holder of a licence under section 6(1)(d) of EA 1989.
- (6) Before making regulations which contain provision falling within paragraph 12(1)(b), the Secretary of State must also consult the Northern Ireland Authority for Utility Regulation and any person who is a holder of a licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).
- (7) If regulations impose requirements by virtue of paragraph 10(2), the Secretary of State must before making the regulations also consult any person upon whom a requirement is imposed.
- (8) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

### PART 3

#### FURTHER PROVISION ABOUT AN INVESTMENT CONTRACT COUNTERPARTY AND A CFD COUNTERPARTY

##### *Duties and liabilities of an investment contract counterparty and a CFD counterparty*

- 14 (1) An investment contract counterparty and a CFD counterparty must act in accordance with—
- (a) any direction given by the Secretary of State by virtue of this Schedule;
  - (b) any provision included in regulations.
- (2) An investment contract counterparty and a CFD counterparty must exercise the functions conferred by or by virtue of this Schedule to ensure that it can meet its liabilities under any investment contract to which it is a party.
- (3) Regulations may make provision—
- (a) to require an investment contract counterparty or a CFD counterparty to enter into arrangements or to offer to contract for purposes connected to an investment contract;
  - (b) specifying things that an investment contract counterparty or a CFD counterparty may or must do, or things that an investment contract counterparty or CFD counterparty may not do;
  - (c) conferring on the Secretary of State further powers to direct an investment contract counterparty or CFD counterparty to do, or not to do, things specified in the regulations or the direction.
- (4) Provision made by virtue of sub-paragraph (3)(b) or (c) includes provision requiring consultation with, or the consent of, the Secretary of State in relation to—
- (a) the enforcement of obligations under an investment contract;

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- (b) a variation or termination of an investment contract;
  - (c) the settlement or compromise of a claim under an investment contract;
  - (d) the conduct of legal proceedings relating to an investment contract;
  - (e) the exercise of rights under an investment contract.
- (5) Regulations must include such provision as the Secretary of State considers necessary to ensure that an investment contract counterparty or a CFD counterparty can meet its liabilities under any investment contract to which it is a party.

*Shadow directors, etc.*

- 15 The Secretary of State is not, by virtue of the exercise of a power conferred by or by virtue of this Schedule, to be regarded as—
- (a) a person occupying in relation to an investment contract counterparty or a CFD counterparty the position of director;
  - (b) being a person in accordance with whose directions or instructions the directors of an investment contract counterparty or a CFD counterparty are accustomed to act;
  - (c) exercising any function of management in an investment contract counterparty or a CFD counterparty;
  - (d) a principal of an investment contract counterparty or a CFD counterparty.

## PART 4

### TRANSFERS

*Transfers*

- 16 (1) The Secretary of State may make one or more schemes for the transfer of designated property, or designated rights or liabilities under an investment contract—
- (a) from the Secretary of State (“the transferor”) to a CFD counterparty (“the transferee”);
  - (b) from the Secretary of State (“the transferor”) to an investment contract counterparty (“the transferee”);
  - (c) from an investment contract counterparty (“the transferor”) to a CFD counterparty (“the transferee”);
  - (d) from a person who has ceased to be an investment contract counterparty (“the transferor”) to a person who is an investment contract counterparty (“the transferee”).
- (2) If a scheme provides for a CFD counterparty to be the transferee, regulations may provide for the investment contract to be treated to any extent as a CFD for the purposes of provision made by or by virtue of Chapter 2 of Part 2 of this Act.
- (3) Sub-paragraph (4) applies from the beginning of the first day on which all of the following three conditions are met, namely—
- (a) a definition of an “eligible generator” is in force by virtue of section 10(3) or the date is 1st January 2016 or later;
  - (b) a designation under section 7(1) has effect;
  - (c) provision required by section 9(1) to be made is in force.



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- (4) The Secretary of State must in respect of each investment contract, within such period of time as the Secretary of State considers reasonable—
- (a) make a transfer scheme by virtue of sub-paragraph (1)(a) or (c) to ensure the transfer of all rights and liabilities under the investment contract, and
  - (b) make provision under sub-paragraph (2) for the investment contract to be treated as a CFD for the purposes of all provision made by or by virtue of Chapter 2 of Part 2 of this Act.
- (5) But sub-paragraph (4) does not apply to the extent that the Secretary of State considers it appropriate in all the circumstances of the case to disapply it.
- (6) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme.
- (7) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (8) A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact.
- (9) In this paragraph and paragraph 17—
- “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
  - “property” includes interests of any description;
  - “the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect.
- 17 (1) A scheme may make provision—
- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
  - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
  - (c) about the continuation of legal proceedings;
  - (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
  - (e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;
  - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
  - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
  - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
  - (i) for apportioning property, rights or liabilities;
  - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
  - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.

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- (2) Sub-paragraph (1)(b) does not apply to references in primary legislation or in subordinate legislation.
- 18 A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.

## PART 5

### SUPPLEMENTARY

#### *Licence modifications*

- 19 (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(a), (b) or (c) of EA 1989 (generation, transmission and distribution licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A(1A) of that Act;
  - (c) a document maintained in accordance with the conditions of licences under that provision, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under sub-paragraph (1) only for the purpose of—
- (a) allowing or requiring services to be provided to the Secretary of State, an investment contract counterparty or a CFD counterparty;
  - (b) enforcing obligations under an investment contract.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the power under sub-paragraph (1) may in particular include provision of a kind that may be included in regulations.
- (4) Before making a modification under this paragraph, the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the holder of any licence being modified,
  - (d) electricity suppliers,
  - (e) the Department of Enterprise, Trade and Investment,
  - (f) the Authority, and
  - (g) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Sub-paragraph (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

#### *Expenditure*

- 20 (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State for the purpose of making payments in respect of the Secretary of State's obligations under an investment contract, whether entered into before or after this Schedule comes into force.

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- (2) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State for the purpose of, or in connection with—
  - (a) obtaining advice and assistance in relation to investment contracts (including in relation to entering into an investment contract);
  - (b) the establishment of an investment contract counterparty;
  - (c) making payments or providing financial assistance to an investment contract counterparty.
- (3) Financial assistance or payments includes financial assistance or payments given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State; and such conditions may in particular in the case of a grant include conditions for repayment in specified circumstances.
- (4) In this paragraph, “financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance.

### SCHEDULE 3

Section 47

#### ORDERS UNDER SECTION 46: TRANSFER SCHEMES

##### *Power to make transfer schemes*

- 1 (1) The Secretary of State may exercise the power in sub-paragraph (2) in connection with the making of an order under section 46 providing for a person (“the transferee”) to carry out EMR functions in place of another person (“the transferor”).
- (2) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities of the transferor to the transferee.
- (3) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme.
- (4) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (5) A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact.
- (6) In this Schedule—
  - “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
  - “EMR functions” has the same meaning as in section 46;
  - “property” includes interests of any description;
  - “the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect.

##### *Contents of a scheme*

- 2 (1) A scheme may make provision—

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- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
  - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
  - (c) about the continuation of legal proceedings;
  - (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
  - (e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;
  - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
  - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
  - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
  - (i) for apportioning property, rights or liabilities;
  - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
  - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (2) Sub-paragraph (1)(b) does not apply to references in primary legislation or in subordinate legislation.

### *Compensation*

- 3 A scheme must contain provision for the payment by the Secretary of State of such amounts of compensation as the Secretary of State considers appropriate to any person whose interests are adversely affected by it.

## SCHEDULE 4

Section 57

### APPLICATION AND MODIFICATION OF EMISSIONS LIMIT DUTY

#### *Application of duty: changes to main boilers*

- 1 (1) Regulations under section 57(6)(b) may provide for the emissions limit duty to apply (with or without modifications) in relation to fossil fuel plant in cases where—
- (a) immediately before the day on which section 57(1) came into force, the electricity generating station in question was the subject of a relevant consent, and
  - (b) on or after that day—
    - (i) any main boiler of the generating station is replaced, or
    - (ii) an additional main boiler is installed for the generating station.

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- (2) Regulations made by virtue of this paragraph may, in particular, make different provision in relation to different parts of fossil fuel plant.
- (3) For the purposes of sub-paragraph (1)(a), plant is to be treated as the subject of a relevant consent if, by virtue of a consent or approval granted before section 36 of EA 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) came into force, no relevant consent was required in respect of it.

*Application of duty: generating stations not exporting to a network*

- 2 Regulations under section 57(6)(b) may provide for the emissions limit duty to apply with modifications (or not to apply) in relation to fossil fuel plant which does not include a network generating station.

*Modifications where gasification or CCS plant associated with two or more generating stations*

- 3 (1) Regulations under section 57(6)(b) may provide for the emissions limit duty, or the exemption in section 58, to apply with modifications in cases where—
  - (a) gasification plant or CCS plant is associated with two or more electricity generating stations, and
  - (b) each of those generating stations is the subject of a relevant consent.
- (2) Regulations made by virtue this paragraph may, in particular, provide for—
  - (a) the installed generating capacity of any of those generating stations (or any part of it) to be treated as installed generating capacity of another of those generating stations;
  - (b) any of the emissions from the gasification plant or CCS plant to be treated as emissions from any of the generating stations.

*Modifications where carbon capture and storage process used in relation to part of generating station*

- 4 (1) Regulations under section 57(6)(b) may provide for the exemption in section 58 to apply with modifications in cases where the complete CCS system for the fossil fuel plant relates to only part of the generating station.
- (2) For this purpose—
  - (a) a complete CCS system relates to part of a generating station if it is a system for capturing some or all of the carbon dioxide (or any substance consisting primarily of carbon dioxide) that is produced by, or in connection with, generation of electricity by that part of the generating station, and
  - (b) “complete CCS system” has the same meaning as in section 58.

*Modifications of emissions limit duty for changes of circumstance during a year*

- 5 Regulations under section 57(6)(b) may modify the emissions limit duty in relation to fossil fuel plant in cases where—
  - (a) the generating station is used for the first time, or permanently ceases to be used, for the generation of electricity,
  - (b) any period during which the emissions limit duty does not apply in relation to the plant by virtue of section 58 begins or ends, or

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- (c) the generating station, or any CCS plant comprised in the fossil fuel plant, is altered.

## SCHEDULE 5

Section 60

### EMISSIONS LIMIT DUTY: MONITORING AND ENFORCEMENT

#### *Matters that may be contained in enforcement regulations*

- 1 (1) Provision that may be contained in enforcement regulations includes provision—
- (a) conferring functions for or in connection with monitoring or enforcing the compliance of operators with the emissions limit duty;
  - (b) determining the authorities by whom such functions are to be exercisable (“enforcing authorities”);
  - (c) requiring enforcing authorities to comply with directions given by the appropriate national authority in carrying out any of their functions under the regulations;
  - (d) requiring enforcing authorities to comply with requirements imposed on them under section 59(10);
  - (e) requiring or authorising enforcing authorities to carry out consultation in connection with the carrying out of any of their functions under the regulations;
  - (f) requiring enforcing authorities to publish guidance about the carrying out of any of their functions under the regulations;
  - (g) about the provision, use and publication of information in relation to the compliance of operators with the emissions limit duty;
  - (h) authorising the appropriate national authority to make schemes for the charging by enforcing authorities of fees or other charges in respect of or in connection with functions conferred on enforcing authorities under the regulations;
  - (i) about the enforcement of contraventions of the emissions limit duty through enforcement notices and financial penalties (see paragraphs 2 and 3);
  - (j) about the procedure to be followed in connection with the service of enforcement notices and imposition of financial penalties (including requirements for enforcement notices to be published in draft before being served for the purpose of enabling representations to be made about them);
  - (k) for the enforcement of—
    - (i) enforcement notices,
    - (ii) undertakings given in connection with such notices,
    - (iii) financial penalties, or
    - (iv) other obligations imposed on operators under the regulations,
 by proceedings in the High Court or any court of competent jurisdiction in Scotland;
  - (l) conferring rights of appeal in respect of decisions made, notices served, financial penalties imposed or other things done (or omitted to be done) by enforcing authorities under the regulations (including provision in relation to the making, consideration and determination of such appeals);
  - (m) about the application of the regulations to the Crown.

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- (2) Provision under sub-paragraph (1)(a) may in particular include provision—
  - (a) conferring power on enforcing authorities to take samples or to make copies of information;
  - (b) conferring power on enforcing authorities to arrange for preventative or remedial action to be taken at the expense of operators;
  - (c) authorising enforcing authorities to appoint suitable persons to exercise the functions mentioned in paragraph (a) or (b);
  - (d) conferring powers on persons so appointed (which may include, so far as relevant, the powers mentioned in section 108(4) of the Environment Act 1995).
  
- (3) Provision under sub-paragraph (1)(g) may in particular include provision—
  - (a) enabling enforcing authorities to use, for the purposes of their functions conferred under the regulations in respect of fossil fuel plant, information held for the purposes of their functions in relation to any such plant conferred under regulations implementing the ETS Directive;
  - (b) requiring operators, or other persons of a description specified in the regulations, to provide to an enforcing authority such information, and in such manner, as—
    - (i) the regulations may specify, or
    - (ii) the authority may reasonably require;
  - (c) requiring or authorising enforcing authorities to publish such information, and in such manner, as is specified in the regulations (whether such information is held as mentioned in paragraph (a) or is provided as mentioned in paragraph (b));
  - (d) requiring operators to publish such information, and in such manner, as—
    - (i) the regulations may specify, or
    - (ii) an enforcing authority may reasonably require.
  
- (4) Provision under sub-paragraph (1)(h) in relation to a scheme may—
  - (a) require the scheme to be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the enforcing authority or other person to whom they are so payable) as is specified;
  - (b) authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases).

#### *Enforcement notices*

- 2 (1) Enforcement regulations may authorise an enforcing authority to serve an enforcement notice on an operator who has breached the emissions limit duty in respect of any fossil fuel plant—
  - (a) in relation to the year in which the notice is served, or
  - (b) in relation to the preceding year.
  
- (2) The regulations may specify the requirements that may be imposed on an operator under an enforcement notice.
  
- (3) Those requirements may in particular include requirements—
  - (a) to take such remedial action in respect of the breach as is specified in the notice,

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- (b) to provide such undertakings in respect of the breach as may be agreed between the operator and the enforcing authority (whether for the taking of remedial action or otherwise), or
- (c) to comply with a modified emissions limit duty in relation to the fossil fuel plant for any year to take account of excess emissions in earlier years.

#### *Financial penalties*

- 3 (1) Enforcement regulations may authorise an enforcing authority to serve a notice on an operator who has breached the emissions limit duty requiring the operator to pay such a financial penalty in respect of the breach as is specified in, or calculated in accordance with, the notice or the regulations.
- (2) Enforcement regulations which provide for the imposition of financial penalties—
- (a) may not permit an enforcing authority to impose a financial penalty in respect of a breach of the emissions limit duty in any year which began more than 5 years before the year in which the notice imposing the penalty is served;
  - (b) may require enforcing authorities, in imposing such penalties, to have regard to any guidance issued by the appropriate national authority;
  - (c) may provide for such penalties to be instead of, or in addition to, requirements imposed under enforcement notices.

#### *General*

- 4 (1) Enforcement regulations may—
- (a) make provision which corresponds or is similar to any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 in connection with the ETS Directive (subject to any modifications that the appropriate national authority considers appropriate);
  - (b) apply or incorporate (with or without modifications) other enactments relating to the prevention or control of environmental pollution (including, in particular, regulations implementing the ETS Directive and directly applicable EU legislation).
- 5 (1) Provision included in enforcement regulations by virtue of section 62(9)(a) may affect legislation.
- (2) For this purpose, provision affects legislation if it amends, repeals or revokes any provision made by or under primary legislation.
- (3) Enforcement regulations made by the Scottish Ministers, the Welsh Ministers or the Department of Environment may not include any provision affecting legislation unless it is within legislative competence.
- (4) Enforcement regulations made by the Secretary of State—
- (a) may include provision affecting legislation that is made in consequence of any enforcement regulations made by the Scottish Ministers, the Welsh Ministers or the Department of Environment, but
  - (b) may not include any such provision that could be included in the regulations mentioned in paragraph (a) except with the consent of the authority making those regulations.



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- (5) For this purpose, a provision of enforcement regulations is within legislative competence if—
- (a) in the case of regulations by the Scottish Ministers, it would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament;
  - (b) in the case of regulations by the Welsh Ministers, it would be within the legislative competence of the National Assembly for Wales if it were included in an Act of that Assembly;
  - (c) in the case of regulations by the Department of Environment, it would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly.
- (6) Provision included in enforcement regulations by virtue of section 62(9)(b) may include provision modifying provision made by virtue of paragraph 2(3)(c) in cases where there is no applicable emissions limit in respect of any year.

*Interpretation*

- 6 In this Schedule “enforcement regulations” means regulations under section 60.

SCHEDULE 6

Section 74

NUCLEAR REGULATIONS

**PART 1**

INTRODUCTORY

*Provision that may be made by nuclear regulations*

- 1 Nuclear regulations may, in particular, make provision of any of the kinds mentioned in Part 2 of this Schedule for any of the purposes mentioned in section 74(1).
- 2 No provision in Part 2 of this Schedule is to be regarded as limiting the generality of—
- (a) section 74(1), or
  - (b) any other provision in that Part of this Schedule.

*Interpretation*

- 3 In Part 2 of this Schedule, “activity” includes process, operation or act.

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## PART 2

### EXAMPLES OF PROVISION THAT MAY BE MADE BY NUCLEAR REGULATIONS

#### *Nuclear installations etc*

- 4 Imposing requirements with respect to the following, in relation to any nuclear installation or its site—
- (a) design and construction;
  - (b) siting, installation and commissioning;
  - (c) operation;
  - (d) testing, maintenance and repair;
  - (e) inspection;
  - (f) alteration or adjustment;
  - (g) dismantling and decommissioning.

#### *Research*

- 5 Requiring research to be carried out in connection with any activity mentioned in paragraph 4.

#### *Import etc*

- 6 (1) Regulating or prohibiting the import of things of specified descriptions into the United Kingdom.
- (2) For this purpose “import” includes landing and unloading.
- (3) Where an act or omission could constitute an offence—
- (a) under a provision of nuclear regulations made by virtue of sub-paragraph (1), and
  - (b) under a provision of the Customs and Excise Acts 1979, specifying the provision under which the offence is to be punished.

#### *Transport*

- 7 Imposing requirements about how any radioactive material may be transported, including requirements about construction, testing and marking of packages or containers.

#### *Licences and approvals*

- 8 (1) Prohibiting any specified activity except—
- (a) as permitted by virtue of a licence, or
  - (b) with the consent or approval of a specified authority.
- (2) Providing for the grant, renewal, variation, transfer and revocation of licences (including the variation and revocation of conditions attached to licences).

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*Appointment of persons to carry out specified functions*

- 9 (1) Requiring, in specified circumstances, the appointment (whether in a specified capacity or not) of persons to perform specified functions.
- (2) Imposing duties or conferring powers on persons appointed (whether in pursuance of the regulations or not) to perform specified functions.
- (3) Imposing requirements with respect to the qualifications or experience, or both, of persons—
- (a) appointed pursuant to a requirement imposed by virtue of sub-paragraph (1), or
  - (b) performing specified functions.

*Restrictions on employment*

- 10 Regulating or prohibiting the employment in specified circumstances of—
- (a) all persons, or
  - (b) persons of a specified description.

*Instruction, training and supervision etc*

- 11 Imposing requirements with respect to the instruction, training and supervision of persons at work.

*Registration, notification and records*

- 12 Requiring any person, premises or thing to be registered—
- (a) in any specified circumstances, or
  - (b) as a condition of doing any specified activity.
- 13 (1) Requiring, in specified circumstances, specified matters to be notified in a specified manner to specified persons.
- (2) Specifying any power, to be exercisable by any inspector who may be authorised to exercise it by the instrument of appointment, in specified circumstances to require persons to provide information about measures they propose to take in order to comply with any of the relevant statutory provisions.
- 14 Imposing requirements with respect to making and keeping of records and other documents, including plans and maps.

*Accidents and other occurrences*

- 15 Securing that persons in premises of any specified description where persons work leave the premises in specified circumstances.
- 16 Restricting, prohibiting or requiring any specified activity where any accident or other occurrence of a specified kind has occurred.

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## SCHEDULE 7

Section 77

## THE OFFICE FOR NUCLEAR REGULATION

*Status*

- 1 (1) The ONR is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) The ONR's property is not to be regarded as the property of, or property held on behalf of, the Crown.

*Membership*

- 2 (1) The ONR is to consist of—
- (a) not more than 4 executive members, who are employees of the ONR, and
  - (b) not more than 7 non-executive members, who are not members of the ONR's staff.
- (2) References in this Part of this Act to members of the ONR's staff are to persons who—
- (a) are employees of the ONR, or
  - (b) have been seconded to it.
- 3 The executive members consist of—
- (a) the Chief Nuclear Inspector,
  - (b) the Chief Executive Officer, and
  - (c) not more than 2 other members (or not more than 3 other members, if the Chief Nuclear Inspector and the Chief Executive Officer are the same person) appointed by the ONR.
- 4 (1) The non-executive members consist of—
- (a) a chair appointed by the Secretary of State,
  - (b) the member (if any) appointed under sub-paragraph (4), and
  - (c) not more than 5 other members appointed by the Secretary of State.
- (2) The Secretary of State must, so far as practicable, ensure that at any given time there are no fewer than 5 non-executive members of the ONR.
- (3) One non-executive member must have experience of, or expertise in, matters relevant to the ONR's nuclear security purposes.
- (4) The Health and Safety Executive may—
- (a) appoint a non-executive member from among the members of the Health and Safety Executive (an "HSE member"), or
  - (b) authorise the Secretary of State to appoint a non-executive member.
- (5) The Health and Safety Executive must notify the ONR and the Secretary of State whenever it appoints an HSE member.
- 5 Service as a member of the ONR is not service in the civil service of the State, but this is subject to paragraph 6.
- 6 Members of the ONR are to be regarded as Crown servants for the purposes of the Official Secrets Act 1989.

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### *Terms of appointment*

- 7 Subject to the following provisions of this Schedule, members of the ONR hold and vacate office in accordance with the terms of their respective appointments.
- 8 (1) The terms of a person's appointment as an executive member are to be determined by the ONR.
- (2) The terms of a person's appointment as a non-executive member, other than an HSE member, are to be determined by the Secretary of State.
- (3) The terms of a person's appointment as an HSE member are to be determined by the Health and Safety Executive.
- 9 (1) An executive member—
- (a) ceases to be a member of the ONR upon ceasing to be an employee of the ONR, and
  - (b) may at any time resign from office by notice to the ONR.
- (2) A person who is—
- (a) the Chief Nuclear Inspector, or
  - (b) the Chief Executive Officer,
- ceases to be a member of the ONR on ceasing to hold that appointment (unless the person was appointed as both Chief Nuclear Inspector and Chief Executive Officer and continues to hold one of those appointments).
- (3) A non-executive member other than an HSE member—
- (a) ceases to be a member of the ONR upon becoming a member of the ONR's staff, and
  - (b) may at any time resign from office by notice to the Secretary of State.
- (4) An HSE member—
- (a) ceases to be a member of the ONR upon ceasing to be a member of the Health and Safety Executive, and
  - (b) may at any time resign from office by notice to the Health and Safety Executive.
- 10 (1) The Secretary of State may by notice remove any non-executive member, other than an HSE member, from office.
- (2) A notice may not be given under sub-paragraph (1) unless at least one of the conditions in sub-paragraph (3) or (4) is met.
- (3) The conditions in this sub-paragraph are that the member—
- (a) has been absent from meetings of the ONR for a period longer than 6 months without the permission of the ONR;
  - (b) is an undischarged bankrupt or has had his or her estate sequestrated without being discharged;
  - (c) is a person in relation to whom a moratorium period under a debt relief order applies;
  - (d) is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order;
  - (e) is subject to a debt relief restrictions order or an interim debt relief restrictions order;

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- (f) has made an arrangement with his or her creditors, or has entered into a trust deed for creditors, or has made a composition contract with his or her creditors;
  - (g) is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 or equivalent legislation in Northern Ireland;
  - (h) has been convicted of a criminal offence (but this does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27))).
- (4) The conditions in this sub-paragraph are that the Secretary of State is satisfied that the member—
- (a) has a financial or other interest that is likely to affect prejudicially the carrying out of his or her functions as a member of the ONR;
  - (b) has been guilty of misbehaviour;
  - (c) is otherwise incapable of carrying out, or unfit to carry out, the functions of his or her office.
- (5) The Health and Safety Executive may by notice remove an HSE member from office.
- (6) The Health and Safety Executive must notify the ONR and the Secretary of State whenever an HSE member—
- (a) ceases to be a member of the Health and Safety Executive,
  - (b) resigns from office, or
  - (c) is removed from office.
- (7) In sub-paragraph (3) “debt relief order”, “debt relief restrictions order” and “interim debt relief restrictions order” mean the orders of those names made under—
- (a) Part 7A of the Insolvency Act 1986, or
  - (b) Part 7A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

*Remuneration, allowances and pensions etc of non-executive members*

- 11 (1) The ONR may pay to non-executive members other than an HSE member such remuneration as the Secretary of State may determine.
- (2) The ONR may pay to or in respect of the non-executive members such sums as the Secretary of State may determine by way of allowances and expenses.
- (3) The ONR may pay, or make provision for paying, to or in respect of the non-executive members other than an HSE member, such sums as the Secretary of State may determine in respect of pensions or gratuities.
- (4) Where—
- (a) a person ceases, otherwise than on the expiry of his or her term of office, to be a non-executive member other than an HSE member, and
  - (b) it appears to the ONR that there are special circumstances that make it right for that person to receive compensation,
- the ONR may pay the person such amount by way of compensation as the Secretary of State may determine.

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- (5) Where—
- (a) a non-executive member appointed under paragraph 2(3A) of Schedule 2 to the 1974 Act to be a member of the Health and Safety Executive (the “ONR member of the HSE”)—
    - (i) ceases to be the ONR member of the HSE otherwise than on the expiry of his or her term of office as ONR member of the HSE, but
    - (ii) does not cease to be a non-executive member of the ONR, and
  - (b) it appears to the ONR that there are special circumstances that make it right for that person to receive compensation,
- the ONR may make pay the person such amount by way of compensation as the Secretary of State may determine.

*Employees and other members of staff*

- 12 (1) The ONR may appoint persons to serve as its employees.
- (2) A person appointed to serve as an employee of the ONR is to be employed on such terms and conditions, including terms and conditions as to remuneration, as the ONR may determine.
- (3) One employee of the ONR is to be appointed as the Chief Nuclear Inspector.
- (4) One employee of the ONR is to be appointed as the Chief Executive Officer.
- (5) The appointment of the Chief Nuclear Inspector or the Chief Executive Officer also requires the approval of the Secretary of State.
- (6) A person may be both the Chief Nuclear Inspector and the Chief Executive Officer.
- (7) The ONR may make arrangements for persons to be seconded to the ONR to serve as members of the ONR’s staff.
- (8) A period of secondment to the ONR does not affect the continuity of a person’s employment with the employer from whose service he or she is seconded.
- 13 (1) The ONR may pay to or in respect of an employee sums by way of or in respect of allowances, expenses, pensions, gratuities or compensation for loss of employment.
- (2) The ONR may pay to or in respect of a person seconded to it sums by way of or in respect of allowances, expenses, pensions or gratuities.
- (3) An executive member may not take part in the determination of the amount of any remuneration, allowance, expense, pension, gratuity or compensation payable to or in respect of him or her.
- 14 (1) Service as an employee of the ONR is not service in the civil service of the State.
- (2) A person employed in the civil service of the State continues to be employed in the civil service of the State during any period of secondment to the ONR.
- (3) Members of the ONR’s staff are to be regarded as Crown servants for the purposes of the Official Secrets Act 1989.
- (4) Employment by the ONR is not Crown employment for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 273 of that Act).

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- 15 (1) The persons to whom section 1 of the Superannuation Act 1972 (persons to or in respect of whom benefits may be provided by schemes under that section) applies are to include the employees of the ONR.
- (2) Accordingly, in Schedule 1 to that Act (employment to which superannuation schemes may extend), in the list of other bodies, at the appropriate place insert—  
“Office for Nuclear Regulation.”
- (3) The ONR must pay to the Minister for the Civil Service, at such times as that Minister may direct, such sums as that Minister may determine in respect of the increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under that Act.

#### *Committees*

- 16 (1) The ONR may establish committees, and any committee may establish sub-committees.
- (2) The members of a committee may include persons who are not members of the ONR or the ONR’s staff (and the members of a sub-committee of a committee may include persons who are not members of the committee or members of the ONR or the ONR’s staff).
- (3) The ONR may make arrangements for the payment of such remuneration, allowances and expenses as it considers appropriate to any person who—  
(a) is a member of a committee or sub-committee, but  
(b) is not a member of the ONR or of the ONR’s staff.
- (4) Payments made by the ONR under sub-paragraph (3) are to be of such amounts as may be determined by the Secretary of State.

#### *Procedure*

- 17 (1) The ONR may make such provision as it considers appropriate to regulate—  
(a) its own proceedings (including quorum), and  
(b) the proceedings (including quorum) of its committees and sub-committees.
- (2) The ONR may, to any extent, permit any of its committees and sub-committees to regulate their own proceedings (including quorum).
- (3) The validity of any proceedings of the ONR is not affected by any vacancy among the members or by any defect in the appointment of a member.
- (4) The ONR must from time to time publish a summary of its rules and procedures.

#### *Performance of functions*

- 18 (1) The ONR may authorise—  
(a) a member of the ONR,  
(b) a member of the ONR’s staff,  
(c) a health and safety inspector, or  
(d) a committee of the ONR,



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to do anything required or authorised to be done by the ONR (and such authorisation may include authorisation to exercise the power conferred on the ONR by this paragraph).

- (2) The ONR must give an authorisation or authorisations under this paragraph in respect of all its functions which consist of the exercise of a regulatory function in a particular case.
- (3) Only the following may be authorised under this paragraph to do anything in the exercise of a regulatory function in a particular case—
  - (a) a member of the ONR’s staff;
  - (b) a health and safety inspector;
  - (c) a committee of the ONR of which every member is a member of the ONR’s staff or a health and safety inspector.
- (4) An authorisation under this paragraph—
  - (a) may be general or specific;
  - (b) does not affect the ability of the ONR to exercise the function in question.
- (5) Any authorisations given by the ONR under this paragraph must be in writing.
- (6) The ONR must publish any authorisations which it gives under this paragraph.

#### *Payment of allowances and expenses*

- 19 The ONR may pay allowances or expenses to any person in connection with the performance of any of its functions.

#### *Indemnities*

- 20 (1) The ONR may, in the circumstances specified in sub-paragraph (2), indemnify persons who are ONR officers against all or any part of any liability which they incur in the execution, or purported execution, of their functions as such ONR officers.
- (2) Those circumstances are that the ONR is satisfied that the person in question honestly believed that the act giving rise to the liability—
  - (a) was within the person’s relevant powers, and
  - (b) was one that the person was required or entitled to do by virtue of the person’s position as an ONR officer.
- (3) Sub-paragraph (1)—
  - (a) applies only so far as the ONR is not otherwise required to indemnify ONR officers, and
  - (b) is not to be taken to affect any other powers that the ONR has to indemnify its members or members of staff or persons appointed by it.
- (4) In this paragraph—  
“liability” includes damages, costs and expenses (and a reference to liability incurred by a person includes a reference to any such sums which the person is ordered to pay);  
“ONR officer” means—
  - (a) an inspector appointed under Schedule 8;

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- (b) an enforcing officer appointed by the ONR under section 61(3) of the Fire (Scotland) Act 2005 (asp. 5) (enforcing authorities);
  - (c) an inspector appointed by the ONR under Article 26(1) of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) (enforcement of Order);
  - (d) a member of staff of the ONR who is authorised by the Secretary of State under section 4(2)(b) of the Employers' Liability (Compulsory Insurance) Act 1969 (certificates of insurance);
- “relevant powers”—
- (a) in relation to a person within paragraph (a), (b) or (c) of the definition of “ONR officer”, means the powers which the person has in the capacity of an inspector or enforcing officer of the kind in question;
  - (b) in relation to a person within paragraph (d) of that definition, means the person's powers under the Employers' Liability (Compulsory Insurance) Act 1969.

#### *Accounts*

- 21 (1) It is the duty of the ONR—
- (a) to keep proper accounts and proper records in relation to the accounts;
  - (b) to prepare in respect of each financial year a statement of accounts in such form as the Secretary of State, with the approval of the Treasury, may direct;
  - (c) to send copies of the statement to the Secretary of State and the Comptroller and Auditor General before the end of November next following the financial year to which the statement relates.
- (2) The Comptroller and the Auditor General must examine, certify and report on the statement and must lay copies of the statement and of the report on it before Parliament.

#### *Strategy*

- 22 (1) The ONR must prepare a strategy for carrying out its functions, including any general priorities it will apply, or principal objectives to which it will have regard, in carrying out its functions.
- (2) The ONR must act in accordance with its strategy, or any revision of it, approved under sub-paragraph (7).
- (3) Before preparing or revising its strategy the ONR must consult such persons as it considers it appropriate to consult.
- (4) The first proposal for the ONR's strategy must be submitted to the Secretary of State within 8 months beginning with the day on which this paragraph comes into force.
- (5) The ONR—
- (a) may review its strategy at any time, and
  - (b) must do so—
    - (i) within 5 years beginning with the day on which its strategy is first published, and
    - (ii) within 5 years beginning with the most recent review of its strategy.
- (6) The ONR—

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- (a) may revise its strategy following a review under sub-paragraph (5), and
  - (b) must submit any revision of its strategy to the Secretary of State.
- (7) The Secretary of State may approve the ONR’s strategy, or any revision of it, with or without modifications.
- (8) The Secretary of State must consult the ONR before approving with modifications the ONR’s strategy or any revision of it.

#### *Annual plan*

- 23 (1) The ONR—
- (a) must prepare, for each financial year, a plan for the performance during that year of its functions (“the annual plan”), and
  - (b) may revise the annual plan.
- (2) The ONR must take all reasonable steps to act in accordance with the annual plan, or any revision of it, approved under sub-paragraph (4).
- (3) The ONR must submit the proposed annual plan and any revision of it to the Secretary of State.
- (4) The Secretary of State may approve the annual plan and any revision of it with or without modifications.
- (5) The Secretary of State must consult the ONR before approving with modifications the ONR’s annual plan or any revision of it.

#### *Reporting requirements of the ONR*

- 24 (1) As soon as reasonably practicable after the end of each financial year, the ONR must make a report to the Secretary of State on the performance of the ONR’s functions during the year.
- (2) The report for a financial year must contain—
- (a) a general description of what the ONR has done in the exercise of its functions during the year,
  - (b) a description of how, and the extent to which, what the ONR has done during the year has enabled it to—
    - (i) act in accordance with its strategy in force during the year, and
    - (ii) meet any objectives set out in its annual plan, and
  - (c) a description of any relevant services provided by the ONR during the year to any person, whether or not in the United Kingdom, under section 91(2) (provision of services or facilities).

#### *Laying and publication*

- 25 (1) This paragraph applies to—
- (a) the ONR’s strategy, and any revision of it, approved under paragraph 22(7),
  - (b) the ONR’s annual plan, and any revision of it, approved under paragraph 23(4), and
  - (c) a report made to the Secretary of State under paragraph 24.

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- (2) The documents mentioned in sub-paragraph (1) are referred to in this paragraph as “relevant documents”.
- (3) The Secretary of State must lay a copy of each relevant document before Parliament, together with a statement as to whether any matter has been excluded from that copy in accordance with sub-paragraph (4).
- (4) If it appears to the Secretary of State, after consultation with the ONR, that the publication of any matter in a relevant document would be contrary to the interests of national security, the Secretary of State may exclude that matter from the copy of it as laid before Parliament.
- (5) The ONR must arrange for a relevant document to be published in the form in which it was laid before Parliament under sub-paragraph (3).

#### *Payments and borrowing*

- 26
- (1) The Secretary of State must pay to the ONR such sums as are approved by the Treasury and as the Secretary of State considers appropriate for the purpose of enabling the ONR to perform its functions.
  - (2) The ONR may, with the consent of the Secretary of State, borrow money.
  - (3) The ONR may not borrow money if the effect of the borrowing would be to cause the aggregate amount outstanding in respect of the principal of sums borrowed by the ONR to be, or to remain, in excess of the ONR’s borrowing limit.
  - (4) The ONR’s borrowing limit is £35 million.
  - (5) The Secretary of State may by order amend sub-paragraph (4) so as to substitute, for the sum for the time being specified in that sub-paragraph, the sum specified in the order, which must not be—
    - (a) less than £35 million, or
    - (b) greater than £80 million.
  - (6) Before making an order under this paragraph, the Secretary of State must consult the ONR.

#### *Supplementary powers*

- 27
- (1) The ONR may do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.
  - (2) The power in sub-paragraph (1) is subject to any restrictions imposed by or under any provision of any enactment.

#### *Financial year*

- 28
- (1) In this Part of this Act “financial year” means a period of 12 months ending with 31st March.
  - (2) But the first financial year of the ONR is—
    - (a) the period beginning with the date on which section 77 comes into force and ending with the following 31st March, or

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- (b) if the Secretary of State so directs, such other period not exceeding 2 years as may be specified in the direction.

## SCHEDULE 8

Section 83

### INSPECTORS

#### PART 1

##### APPOINTMENT AND POWERS OF INSPECTORS

###### *Appointment of inspectors*

- 1
- (1) The ONR may appoint persons (referred to in this Part of this Act as “inspectors”) to carry into effect the relevant statutory provisions.
  - (2) A person appointed as an inspector must be someone who appears to the ONR to be suitably qualified to carry out the functions that the ONR authorises the person to carry out.
  - (3) The appointment of an inspector under this paragraph is to be on such terms as the ONR may determine and may be ended by the ONR at any time.
  - (4) Any appointment of an inspector under this paragraph must be made by a written instrument.
  - (5) References in this Schedule to carrying into effect the relevant statutory provisions include in particular assisting the ONR to fulfil its functions under the relevant statutory provisions.

###### *Powers of inspectors*

- 2
- (1) An inspector’s instrument of appointment may authorise the inspector to exercise any relevant power.
  - (2) Authority to exercise a relevant power may be given—
    - (a) without restriction, or
    - (b) only to a limited extent or for limited purposes.
  - (3) The authority conferred by an inspector’s instrument of appointment to exercise any relevant powers may be varied by the ONR by a further instrument in writing varying the instrument of appointment.
  - (4) For the purposes of this Schedule, an inspector is “authorised”, in relation to a power, if and so far as the inspector is authorised by the instrument of appointment to exercise the power.
  - (5) In this Part, “relevant power” means a power conferred by any of the relevant statutory provisions on an inspector if and so far as so authorised.

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- (6) When exercising or seeking to exercise any relevant power, an inspector must, if asked, produce the instrument of appointment (including any instrument varying it) or a duly authenticated copy.

## PART 2

### POWERS EXERCISABLE BY INSPECTORS AUTHORISED BY INSTRUMENT OF APPOINTMENT: IMPROVEMENT NOTICES AND PROHIBITION NOTICES

#### *Improvement notices*

- 3 (1) This paragraph applies where an inspector is of the opinion that a person—
- (a) is contravening one or more applicable provisions, or
  - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector may, if authorised, give the person a notice (an “improvement notice”) requiring the person to remedy—
- (a) the contravention, or
  - (b) as the case may be, the matters giving rise to the notice, within the period specified in the notice.
- (3) The improvement notice must—
- (a) specify the applicable provision or provisions in question, and
  - (b) state that the inspector is of the opinion mentioned in sub-paragraph (1), and why.
- (4) The period specified under sub-paragraph (2) must end no earlier than the period within which an appeal against the notice may be brought under paragraph 6.
- (5) In this paragraph “applicable provision” means—
- (a) any of the relevant statutory provisions other than—
    - (i) a provision of the Nuclear Safeguards Act 2000, or
    - (ii) any provision of nuclear regulations identified in accordance with section 74(9) (requirement for provisions made for nuclear security purposes or nuclear safeguards purposes, or both, to be identified as such), or
  - (b) any condition attached to a nuclear site licence under section 4 of the Nuclear Installations Act 1965 relating to a site in England, Wales or Scotland.

#### *Prohibition notices*

- 4 (1) This paragraph applies where an inspector is of the opinion that—
- (a) relevant activities, as they are being carried on by or under the control of a person, involve a risk of serious personal injury, or
  - (b) relevant activities which are likely to be carried on by or under the control of a person will, as so carried on, involve a risk of serious personal injury.
- (2) The inspector may, if authorised, give the person a notice (“a prohibition notice”) directing that the activities to which the notice relates must not be carried on by or under the control of the person unless the following have been remedied—

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- (a) the matters specified in the notice under sub-paragraph (3)(b), and
  - (b) any associated contraventions of provisions specified under sub-paragraph (3)(c).
- (3) A prohibition notice must—
- (a) state that the inspector is of the opinion mentioned in sub-paragraph (1);
  - (b) specify the matters which in the inspector’s opinion give, or, as the case may be, will give rise to the risk mentioned in that sub-paragraph;
  - (c) where in the inspector’s opinion any of those matters involves or, as the case may be, will involve a contravention of any applicable provision—
    - (i) specify the provision or provisions in question, and
    - (ii) state that the inspector is of that opinion, and why.
- (4) A prohibition notice takes effect—
- (a) at the end of the period specified in the notice, or
  - (b) if the notice so specifies, immediately.
- (5) In this paragraph—
- “applicable provision” has the same meaning as in paragraph 3;
  - “relevant activities” means any activities in relation to which any applicable provision applies (or would apply if they were being carried on).

*Improvement and prohibition notices: supplementary*

- 5
- (1) In this paragraph “a notice” means an improvement notice or a prohibition notice.
  - (2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates.
  - (3) Any such directions—
    - (a) may be expressed by reference to any approved code of practice, and
    - (b) may afford the person to whom the notice is given a choice between different ways of remedying the contravention or matter.
  - (4) Sub-paragraph (5) applies where—
    - (a) any of the applicable provisions applies to a building or any matter connected with a building, and
    - (b) an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with the building or matter.For this purpose “applicable provision” has the same meaning as in paragraph 3.
  - (5) The notice must not direct any measures to be taken to remedy the contravention that are more onerous than any measures that would be necessary to secure conformity with—
    - (a) current new-build requirements, or
    - (b) if the provision in question imposes specific requirements that are more onerous than the requirements of any current new-build requirements, those specific requirements.
  - (6) In sub-paragraph (5), “current new-build requirements”, in relation to a building, or matter connected with a building, means the requirements of any building regulations

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for the time being in force to which the building or matter would be required to conform if the relevant building were being newly erected.

- (7) In sub-paragraph (6), “building regulations”, in relation to Scotland, has the meaning given by section 1 of the Building (Scotland) Act 2003 (asp 8).
- (8) Where an improvement notice or a prohibition notice which is not to take immediate effect has been given—
  - (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it under paragraph 3(2) or 4(4)(a), and
  - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

*Appeal against improvement or prohibition notice*

- 6 (1) In this paragraph “a notice” means an improvement notice or a prohibition notice.
- (2) A person to whom a notice is given may appeal within such period after the notice is given as may be prescribed by regulations made by the Secretary of State (“the prescribed period”).
- (3) An appeal under this paragraph lies to an employment tribunal.
- (4) On an appeal, the tribunal may—
  - (a) cancel the notice, or
  - (b) confirm it—
    - (i) in its original form, or
    - (ii) with such modifications as, in the circumstances, the tribunal considers appropriate.
- (5) Where an appeal under this paragraph is brought against an improvement notice within the prescribed period, the operation of the notice is suspended until the appeal is withdrawn or finally disposed of.
- (6) Where—
  - (a) an appeal under this paragraph is brought against a prohibition notice within the prescribed period, and
  - (b) on the application of the appellant, the tribunal so directs,
 the operation of the notice is suspended from the time the direction is given until the appeal is withdrawn or finally disposed of.
- (7) One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under this paragraph.

*Improvement and prohibition notices: offences*

- 7 (1) It is an offence to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice.
- (2) A person who commits an offence under this paragraph is liable—
  - (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland),



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- (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in sub-paragraph (2)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

### PART 3

#### OTHER POWERS EXERCISABLE BY INSPECTOR IF AUTHORISED BY INSTRUMENT OF APPOINTMENT

##### *Power of entry*

- 8 (1) An inspector may, if authorised, enter any premises which the inspector has reason to believe it is necessary for the inspector to enter for the relevant purpose—
- (a) at any reasonable time, or
  - (b) at any time, in a situation—
    - (i) which in the inspector's opinion is or may be dangerous, or
    - (ii) in which, in the inspector's opinion, delay would or might be prejudicial to the nuclear security purposes.
- (2) In relation to domestic premises, the power may be exercised only—
- (a) in accordance with a warrant issued by a justice of the peace, or
  - (b) in a situation which in the inspector's opinion is or may be dangerous.
- (3) A justice of the peace may issue a warrant under sub-paragraph (2)(a) only if satisfied, on the application of the inspector,—
- (a) that—
    - (i) there are reasonable grounds to believe that a contravention of a relevant statutory provision is occurring on the premises, or
    - (ii) the inspector has been refused consent to enter the premises for the relevant purpose or there are reasonable grounds to believe that such consent will be refused, and
  - (b) that it is reasonable in the circumstances to issue a warrant to the inspector.
- (4) The reference to premises in sub-paragraph (1) includes any ship outside the United Kingdom or its territorial sea.
- (5) For the purposes of this paragraph, “domestic premises” means premises used wholly or mainly as a private dwelling.

##### *Power to take persons and equipment etc onto premises*

- 9 In exercising the power of entry mentioned in paragraph 8, an inspector may—

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- (a) be accompanied—
  - (i) by any person approved by the ONR for the purpose, and
  - (ii) if the inspector has reasonable cause to expect any serious obstruction in the exercise of any of the inspector’s powers, by a constable, and
- (b) take along any equipment and materials required for any purpose for which the inspector is exercising the power of entry.

*Power to deal with cause of imminent danger*

- 10 (1) Sub-paragraph (2) applies where an inspector finds any article or substance in relevant premises in circumstances in which the inspector has reasonable cause to believe it is a cause of imminent danger of serious personal injury.
- (2) The inspector may, if authorised, do any of the following—
- (a) seize the article or substance;
  - (b) cause it to be made harmless or the risk of harm from it to be reduced (in either case, by destruction or otherwise);
  - (c) for the purpose mentioned in paragraph (b), seize any other article or substance.
- (3) Before any article that forms part of a batch of similar articles, or any substance, is dealt with under sub-paragraph (2)(b), the inspector must, if it is practicable,—
- (a) take a sample, and
  - (b) give a portion of the sample, marked so as to be identifiable, to a responsible person.
- (4) As soon as practicable after seizing or dealing with any article or substance under sub-paragraph (2), the inspector must make and sign a written report setting out the circumstances in which the article or substance was seized or so dealt with.
- (5) The inspector must give a signed copy of the report to a responsible person.
- (6) If that person is not the owner of the article or substance, the inspector must also—
- (a) give a signed copy of the report to the owner, or
  - (b) if that is not possible because—
    - (i) the inspector cannot find out the owner’s name or address after making reasonable enquiries, and
    - (ii) the owner has not indicated a willingness in accordance with section 110 to receive a signed copy of the report by any means mentioned in subsection (1)(b) of that section,
 give a further signed copy of the report to that responsible person.
- (7) For the purposes of this paragraph—
- (a) “responsible person”, in relation to any article or substance, means a responsible person at the premises in which the inspector finds the article or substance;
  - (b) in the case of a report in electronic form, any signature required on the report or a copy of it may be an electronic signature (within the meaning given in section 7(2) of the Electronic Communications Act 2000).

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*Powers exercisable in relation to particular articles or substances or in particular circumstances*

- 11 (1) An authorised inspector may cause any article or substance in relevant premises—
- (a) to be dismantled;
  - (b) to be tested;
  - (c) to have any other process applied to it.
- (2) The inspector may exercise any of those powers only if it appears to the inspector—
- (a) that the article or substance has caused, or is likely to cause, danger to health or safety, or
  - (b) that it is desirable to do so for the nuclear security purposes.
- (3) Before exercising a power in this paragraph, the inspector must consult anyone whom the inspector considers it appropriate to consult about the dangers (if any) of what is proposed.
- (4) Anything done to the article or substance under this paragraph must not damage or destroy it unless in the circumstances that is unavoidable for the relevant purpose.
- (5) If requested by a person who has responsibilities in relation to the relevant premises, and is on the premises, the inspector must allow anything done to the article or substance under this paragraph to be done in that person's presence, unless the inspector considers that that would be prejudicial to national security.
- 12 (1) An authorised inspector may take possession of any article or substance found on relevant premises and retain it for as long as necessary—
- (a) for it to be examined;
  - (b) for anything to be done to it which the inspector may cause to be done under paragraph 11;
  - (c) to ensure that it is not tampered with before any examination or other procedure mentioned in paragraph (a) or (b) is complete;
  - (d) to ensure that it is available for use in—
    - (i) any proceedings for an offence under any of the relevant statutory provisions, or
    - (ii) any proceedings relating to an improvement notice or a prohibition notice.
- (2) The inspector may exercise that power only if it appears to the inspector—
- (a) that it is desirable to do so for the nuclear security purposes, or
  - (b) that the article or substance has caused, or is likely to cause, danger to health or safety.
- (3) Before taking possession of any substance under this paragraph, the inspector must, if it is practicable,—
- (a) take a sample of it, and
  - (b) give a portion of the sample, marked so as to be identifiable, to a responsible person at the premises.
- (4) An inspector who takes possession of any article or substance under this paragraph must—
- (a) if it is practicable to do so, give a notice to that effect to a responsible person at the premises;

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- (b) otherwise, fix such a notice in a conspicuous position at the premises.
- (5) The notice must include sufficient information about the article or substance to identify it.

*Powers of inspection and examination and to take samples*

- 13 (1) An authorised inspector may carry out any examination or investigation necessary for the relevant purpose and, in doing so, may—
  - (a) take measurements and photographs, and
  - (b) make recordings.
- (2) An authorised inspector may take and deal with samples of—
  - (a) any article or substance found in relevant premises, or
  - (b) the atmosphere in or in the vicinity of relevant premises.
- (3) The Secretary of State may by regulations make provision about—
  - (a) the procedure to be followed in taking any such samples, and
  - (b) the way in which any such samples are to be dealt with.
- 14 (1) An authorised inspector may direct that any relevant premises, or any article or substance in them, must be left undisturbed for as long as reasonably necessary for the purposes of any examination or investigation necessary for the purpose of any of the relevant statutory provisions.
- (2) A direction under sub-paragraph (1)—
  - (a) may relate to part of any relevant premises;
  - (b) may relate to particular aspects of any premises or article or substance.

*Powers to require information and documents*

- 15 (1) An authorised inspector may require any person who the inspector has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph 13—
  - (a) to answer any question the inspector thinks fit, and
  - (b) to sign a declaration of the truth of the person’s answers.
- (2) Where a person required to answer questions under this paragraph has nominated another person to be present, the person may not be required to answer questions except in the presence of the nominated person (if any).
- (3) When exercising the power in this paragraph, an inspector may allow another person to be present (in addition to the nominated person (if any)).
- (4) No answer given by a person by virtue of this paragraph is admissible in evidence against the person, or the person’s spouse or civil partner, in any proceedings.
- 16 (1) An authorised inspector may—
  - (a) require any relevant documents to be produced, and
  - (b) inspect and take copies of (or of any information in) any relevant documents.
- (2) For this purpose—
  - (a) “document” includes information recorded in any form;
  - (b) “relevant document” means a record or other document which—

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- (i) is required to be kept by virtue of any of the relevant statutory provisions, or
  - (ii) the inspector needs to see for the purposes of any examination or investigation under paragraph 13.
- (3) In the case of a relevant document that consists of information held in electronic form, the inspector may—
  - (a) require it to be produced—
    - (i) in a legible form, or
    - (ii) in a form from which it can readily be produced in a legible form, and
  - (b) require access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with the relevant document.

### *Offences*

- 17 (1) It is an offence for a person to contravene any requirement imposed by an inspector under this Part of this Schedule.
- (2) It is an offence for a person to prevent or attempt to prevent any other person from—
  - (a) appearing before an inspector, or
  - (b) answering any question to which an inspector may require an answer by virtue of paragraph 15.
- (3) A person who commits an offence under this paragraph is liable—
  - (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (4) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in sub-paragraph (3)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.
- 18 (1) It is an offence for a person intentionally to obstruct an inspector in the exercise or performance of the inspector's functions.
- (2) A person who commits an offence under this paragraph is liable on summary conviction—
  - (a) to imprisonment for a term not exceeding 51 weeks (in England and Wales), 12 months (in Scotland) or 6 months (in Northern Ireland),
  - (b) to—
    - (i) in England and Wales, a fine, or

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- (ii) in Scotland or Northern Ireland, a fine not exceeding level 5 on the standard scale, or
- (c) to both.
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in sub-paragraph (2)(a), as it has effect in England and Wales, to 51 weeks is to be read as a reference to 6 months.
- 19 (1) It is an offence for a person falsely to pretend to be an inspector.
- (2) A person who commits an offence under this paragraph is liable on summary conviction to—
  - (a) in England and Wales, a fine, or
  - (b) in Scotland or Northern Ireland, a fine not exceeding level 5 on the standard scale.

#### *Supplementary powers*

- 20 A power conferred by this Schedule includes power to require any person to provide any facilities or assistance relating to matters or things—
  - (a) within the person’s control, or
  - (b) in relation to which the person has responsibilities,
 which are needed in order to enable an authorised inspector to exercise the power.
- 21 A power conferred by this Schedule includes power to do anything incidental that is necessary for the relevant purpose.

#### *Protection for documents subject to legal professional privilege etc*

- 22 Nothing in this Part of this Schedule is to be taken to confer power to compel the production by any person of a document or information in respect of which—
  - (a) in England and Wales or Northern Ireland, a claim to legal professional privilege, or
  - (b) in Scotland, a claim to confidentiality of communications,
 could be maintained in legal proceedings.

## **PART 4**

### SUPPLEMENTARY

#### *Duty to provide information to employees or their representatives*

- 23 (1) An inspector must provide to people employed at any premises (or their representatives) any relevant information that needs to be provided in order for them (or their representatives) to be kept adequately informed about matters affecting their health, safety or welfare.
- (2) Where information is provided to employees (or their representatives) under sub-paragraph (1), the inspector must provide the same information to their employer.
- (3) For this purpose—

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- (a) “relevant information”, in relation to any premises, means—
  - (i) factual information which is protected information within the meaning of Schedule 9 and is relevant to the premises, and
  - (ii) information about action which the inspector has taken or proposes to take in relation to the premises, and
- (b) “employee”, “employer” and “employed” have the same meanings as in Part 1 of the 1974 Act.

### *Interpretation*

24 (1) In this Schedule—

“authorised” is to be read in accordance with paragraph 2(4);

“offshore installation” means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, ship or aircraft,
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or its subsoil, or resting on other land covered with water or its subsoil), and
- (c) any tent or movable structure;

“relevant premises”, in relation to an inspector, means premises which the inspector has entered—

- (a) with the consent of a person who reasonably appeared to the inspector to be an appropriate person to give consent, or
- (b) in exercise of the power in paragraph 8;

“the relevant purpose”, in relation to a power, means—

- (a) if an instrument of appointment authorises the inspector to exercise the power only for limited purposes, that purpose;
- (b) in any other case, the purpose of carrying into effect the relevant statutory provisions;

“ship” includes every description of vessel used in navigation;

“substance” means any natural or artificial substance, whether solid or liquid or in the form of a gas or vapour.

- (2) In this Schedule, references to an inspector, in relation to any power, are to the inspector exercising or proposing to exercise the power.

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## SCHEDULE 9

Section 100

## DISCLOSURE OF INFORMATION

## PART 1

## PROHIBITION ON DISCLOSURE OF PROTECTED INFORMATION

*Meaning of “protected information” and related terms*

- 1 (1) In this Schedule “protected information” means information which has been—
- (a) obtained by the ONR under section 97,
  - (b) provided to the ONR, an inspector or a health and safety inspector under section 98,
  - (c) obtained by an inspector as a result of the exercise of any relevant power,
  - (d) obtained by a health and safety inspector in the exercise of any power under section 20 of the 1974 Act (powers of persons appointed under section 19 of that Act),
  - (e) obtained by an ONR inquiry official as a result of the exercise of an ONR inquiry power,
  - (f) provided to a person pursuant to a requirement imposed by any of the relevant statutory provisions, or
  - (g) provided to the ONR or a health and safety inspector pursuant to a requirement imposed by any provision which is one of the relevant statutory provisions for the purposes of Part 1 of the 1974 Act.
- (2) Information is not protected information for the purposes of this Schedule if it has been—
- (a) disclosed as mentioned in paragraph 16, or
  - (b) otherwise made available to the public—
    - (i) by virtue of a disclosure in accordance with Part 3 of this Schedule, or
    - (ii) lawfully from other sources.
- (3) Information received by virtue of a disclosure under paragraph 21 (anonymised information) is not protected information.
- (4) Protected information includes, in particular, information with respect to a trade secret which an inspector, a health and safety inspector or an ONR inquiry official has obtained as a result of entering premises in exercise of a relevant power, a power conferred under section 20 of the 1974 Act or an ONR inquiry power.
- (5) In this Schedule—
- “ONR inquiry official” means a person on whom functions are conferred under section 85(5)(a);
- “ONR inquiry power” means a power conferred by regulations under section 85(5)(a);
- “the original holder” of protected information means the person who obtained the information, or to whom it was provided, as mentioned in subparagraph (1).



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## PART 2

### OFFENCES RELATING TO DISCLOSURE AND USE OF PROTECTED INFORMATION

#### *Prohibition on disclosing protected information*

- 2 Protected information must not be disclosed—
- (a) by the original holder of the information, or
  - (b) by any other person holding it who has received it directly or indirectly from the original holder by virtue of a disclosure, or disclosures, in accordance with this Schedule,
- except in accordance with Part 3 of this Schedule.

#### *Offence of disclosing protected information in contravention of paragraph 2*

- 3 It is an offence for a person to disclose information in contravention of paragraph 2.

#### *Offence of using protected information in contravention of a restriction in Part 3*

- 4 It is an offence for a person to use protected information in contravention of a restriction under paragraph 10(3), 11(2), 12(2), 13(2), 14(2) or 15(2).

#### *Defence to offences under paragraphs 3 and 4*

- 5 It is a defence for a person charged with an offence under paragraph 3 or 4 to prove—
- (a) that the person did not know and had no reason to suspect that the information was protected information, or
  - (b) that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

#### *Penalty for offences under paragraphs 3 and 4*

- 6 (1) A person who commits an offence under paragraph 3 or 4 is liable—
- (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding the statutory maximum (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (2) In the application of sub-paragraph (1) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference in sub-paragraph (1)(a)(i) to 12 months is to be read as a reference to 6 months.

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### PART 3

#### PROTECTED INFORMATION: PERMITTED DISCLOSURES AND RESTRICTIONS ON USE

##### *Disclosure with appropriate consent*

- 7 (1) Paragraph 2 does not prohibit a disclosure of protected information if it is made with the appropriate consent.
- (2) For this purpose “the appropriate consent” means—
- (a) if the information was obtained as mentioned in paragraph 1(1) as a result of any premises being entered—
    - (i) by an inspector in exercise of a relevant power,
    - (ii) by a health and safety inspector in exercise of a power under section 20 of the 1974 Act, or
    - (iii) by an ONR inquiry official in exercise of an ONR inquiry power, the consent of a person having responsibilities in relation to the premises;
  - (b) in any other case, the consent of the person from whom the information was obtained, or who provided it, as mentioned in paragraph 1(1).

##### *Disclosure by ONR, inspectors etc*

- 8 Paragraph 2 does not prohibit a disclosure of protected information by—
- (a) the ONR,
  - (b) an inspector,
  - (c) a health and safety inspector, or
  - (d) an ONR inquiry official,
- for the purposes of any of that person’s functions.

##### *Disclosure to the ONR, inspectors etc*

- 9 Paragraph 2 does not prohibit a disclosure of protected information to—
- (a) the ONR,
  - (b) an officer of the ONR,
  - (c) a person or body performing any functions of the ONR on its behalf by virtue of section 95,
  - (d) an officer of such a body,
  - (e) a person providing advice to the ONR,
  - (f) an inspector, or
  - (g) a health and safety inspector.

##### *Ministers, government departments and certain authorities*

- 10 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure to—
    - (i) a relevant authority, or
    - (ii) an officer of a relevant authority, or
  - (b) a disclosure by a person within paragraph (a) which is necessary for any of the purposes of the relevant authority in question.

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- (2) For this purpose, “relevant authority” means—
- (a) a Minister of the Crown,
  - (b) the Scottish Ministers,
  - (c) the Welsh Ministers,
  - (d) a Northern Ireland Department,
  - (e) the Environment Agency,
  - (f) the Scottish Environment Protection Agency,
  - (g) the Natural Resources Body for Wales,
  - (h) the Office of Rail Regulation,
  - (i) the Civil Aviation Authority, or
  - (j) any other government department.
- (3) A person within sub-paragraph (1)(a) to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for a purpose other than any of the purposes of the relevant authority in question.

*Health and safety etc*

- 11 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure to a health and safety authority, or
  - (b) a disclosure by a health and safety authority which is—
    - (i) made by or with the consent of the Health and Safety Executive, and
    - (ii) necessary for any of the purposes of the Health and Safety Executive.
- (2) A health and safety authority to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for any purpose other than any of the purposes of the Health and Safety Executive.
- (3) For this purpose, “health and safety authority” means—
- (a) the Health and Safety Executive,
  - (b) an officer of the Health and Safety Executive,
  - (c) a person or body performing any functions of the Health and Safety Executive on its behalf by virtue of section 13(3) of the 1974 Act,
  - (d) an officer of such a body,
  - (e) an adviser appointed by that Executive under section 13(7) of that Act, and
  - (f) a person appointed by that Executive under section 19 of that Act as an inspector within the meaning given in that section.
- 12 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure to a person with enforcement responsibilities;
  - (b) a disclosure by such a person which is—
    - (i) made by or with the consent of the enforcing authority in question, and
    - (ii) necessary for the purposes of any function which the enforcing authority in question has in its capacity as an enforcing authority.
- (2) A person with enforcement responsibilities to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information

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otherwise than for the purposes of any function which the enforcing authority in question has in its capacity as such.

- (3) For this purpose, “person with enforcement responsibilities” means—
- (a) an enforcing authority within the meaning of the 1974 Act, other than the ONR or the Health and Safety Executive;
  - (b) an officer of an authority within paragraph (a);
  - (c) a person appointed by such an authority under section 19 of that Act as an inspector within the meaning given in that section.
- 13 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure to a Northern Ireland health and safety authority;
  - (b) a disclosure by a Northern Ireland health and safety authority which is—
    - (i) made by or with the consent of the Health and Safety Executive for Northern Ireland, and
    - (ii) necessary for any of the purposes of the Health and Safety Executive for Northern Ireland.
- (2) A Northern Ireland health and safety authority to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for any purpose other than any of the purposes of the Health and Safety Executive for Northern Ireland.
- (3) For this purpose, Northern Ireland health and safety authority means—
- (a) the Health and Safety Executive for Northern Ireland,
  - (b) an officer of the Health and Safety Executive for Northern Ireland,
  - (c) a person or body performing any functions of the Health and Safety Executive for Northern Ireland on its behalf by virtue of Article 15(1)(a) of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)),
  - (d) an officer of such a body,
  - (e) an adviser appointed by that Executive under Article 15(1)(c) of that Order, and
  - (f) a person appointed by that Executive under Article 21 of that Order as an inspector within the meaning of that Article.

*Local authorities and water authorities etc*

- 14 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure by the original holder to an officer of a local authority or relevant water authority who is authorised by the authority to receive the information;
  - (b) a disclosure by an officer of a local authority or relevant water authority to whom the information is disclosed by virtue of paragraph (a) which is necessary for a relevant purpose.
- (2) A person to whom information is disclosed by virtue of sub-paragraph (1)(a) must not use the information for a purpose other than a relevant purpose.
- (3) For the purposes of this paragraph—
- “local authority” includes the following—
    - (a) a joint authority established by Part 4 of the Local Government Act 1985;

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- (b) an authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities);
  - (c) an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009;
  - (d) a combined authority established under section 103 of that Act;
  - (e) the London Fire and Emergency Planning Authority;
  - (f) the Broads Authority;
  - (g) a National Park authority;
- “relevant water authority” means—
- (a) a water undertaker,
  - (b) a sewerage undertaker,
  - (c) a water authority,
  - (d) a water development board, or
  - (e) Scottish Water;
- “relevant purpose”, in relation to an officer of a local authority or relevant water authority, means any purpose of the authority in connection with—
- (a) any of the relevant statutory provisions or any of the provisions which are relevant statutory provisions for the purposes of Part 1 of the 1974 Act, or
  - (b) any provision of, or made under, primary legislation which relates to public health, public safety or the protection of the environment.

### *Police*

- 15 (1) Paragraph 2 does not prohibit the following disclosures of protected information—
- (a) a disclosure by the original holder to a constable authorised by a chief officer of police to receive it;
  - (b) a disclosure by a constable to whom it is disclosed by virtue of paragraph (a) which is necessary for any of the purposes of the police in connection with—
    - (i) the relevant statutory provisions, or
    - (ii) any provision of, or made under, primary legislation which relates to public health, public safety or national security.
- (2) A constable to whom information is disclosed by virtue of sub-paragraph (1) must not use the information for a purpose other than a purpose of the police in connection with—
- (a) any of the relevant statutory provisions or any of the provisions which are relevant statutory provisions for the purposes of Part 1 of the 1974 Act, or
  - (b) any provision of, or made under, primary legislation which relates to public health, public safety or national security.

### *Disclosure required under legislation*

- 16 Paragraph 2 does not prohibit a disclosure of protected information which is made in accordance with an obligation under—
- (a) the Freedom of Information Act 2000,
  - (b) the Freedom of Information (Scotland) Act 2002, or

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- (c) environmental information regulations within the meaning given in section 39(1A) of the Freedom of Information Act 2000.

*Legal proceedings, inquiries and investigations*

- 17 Paragraph 2 does not prohibit a disclosure of protected information for the purposes of—
- (a) any legal proceedings,
  - (b) an ONR inquiry,
  - (c) an inquiry under section 14(2A) of the 1974 Act which is relevant to the ONR’s purposes,
  - (d) an investigation held by virtue of section 84,
  - (e) any report of such proceedings, ONR inquiry or inquiry under section 14(2A) of the 1974 Act or any special report under section 84.
- 18 Paragraph 2 does not prohibit a disclosure of protected information which is made—
- (a) by an inspector, a health and safety inspector or an ONR inquiry official,
  - (b) to a person who appears to the person making the disclosure to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, and
  - (c) in the form of a written statement of relevant facts observed by the person making the disclosure in the course of exercising a relevant power, a power under section 20 of the 1974 Act or an ONR inquiry power.
- 19 (1) Paragraph 2 does not prohibit a disclosure of protected information which is made—
- (a) by the ONR, an inspector, a health and safety inspector or an ONR inquiry official, and
  - (b) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (criminal proceedings and investigations).
- (2) Section 18 of that Act (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by sub-paragraph (1) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

*Disclosure for safeguards purposes*

- 20 Paragraph 2 does not prohibit a disclosure of protected information which is made for the purposes of any of the safeguards obligations.

*Anonymised information*

- 21 Paragraph 2 does not prohibit a disclosure of protected information which is made in a form calculated to prevent the information from being identified as relating to a particular person or case.

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## PART 4

### GENERAL

#### *Interaction with other legislation*

- 22 The prohibition in paragraph 2 is to be disregarded for the purposes of—
- (a) section 44 of the Freedom of Information Act 2000, and
  - (b) section 26 of the Freedom of Information (Scotland) Act 2002,
- (which provide for exemptions from disclosure requirements under those Acts for information subject to statutory prohibitions on disclosure).
- 23 Nothing in this Part of this Act is to be taken to permit or require a disclosure of information which is prohibited by or under any provision of primary legislation (including, in particular, section 79 or 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition on disclosure of information relating to nuclear security)).

## SCHEDULE 10

Section 106

### PROVISIONS RELATING TO OFFENCES

#### *Interpretation*

- 1 In this Schedule—
- “offence” means an offence created by or under a relevant provision;
  - “relevant provision” means any of the relevant statutory provisions other than any provision made by the Nuclear Safeguards Act 2000.

#### *Venue*

- 2 (1) If an offence is committed in connection with any plant or substance, the offence may be treated as having been committed at the place where the plant or substance is for the time being.
- (2) Sub-paragraph (1) applies only if it is necessary to treat the offence as having been committed there for the purpose of conferring jurisdiction on any court to entertain proceedings for the offence.
- (3) In this paragraph—
- “plant” includes any machinery, equipment or appliance;
  - “substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.
- (4) This paragraph is subject to any provision made in nuclear regulations by virtue of section 74(5)(b) (treatment of offences as having been committed at a specified place).

#### *Extension of time for bringing summary proceedings*

- 3 (1) This paragraph applies where—
- (a) a special report on a matter is made under section 84(1);

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- (b) a report is made by a person holding an ONR inquiry;
  - (c) a coroner’s inquest is held into a relevant death; or
  - (d) a public inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 is held into a relevant death.
- (2) A “relevant death” is the death of any person which may have been caused—
- (a) by an accident which happened while at work,
  - (b) by a disease which the person contracted (or probably contracted) while at work, or
  - (c) by an accident, act or omission which occurred in connection with the work of any person.
- (3) Sub-paragraph (4) applies if it appears from—
- (a) the report mentioned in sub-paragraph (1)(a) or (b),
  - (b) the inquest mentioned in sub-paragraph (1)(c), or
  - (c) the proceedings at the inquiry mentioned in sub-paragraph (1)(d),
- that a relevant provision was contravened at a time which is material in relation to the subject-matter of the report, inquest or inquiry.
- (4) Summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within 3 months of—
- (a) the making of the report in question, or
  - (b) (as the case may be) the conclusion of the inquest or inquiry.
- 4 (1) This paragraph applies to any offence that a person commits as a result of a provision or requirement that the person is subject to as the designer, manufacturer, importer or supplier of any thing.
- (2) Summary proceedings for the offence may be commenced at any time within 6 months from the date on which there comes to the knowledge of the ONR evidence that appears sufficient to the ONR—
- (a) to justify a prosecution for the offence, or
  - (b) in relation to an offence in Scotland, to justify a report to the Lord Advocate with a view to consideration of the question for prosecution.
- (3) For this purpose—
- (a) a certificate of the ONR stating that such evidence came to its knowledge on a specified date is to be taken as conclusive evidence of that fact,
  - (b) a document purporting to be such a certificate, and to be signed on behalf of the ONR, is to be presumed to be such a certificate unless the contrary is proved, and
  - (c) in relation to an offence in Scotland, section 136(3) of the Criminal Procedure (Scotland) Act 1995 (date of commencement of proceedings) has effect as it has effect for the purposes of that section.

*Continuation of offences*

- 5 (1) This paragraph applies where an offence is committed as a result of a failure to do something at or within a time fixed by or under a relevant provision.
- (2) The offence is to be deemed to continue until the thing is done.



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#### *Offences due to fault of other person*

- 6 (1) A person (“A”) is guilty of an offence if—
- (a) another person (“B”) commits the offence, and
  - (b) B’s commission of the offence is due to the act or default of A, and A is liable to be proceeded against and dealt with accordingly.
- (2) For this purpose it does not matter whether or not proceedings are taken against B.
- (3) A person (“A”) is guilty of an offence if—
- (a) A is a person other than the Crown,
  - (b) the offence would have been committed by the Crown but for the fact that the provision under which the offence is committed does not bind the Crown, and
  - (c) the Crown’s commission of the offence would have been due to the act or default of A,
- and A is liable to be proceeded against and dealt with accordingly.
- (4) This paragraph is subject to any provision made in nuclear regulations.

#### *Offences by bodies corporate*

- 7 (1) Where an offence committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
  - (b) to be attributable to neglect on the part of an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (2) In sub-paragraph (1) “officer”, in relation to a body corporate, means—
- (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person purporting to act in any such capacity.
- (3) In sub-paragraph (2) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

#### *Offences by partnerships*

- 8 (1) Proceedings for an offence alleged to have been committed by a partnership may be brought in the name of the partnership.
- (2) Rules of court relating to the service of documents have effect in relation to proceedings for an offence as if the partnership were a body corporate.
- (3) For the purposes of such proceedings the following provisions apply as they apply in relation to a body corporate—
- (a) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980, and
  - (b) section 18 of the Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).

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- (4) A fine imposed on a partnership on its conviction for an offence is to be paid out of the partnership assets.
- (5) Where an offence committed by a partnership is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to neglect on the part of a partner,
- the partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (6) In this paragraph “partner” includes a person purporting to act as a partner.

*Restriction on institution of proceedings in England and Wales*

- 9 Proceedings for an offence in England and Wales may be instituted only—
- (a) by the ONR or an inspector, or
  - (b) by, or with the consent of, the Director of Public Prosecutions.

*Prosecutions by inspectors in England and Wales*

- 10 An inspector may prosecute proceedings for an offence before a magistrates’ court in England and Wales if authorised to do so by the inspector’s instrument of appointment (see paragraph 2 of Schedule 8).

*Onus of proving limits of what is practicable etc*

- 11 (1) This paragraph applies if regulations under this Part create an offence consisting of—
- (a) a failure to comply with a duty or requirement to do something so far as practicable (or reasonably practicable), or
  - (b) a failure to use the best means do something.
- (2) The regulations may provide that it is for the defendant to prove that—
- (a) it was not practicable (or reasonably practicable) to do more than was in fact done to satisfy the duty or requirement, or
  - (b) there was no better practicable means than was in fact used to satisfy the duty or requirement.

*Evidence*

- 12 (1) This paragraph applies where a requirement is imposed by a relevant provision for an entry to be made in any register or other record.
- (2) If the entry is made, it is—
- (a) admissible in evidence, or
  - (b) in Scotland, sufficient evidence of the facts stated in the entry, against the person by or on whose behalf the entry is made.
- (3) If the entry is not made, and the requirement relates to making the entry in respect of observance with a relevant provision, the fact that the entry is not made—
- (a) is admissible in evidence, or
  - (b) in Scotland, is sufficient evidence that the provision has not been observed.

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*Power of court to order cause of offence to be remedied*

- 13 (1) This paragraph applies where—
- (a) a person (“P”) is convicted of an offence, and
  - (b) it appears to the court that the matters in respect of which P is convicted are matters that are within P’s power to remedy.
- (2) The court may (in addition to, or instead of, imposing any punishment) order P to take such steps as the order may specify for the purpose of remedying those matters.
- (3) The steps are to be taken within such time as may be fixed by the order (“the remedial period”).
- (4) The court may extend or further extend the remedial period on an application.
- (5) An application under sub-paragraph (4) must be made—
- (a) before the end of the remedial period, or
  - (b) before the end of that period as extended on a previous application.
- (6) Where P is ordered to remedy any matters by an order under this paragraph—
- (a) it is an offence for P to fail to comply with the order, but
  - (b) P is not liable under any relevant provision in respect of those matters to the extent that they continue during—
    - (i) the remedial period, or
    - (ii) any extension of that period granted under sub-paragraph (4).
- (7) A person who commits an offence under this paragraph is liable—
- (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (8) In the application of sub-paragraph (7) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s powers to imprison), the reference in sub-paragraph (7)(a)(i) to 12 months is to be read as a reference to 6 months.

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## SCHEDULE 11

Section 115

### TRANSFERS TO THE OFFICE FOR NUCLEAR REGULATION

#### PART 1

##### INTRODUCTORY

- 1 In this Schedule—
- “the HSE” means the Health and Safety Executive;
  - “the interim ONR” means the agency of the HSE currently known as the Office for Nuclear Regulation;
  - “TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#)).

#### PART 2

##### STAFF TRANSFER SCHEMES

###### *Power to make staff transfer schemes*

- 2 (1) The Secretary of State may make one or more schemes under which an employee to whom the scheme applies becomes an employee of the ONR (but this is subject to provision contained in the scheme by virtue of paragraph 6).
- (2) A scheme under sub-paragraph (1) is referred to in this Schedule as a “staff transfer scheme”.

###### *Staff to whom a transfer may apply*

- 3 (1) The employees to whom a transfer scheme may apply are those employees who fall within sub-paragraph (2).
- (2) An employee falls within this sub-paragraph if, immediately before the staff transfer scheme takes effect, the employee—
- (a) was employed by the HSE under a contract of employment, and
  - (b) was assigned to work in the interim ONR.
- (3) Sub-paragraph (4) applies for the purposes of determining whether an employee was assigned as mentioned in sub-paragraph (2) where, immediately before the transfer scheme takes effect, the employee—
- (a) is on secondment,
  - (b) is temporarily assigned to work in another part of the HSE, or
  - (c) is otherwise temporarily absent.
- (4) That sub-paragraph is to be read as if it operated immediately before the date of the secondment or temporary assignment, or the date when the absence began, instead of immediately before the date on which the scheme takes effect.

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### *Content of a staff transfer scheme*

- 4 (1) A staff transfer scheme may make provision for giving full effect to an employee’s transfer into the employment of the ONR as a result of the scheme.
- (2) Provision made by virtue of sub-paragraph (1) may include provision—
- (a) that has the same or similar effect as the TUPE regulations (so far as those regulations do not apply in relation to the transfer);
  - (b) modifying the law (including provision made by an Act or subordinate legislation) applicable to the employee’s employment;
  - (c) about the pension entitlements of the employee enjoyed immediately before the transfer.
- 5 (1) A staff transfer scheme may apply to all, or to any specified class or description of, the employees falling within paragraph 3(2) or to specified employees so falling.
- (2) “Specified” means specified in the scheme.
- 6 (1) A staff transfer scheme may make provision enabling an employee to object to the transfer which would otherwise be effected by the scheme including provision as to how such an objection is to be made and as to the consequences of it.
- (2) A staff transfer scheme may make provision allowing an employee to be treated as being temporarily assigned to the ONR for a period limited by the scheme, whether at the employee’s election or in the exercise of a discretion conferred on the Secretary of State by the scheme.
- (3) Provision made by virtue of sub-paragraph (2) may include provision—
- (a) allowing the employee to elect to end the period of temporary assignment by agreeing to become an employee of the ONR or by objecting to the transfer under sub-paragraph (1);
  - (b) as to the consequences of the expiry of the period of temporary assignment without such an election having been made;
  - (c) as to the employee’s pay (and the liability to pay it) and the terms and conditions on which the employee is engaged.

## **PART 3**

### **PROPERTY TRANSFER SCHEMES**

#### *Power to make property transfer schemes*

- 7 (1) The Secretary of State may make one or more schemes transferring qualifying property, rights and liabilities of the HSE to the ONR.
- (2) The Secretary of State may make one or more schemes transferring qualifying property, rights and liabilities of the Secretary of State to the ONR.
- (3) A scheme under sub-paragraph (1) or (2) is referred to in this Schedule as a “property transfer scheme”.
- 8 The HSE may submit to the Secretary of State proposals about the exercise of the power to make property transfer schemes.

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### *Qualifying property*

- 9 (1) References in this Part to “qualifying property, rights and liabilities” are to property held, and rights and liabilities arising, in connection with—
- (a) functions under any enactment which were functions of the Secretary of State or the HSE and as a result of this Act have or are to become functions of the ONR;
  - (b) functions which were functions of the Secretary of State or the HSE which have been or are to be replaced by a function of the ONR under this Act;
  - (c) functions which were carried out by the HSE under an agreement under section 13 of the 1974 Act and which are to be carried out by the ONR under an agreement under section 90.
- (2) Rights and liabilities arising under or in connection with a contract of employment in effect when the scheme comes into force are excluded from the rights and liabilities which may be transferred under a property transfer scheme.

### *Content of a property transfer scheme*

- 10 (1) A property transfer scheme may, in particular, make provision—
- (a) for anything done by or in relation to the HSE or the Secretary of State in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the ONR;
  - (b) for references to the HSE or the Secretary of State in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the ONR;
  - (c) about the continuation of legal proceedings;
  - (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
  - (e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;
  - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
  - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme
  - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
  - (i) for apportioning property, rights or liabilities;
  - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
  - (k) for requiring the ONR to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (2) Sub-paragraph (1)(b) does not apply to references in primary legislation or in subordinate legislation.
- (3) In this Part of this Schedule “property” includes interests of any description.

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### *Compensation*

- 11 A property transfer scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.

## **PART 4**

### PROCEDURE FOR MAKING OR MODIFYING SCHEMES UNDER THIS SCHEDULE

- 12 (1) Before making a staff transfer scheme or a property transfer scheme, the Secretary of State must be satisfied that—
- (a) those persons that the Secretary of State considers likely to be affected by the making of the scheme, and
  - (b) such other persons as appear to the Secretary of State to represent the interests of such persons,
- have been consulted (whether by the Secretary of State or another person) and must have regard to the results of the consultation in determining whether to make the scheme.
- (2) Sub-paragraph (3) applies where—
- (a) the Secretary of State is proposing to make a modification to a staff transfer scheme or a property transfer scheme under section 153,
  - (b) it appears to the Secretary of State that the modification is likely to have a material effect on any person, and
  - (c) the Secretary of State is not required under subsection (3) of that section to obtain the agreement of those persons before making the modification.
- (3) Before making the modification, the Secretary of State must be satisfied that—
- (a) any person or persons falling within sub-paragraph (2)(b), and
  - (b) such other persons as appear to the Secretary of State to represent the interests of such persons,
- have been consulted (whether by the Secretary of State or another person) and must have regard to the results of the consultation in determining whether to make the modification.
- (4) For the purposes of this paragraph it does not matter whether consultation takes place before or after the passing of this Act.

## SCHEDULE 12

Section 116

### MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 3

## **PART 1**

### AMENDMENTS OF THE HEALTH AND SAFETY AT WORK ETC. ACT 1974

#### *Health and Safety at Work etc. Act 1974 (c. 37)*

- 1 The Health and Safety at Work etc. Act 1974 is amended as follows.

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- 2 (1) Section 11 (functions of the Health and Safety Executive) is amended as follows.
- (2) In subsection (4)—
- (a) in paragraph (a), for “the railway safety purposes” substitute “any of the transferred purposes”, and
  - (b) in paragraph (b), for the words following “made” substitute “—
    - (i) for any of the transferred purposes, or
    - (ii) under section 43 and concern fees relating to nuclear site regulation.”
- (3) After that subsection insert—
- “(4A) In subsection (4)—
- (a) “the transferred purposes” means—
    - (i) the railway safety purposes;
    - (ii) the nuclear safety purposes;
    - (iii) the nuclear security purposes;
    - (iv) the nuclear safeguards purposes;
    - (v) the radioactive material transport purposes;
  - (b) “fees relating to nuclear site regulation” means fees payable for or in connection with the performance of a function by or on behalf of—
    - (i) the Office for Nuclear Regulation, or
    - (ii) any inspector appointed by the Office for Nuclear Regulation.
- (4B) The Executive may submit to the Secretary of State any proposal submitted to it by the Office for Nuclear Regulation under section 81 of the Energy Act 2013 (proposals about orders and regulations).”
- 3 In section 13 (powers of the Executive), after subsection (6) insert—
- “(6A) The reference in subsection (6) to the general purposes of this Part does not include a reference to any of the following—
- (a) the nuclear safety purposes;
  - (b) the nuclear security purposes;
  - (c) the nuclear safeguards purposes;
  - (d) the radioactive material transport purposes.”
- 4 (1) Section 14 (power of the Executive to direct investigations and inquiries) is amended as follows.
- (2) In subsection (1)(a), after “railway safety purposes” insert “or the ONR’s purposes”.
- (3) After subsection (4) insert—
- “(4A) Provision that may be made by virtue of subsection (4)(a) includes, in particular, provision conferring functions on the Office for Nuclear Regulation in relation to powers of entry and inspection in relation to any premises for which it is an enforcing authority.”
- 5 (1) Section 15 (health and safety regulations) is amended as follows.
- (2) After subsection (1) insert—



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- “(1A) In subsection (1), the reference to the general purposes of this Part does not include a reference to any of the following—
- (a) the nuclear safety purposes;
  - (b) the nuclear security purposes;
  - (c) the nuclear safeguards purposes;
  - (d) the radioactive material transport purposes.
- (1B) Subsection (1A) does not preclude health and safety regulations from including provision merely because the provision could be made for any of the purposes mentioned in paragraphs (a) to (d) of that subsection.”
- (3) In subsection (2), for “the preceding subsection” substitute “subsection (1)”.
- (4) In subsection (3)(c), after “may” insert “, subject to subsection (3A)”.
- (5) After subsection (3) insert—
- “(3A) Nothing in this section is to be taken to permit health and safety regulations to make provision about responsibility for the enforcement of any of the relevant statutory provisions as they apply in relation to any GB nuclear site.
- (3B) Subsection (3A) does not prevent health and safety regulations providing for the Office of Rail Regulation to be responsible for the enforcement, in relation to GB nuclear sites, of any of the relevant statutory provisions that are made for the railway safety purposes.
- (3C) In subsections (3A) and (3B), “GB nuclear site” has the same meaning as in section 68 of the Energy Act 2013 (nuclear safety purposes).”
- 6 (1) Section 18 (authorities responsible for enforcement of the relevant statutory provisions) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The Office for Nuclear Regulation is responsible for the enforcement of the relevant statutory provisions as they apply in relation to GB nuclear sites (within the meaning given in section 68 of the Energy Act 2013 (nuclear safety purposes)).
- (1B) Subsection (1A) is subject to any provision of health and safety regulations making the Office of Rail Regulation responsible for the enforcement of any of the relevant statutory provisions to any extent in relation to such sites.”
- (3) In subsection (2)—
- (a) before paragraph (a) insert—
    - “(za) make the Office for Nuclear Regulation responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed (and may in particular provide for any site or matter in relation to which the Office for Nuclear Regulation is made so responsible to be determined by the Secretary of State or the Office for Nuclear Regulation under the regulations);”;
  - (b) in paragraph (b), before sub-paragraph (i) insert—
    - “(zi) transferred from the Executive or local authorities to the Office for Nuclear Regulation, or from the

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Office for Nuclear Regulation to the Executive or local authorities;”;

- (c) in paragraph (b)(ii)—
  - (i) after “Executive” insert “, to the Office for Nuclear Regulation”;
  - (ii) after “by virtue of” insert “subsection (1A) or”;
- (d) in paragraph (b), after sub-paragraph (ii) insert—
  - “(iii) assigned to the Office of Rail Regulation or the Office for Nuclear Regulation for the purpose of removing any uncertainty as to what are by virtue of any of the relevant statutory provisions their respective responsibilities for the enforcement of any of those provisions;”.

(4) After subsection (3) insert—

“(3A) Regulations under subsection (2)(a) may not make local authorities enforcing authorities in relation to any site in relation to which the Office for Nuclear Regulation is an enforcing authority.

(3B) Where the Office for Nuclear Regulation is, by or under subsection (1A) or (2), made responsible for the enforcement of any of the relevant statutory provisions to any extent, it must make adequate arrangements for the enforcement of those provisions to that extent.”

(5) In subsection (5) in the opening words, after “the Executive” insert “, the Office for Nuclear Regulation”.

(6) In subsection (7), in the words following paragraph (b)—

- (a) after “section 13” insert “of this Act or section 95 of the Energy Act 2013 (power for Office for Nuclear Regulation to arrange for exercise of functions by others)”;
- (b) after “the Executive” (in the first and third places) insert “or the Office for Nuclear Regulation”;
- (c) after “the Executive” (in the second place) insert “or the Office for Nuclear Regulation (as the case may be)”;
- (d) for “under that subsection” substitute “or arrangements under the provision in question”.

7 In section 27 (obtaining of information by the Executive, enforcing authorities etc), in subsection (1)(b), after “an enforcing authority” insert “other than the Office for Nuclear Regulation”.

8 In section 27A (information communicated by Commissioners for Revenue and Customs), in subsection (2), at the end insert “, other than the Office for Nuclear Regulation or an inspector appointed by the Office for Nuclear Regulation”.

9 (1) Section 28 (restrictions on disclosure of information) is amended as follows.

(2) In subsection (1)(a), after “to any person” insert “, other than the Office for Nuclear Regulation (or an inspector appointed by it),”.

(3) In subsection (3)(a), after “Executive” insert “, the Office for Nuclear Regulation,”.

(4) In subsection (4)—

- (a) in the opening words—

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- (i) after “Executive” (in the first place), insert “, the Office for Nuclear Regulation,”;
    - (ii) after “Executive” (in the second place), insert “or the Office for Nuclear Regulation”;
  - (b) in paragraph (a), after “Executive” insert “or Office for Nuclear Regulation” and after “section 13(3)” insert “of this Act or, as the case may be, section 95 of the Energy Act 2013”;
  - (c) in paragraph (c), at the end insert “or, in the case of the Office for Nuclear Regulation, a person providing advice to that body.”.
- (5) In subsection (5)(a), after “Executive” insert “, of the Office for Nuclear Regulation”.
- (6) After subsection (9A) insert—
  - “(9B) Nothing in subsection (7) or (9) applies to a person appointed as an inspector by the Office for Nuclear Regulation in relation to functions which the person has by virtue of that appointment.”
- 10 (1) Section 44 (appeals in connection with licensing provisions in the relevant statutory provisions) is amended as follows.
  - (2) In subsection (1), omit “(other than nuclear site licences)”.
  - (3) In subsection (7)—
    - (a) in paragraph (a) omit “other than a nuclear site licence”;
    - (b) omit paragraph (b).
  - (4) Omit subsection (8).
- 11 (1) Section 50 (regulations under the relevant statutory provisions) is amended as follows.
  - (2) In subsection (1AA), for the words following “unless” substitute “the Secretary of State has consulted—
    - (a) the Executive,
    - (b) the Office for Nuclear Regulation, and
    - (c) such other bodies as appear to the Secretary of State to be appropriate.”
  - (3) In subsection (2), for “the Executive” substitute “—
    - (a) the Executive, and
    - (b) the Office for Nuclear Regulation.”
  - (4) In subsection (3), before paragraph (a) insert—
    - “(za) the Office for Nuclear Regulation;”.
  - (5) After subsection (3) insert—
    - “(4) If the Executive has consulted the Office for Nuclear Regulation under subsection (3) in relation to a proposal under section 11(3) for regulations under any of the relevant statutory provisions, it must, when it submits the proposal (with or without modification) to the Secretary of State, also submit—
      - (a) any representations made by the Office for Nuclear Regulation in response to the consultation, and

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- (b) any response to those representations given by the Executive to the Office for Nuclear Regulation.
- (5) The preceding provisions of this section do not apply to the exercise of the power in section 43 to make ONR fees regulations, but the Secretary of State must consult the Office for Nuclear Regulation before—
- (a) making ONR fees regulations independently of any proposals submitted by the Office for Nuclear Regulation under section 81(1) of the Energy Act 2013, or
  - (b) making ONR fees regulations which give effect to such proposals but with modifications.
- (6) In subsection (5) “ONR fees regulations” means regulations under section 43 so far as they make provision in relation to fees payable for or in connection with the performance of a function by or on behalf of—
- (a) the Office for Nuclear Regulation, or
  - (b) any inspector appointed by the Office for Nuclear Regulation.”
- 12 In section 53(1) (general interpretation of Part 1)—
- (a) after the definition of “micro-organism” insert—
    - ““nuclear safeguards purposes” has the same meaning as in Part 3 of the Energy Act 2013 (nuclear regulation etc.) (see section 72 of that Act);
    - “nuclear safety purposes” has the same meaning as in that Part of that Act (see section 68 of that Act);
    - “nuclear security purposes” has the same meaning as in that Part of that Act (see section 70 of that Act);”;
  - (b) after the definition of “offshore installation” insert—
    - ““the ONR’s purposes” has the same meaning as in Part 3 of the Energy Act 2013 (see section 67 of that Act);”;
  - (c) after the definition of “prohibition notice” insert—
    - ““the radioactive material transport purposes” means the transport purposes within the meaning of Part 3 of the Energy Act 2013 (see section 73 of that Act);”.
- 13 (1) Section 82 (general provisions as to interpretation and regulations) is amended as follows.
- (2) In subsection (3)(b), after “subsection” insert “(3A) or”.
- (3) After subsection (3) insert—
- “(3A) In the case of a statutory instrument which also contains regulations under section 74 of the Energy Act 2013 (nuclear regulations), subsection (3) is subject to section 113 of that Act (subordinate legislation).”
- 14 In Schedule 1 (existing enactments which are relevant statutory provisions), omit the entry relating to the Nuclear Installations Act 1965.
- 15 (1) Schedule 2 (constitution etc. of the Health and Safety Executive) is amended as follows.
- (2) In paragraph 1(b) for “eleven” substitute “twelve”.
- (3) In paragraph 2(2), at the beginning insert “Subject to sub-paragraph (3A),”.

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(4) After paragraph 2(3) insert—

“(3A) The Office for Nuclear Regulation may appoint a member from among the non-executive members of the Office for Nuclear Regulation (“an ONR member”).

(3B) The Office for Nuclear Regulation must notify the Executive and the Secretary of State whenever it appoints an ONR member.”.

(5) In paragraph 3, after “4” insert “, 4A”.

(6) In paragraph 4, after “Executive” insert “, other than an ONR member,”.

(7) After paragraph 4 insert—

“4A (1) An ONR member may at any time resign from office by giving notice in writing to the Office for Nuclear Regulation.

(2) An ONR member ceases to be a member of the Executive upon ceasing to be a non-executive member of the Office for Nuclear Regulation.

(3) The Office for Nuclear Regulation may remove an ONR member from office by giving notice in writing.

(4) The Office for Nuclear Regulation must notify the Executive and the Secretary of State whenever an ONR member—

(a) resigns from office,

(b) ceases to be a non-executive member of the Office for Nuclear Regulation, or

(c) is removed from office.”.

(8) In paragraph 5, after “member” insert “, other than an ONR member,”.

(9) Paragraph 6 is amended as follows.

(10) In sub-paragraph (1), for the words following “pay” substitute “—  
(a)

to each member, other than an ONR member, such remuneration, and

(b) to each member such travelling and other allowances,

as may be determined by the Secretary of State.”

(11) In sub-paragraph (2), after “member” insert “other than an ONR member”.

(12) In sub-paragraph (3), after “member” insert “other than an ONR member”.

(13) After that sub-paragraph insert—

“(4) Where—

(a) a member appointed under paragraph 4(4)(a) of Schedule 7 to the Energy Act 2013 to be a member of the Office for Nuclear Regulation (the “HSE member of the ONR”)—

(i) ceases to be the HSE member of the ONR otherwise than on the expiry of his or her term of office as HSE member of the ONR, but

(ii) does not cease to be a member of the Executive, and

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(b) it appears to the Executive that there are special circumstances that make it right for that person to receive compensation, the Executive may pay the member such amount by way of compensation as the Secretary of State may determine.”

## PART 2

### NUCLEAR SAFETY

#### *Nuclear Installations Act 1965 (c. 57)*

16 The Nuclear Installations Act 1965 is amended as follows.

17 For section 1 substitute—

**“1 Restriction of certain nuclear installations to licensed sites**

- (1) No person may use a site for the purpose of installing or operating—
  - (a) any nuclear reactor (other than a nuclear reactor comprised in a means of transport, whether by land, water or air), or
  - (b) any other installation of a prescribed kind,
 unless a licence to do so has been granted in respect of the site by the appropriate national authority and is in force.
- (2) Such a licence is referred to in this Act as a “nuclear site licence”.
- (3) The only kinds of installation that may be prescribed under subsection (1)
  - (b) are installations (other than nuclear reactors) designed or adapted for—
    - (a) producing or using atomic energy,
    - (b) any process which—
      - (i) is preparatory or ancillary to producing or using atomic energy, and
      - (ii) involves, or is capable of causing, the emission of ionising radiations, or
    - (c) storing, processing or disposing of—
      - (i) nuclear fuel, or
      - (ii) bulk quantities of other radioactive matter which has been produced or irradiated in the course of the production or use of nuclear fuel.
- (4) Regulations under subsection (1)(b) may make provision for exempting an installation from subsection (1).
- (5) Regulations made by virtue of subsection (4)—
  - (a) may provide for any exemption to be conditional;
  - (b) may not result in an installation being exempt from subsection (1) unless the Secretary of State is satisfied that it is not a relevant installation (or, in the case of a conditional exemption, would not be a relevant installation if the prescribed conditions were satisfied).

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- (6) Before exercising any function under subsection (1)(b), (4) or (5) in or as regards Scotland, the Secretary of State must consult the Scottish Ministers.
- (7) Any person who contravenes subsection (1) is guilty of an offence.
- (8) A person convicted of an offence under subsection (7) in England and Wales or Scotland is liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;
  - (b) on summary conviction to imprisonment for a term not exceeding 12 months, or a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland), or both.
- (9) A person convicted of an offence under subsection (7) in Northern Ireland is liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding 5 years, or a fine, or both;
  - (b) on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding the prescribed sum, or both.
- (10) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference to 12 months in subsection (8)(b), as it has effect in England and Wales, is to be read as a reference to 6 months.
- (11) Subsection (1) is subject to section 47 of the Energy Act 2008 (prohibition in England and Wales and Northern Ireland on use of site in absence of approved funded decommissioning programme)."

18 For section 3 substitute—

### **“3 Grant and variation of nuclear site licences**

- (1) A nuclear site licence—
  - (a) may be granted only to a body corporate;
  - (b) is not transferable.
- (2) The appropriate national authority must consult the appropriate environment authority before granting a nuclear site licence.
- (3) Two or more installations in the vicinity of one another may, if the appropriate national authority consider appropriate, be treated for the purposes of the grant of a nuclear site licence as being on the same site.
- (4) Subject to subsection (8), where an application is made for a nuclear site licence, the appropriate national authority may direct the applicant to serve a notice on any public authority specified in the direction.
- (5) For this purpose “public authority” includes—
  - (a) in relation to a site in England or Wales, a water undertaker;
  - (b) in relation to a site in Scotland, Scottish Water;

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- (c) in relation to a site in Northern Ireland, a water undertaker (within the meaning of the Water and Sewerage Services) (Northern Ireland) Order 2006 (S.I. 2006/3336 (. 21)).
- (6) Such a notice must—
  - (a) state that the application has been made,
  - (b) give such particulars about the proposed use of the site under the licence as may be specified in the direction, and
  - (c) state that the body on whom it is served may make representations about the application to the appropriate national authority within three months of the date of service.
- (7) Where a direction has been given under subsection (4), the appropriate national authority may not grant the licence unless it is satisfied that—
  - (a) three months have passed since the service of the last of the notices required by the direction, and
  - (b) the authority has considered any representations made in accordance with any of those notices.
- (8) Subsection (4) does not apply in relation to an application in respect of a site for a generating station where—
  - (a) a consent under section 36 of the Electricity Act 1989 is required for the operation of the station (or would be required but for an order under the Planning Act 2008 granting development consent for the site), or
  - (b) a consent under Article 39 of the Electricity (Northern Ireland) Order 1992 is required for the operation of the station.
- (9) A nuclear site licence may include provision about when section 19(1) is to start to apply in relation to the licensed site.
- (10) But, if the licence relates to a site in England, Wales or Scotland, such a provision may be included only with the consent of the Secretary of State.
- (11) Where a nuclear site licence includes such a provision, section 19(1) does not apply in relation to the site until—
  - (a) the time determined in accordance with the provision, or
  - (b) if earlier, the time when the site is first used for the operation of a nuclear installation after the grant of the licence.
- (12) The appropriate national authority may from time to time vary a nuclear site licence by excluding from it any part of the licensed site—
  - (a) which the licensee no longer needs for any use requiring such a licence, and
  - (b) with respect to which the appropriate national authority is satisfied that there is no danger from ionising radiations from anything on that part of the site.
- (13) The appropriate national authority must consult the appropriate environment authority before varying a nuclear site licence if the variation relates to or affects the creation, accumulation or disposal of radioactive waste.
- (14) In subsection (13), “radioactive waste”—



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- (a) in relation to a site in England or Wales, has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675);
- (b) in relation to a site in Scotland or Northern Ireland, has the same meaning as in the Radioactive Substances Act 1993.”

19 For section 4 substitute—

**“4 Attachment of conditions to licences**

- (1) The appropriate national authority—
  - (a) must, when it grants a nuclear site licence, attach to it such conditions as the authority considers necessary or desirable in the interests of safety, and
  - (b) may attach such conditions to it at any other time.
- (2) For the purposes of subsection (1), “safety” in relation to a nuclear site includes—
  - (a) safety in normal circumstances, and
  - (b) safety in the event of any accident or other emergency on the site.
- (3) Conditions that may be attached to a licence by virtue of subsection (1) may in particular include provision—
  - (a) for securing that an efficient system is maintained for detecting and recording the presence and intensity of any ionising radiations from time to time emitted from anything on the site or from anything discharged on or from the site;
  - (b) with respect to the design, siting, construction, installation, operation, modification and maintenance of any plant or other installation on, or to be installed on, the site;
  - (c) with respect to preparations for dealing with, and measures to be taken on the happening of, any accident or other emergency on the site;
  - (d) without prejudice to sections 13 and 16 of the Radioactive Substances Act 1993 or to the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), with respect to the discharge of any substance on or from the site.
- (4) The appropriate national authority may at any time attach to a nuclear site licence such conditions as the appropriate national authority may consider appropriate with respect to the handling, treatment and disposal of nuclear matter.
- (5) The appropriate national authority may at any time vary or revoke any condition for the time being attached to a nuclear site licence by virtue of this section.
- (6) The appropriate national authority must consult the appropriate environment authority before—
  - (a) attaching any condition to a nuclear site licence, or
  - (b) varying or revoking any condition attached to a nuclear site licence, if the condition relates to or affects the creation, accumulation or disposal of radioactive waste.

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- (7) In subsection (6) “radioactive waste”—
- (a) in relation to a site in England or Wales, has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675);
  - (b) in relation to a site in Scotland or Northern Ireland, has the same meaning as in the Radioactive Substances Act 1993.
- (8) Any power under this section to attach, vary or revoke a condition is exercisable in writing.
- (9) The appropriate national authority must consider any representation which is—
- (a) made to it by an organisation representing persons who have duties on a site in respect of which a nuclear site licence is in force, and
  - (b) relates to the exercise by the authority of any of its powers under this section in relation to the site.
- (10) Where a condition attached to a nuclear site licence by virtue of this section is contravened, each of the following is guilty of an offence—
- (a) the licensee, and
  - (b) any person having duties upon the site in question who committed the contravention.
- (11) A person convicted of an offence under subsection (10) in England and Wales or Scotland is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;
  - (b) on summary conviction to imprisonment for a term not exceeding 12 months, or a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland), or both.
- (12) A person convicted of an offence under subsection (10) in Northern Ireland is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding 5 years, or a fine, or both;
  - (b) on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding the prescribed sum, or both.
- (13) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s power to imprison) the reference to 12 months in subsection (11)(b), as it has effect in England and Wales, is to be read as a reference to 6 months.”

20 For section 5 substitute—

**“5 Revocation and surrender of licences**

- (1) A nuclear site licence may at any time be—
- (a) revoked by the appropriate national authority, or
  - (b) surrendered by the licensee.

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- (2) The appropriate national authority must consult the appropriate environment authority before revoking a nuclear site licence.
- (3) Subsections (4) to (6) apply where a nuclear site licence has been revoked or surrendered.
- (4) If the appropriate national authority requires it to do so, the licensee must deliver up or account for the licence to such person as the appropriate national authority may direct.
- (5) During the remainder of the period of the licensee's responsibility the appropriate national authority may give the licensee such directions as the authority may consider appropriate for preventing, or giving warning of, any risk of—
  - (a) injury to any person, or
  - (b) damage to any property,by ionising radiations from anything remaining on the site.
- (6) A nuclear safety inspector may direct the licensee to ensure that, during the remainder of the period of responsibility, notices indicating the limits of the site are kept posted on the site in the positions specified in the direction.
- (7) For this purpose, “nuclear safety inspector” means an inspector appointed—
  - (a) by the ONR under Schedule 8 to the Energy Act 2013, in the case of a site in England, Wales or Scotland, or
  - (b) under section 24, in the case of a site in Northern Ireland.
- (8) A licensee who contravenes any direction for the time being in force under subsection (5) or (6) is guilty of an offence.
- (9) A person who without reasonable cause pulls down, injures or defaces any notice posted under subsection (6) is guilty of an offence.
- (10) A person convicted of an offence under subsection (8) in England and Wales or Scotland is liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;
  - (b) on summary conviction to imprisonment for a term not exceeding 12 months, or a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland), or both.
- (11) A person convicted of an offence under subsection (8) in Northern Ireland is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 12 months, or a fine, or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 3 months, or a fine not exceeding the prescribed sum, or both.
- (12) A person convicted of an offence under subsection (9) is liable on summary conviction—
  - (a) in England and Wales or Scotland, to a fine not exceeding level 2 on the standard scale;
  - (b) in Northern Ireland, to a fine not exceeding level 1 on the standard scale.

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- (13) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference to 12 months in subsection (10)(b), as it has effect in England and Wales, is to be read as a reference to 6 months.
- (14) In this Act, "period of responsibility" in relation to the licensee under a nuclear site licence means, as respects the site in question or any part of it, the period—
- (a) beginning with the grant of the licence, and
  - (b) ending with whichever of the dates in subsection (15) is the earliest, except that it does not include any period during which section 19(1) does not apply in relation to the site.
- (15) Those dates are—
- (a) the date when the appropriate national authority gives notice in writing to the licensee that in the authority's opinion there has ceased to be any danger from ionising radiations from anything on the site or, as the case may be, on the part of it in question;
  - (b) the date when a new nuclear site licence in respect of a site comprising the site in question or, as the case may be, that part of it, is granted (whether to the same licensee or to some other person);
  - (c) the date when the following conditions have both become satisfied—
    - (i) the site in question or, as the case may be, that part of it is used or occupied by or on behalf of the Crown, and
    - (ii) a nuclear site licence has ceased to be required in respect of that site or part."

21 For section 6 substitute—

**"6 Maintenance of list of licensed sites**

- (1) The appropriate authority must maintain a list showing every site in respect of which a nuclear site licence has been granted.
- (2) The list—
  - (a) need not show any site or part of a site in the case of which—
    - (i) no nuclear site licence is for the time being in force; and
    - (ii) 30 years have passed since the end of the last licensee's period of responsibility;
  - (b) must include a map or maps showing the position and limits of each site shown in the list.
- (3) The authority must arrange for the list, or a copy of it, to be available for inspection by the public.
- (4) In this section "appropriate authority" means—
  - (a) in relation to England and Wales and Northern Ireland, the Secretary of State;
  - (b) in relation to Scotland, the Scottish Ministers."

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22 In section 19(1) (special cover for licensee’s liability), for “section 3(5)” substitute “section 3(11)”.

23 For section 22 (reporting of and inquiries into dangerous occurrences) substitute—

**“22 Reporting of and inquiries into dangerous occurrences**

- (1) The provisions of this section apply where any prescribed occurrence happens—
  - (a) on a licensed site, or
  - (b) in the course of the carriage of nuclear matter on behalf of any person where a duty with respect to that carriage is imposed on that person by section 7, 10 or 11 of this Act.
- (2) The licensee or other person mentioned in subsection (1) must ensure that the occurrence is reported without delay in the prescribed manner—
  - (a) to the appropriate national authority, and
  - (b) to such other persons, if any, as may be prescribed in relation to occurrences of that kind.
- (3) A person who is required by virtue of subsection (2) to report an occurrence and who fails to do so is guilty of an offence.
- (4) A person convicted of an offence under subsection (3) in England and Wales or Scotland is liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both;
  - (b) on summary conviction to imprisonment for a term not exceeding 12 months, or a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland), or both.
- (5) A person convicted of an offence under subsection (3) in Northern Ireland is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 3 on the standard scale, or both.
- (6) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s power to imprison), the reference to 12 months in subsection (4)(b), as it has effect in England and Wales, is to be read as a reference to 6 months.
- (7) Before exercising any function under subsection (1) or (2) in or as regards Scotland, the Secretary of State must consult the Scottish Ministers.
- (8) Subsections (9) to (11) have effect only in relation to a prescribed occurrence which happens in Northern Ireland.
- (9) The Secretary of State—
  - (a) may direct an inspector to make a special report with respect to the occurrence, and
  - (b) may cause any such report, or so much of it as it is not in the Secretary of State’s opinion inconsistent with the interests of national security to disclose, to be made public at such time and in such manner as the Secretary of State considers appropriate.

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- (10) The Secretary of State may direct an inquiry to be held into the occurrence and its causes, circumstances and effects.
- (11) Any such inquiry must be held—
- (a) in accordance with the provisions of Schedule 2 to this Act, and
  - (b) in public, except where or to the extent that it appears to the Secretary of State expedient in the interests of national security to direct otherwise.”
- 24 In section 24 (inspectors), for “provisions which are mentioned in Schedule 1 to the Health and Safety at Work etc. Act 1974” substitute “sections 1, 3 to 6, 22 and 24A of this Act”.
- 25 (1) Section 24A (recovery of expenses by Health and Safety Executive) is amended as follows.
- (2) In subsection (1)—
- (a) for “Health and Safety Executive (“the Executive”) which the Executive may” substitute “ONR which the ONR may”;
  - (b) in paragraph (a) for “such of the provisions of this Act as are mentioned in Schedule 1 to the Health and Safety at Work etc Act 1974” substitute “sections 1, 3 to 6 and 22, and this section of this Act”.
- (3) In subsection (2)—
- (a) for “Executive” substitute “ONR”;
  - (b) for “the Health and Safety at Work etc. Act 1974” substitute “Schedule 8 to the Energy Act 2013”.
- (4) In subsections (3), (4) and (6) to (8) for “Executive”, in each place where it appears, substitute “ONR”.
- (5) In the heading, for “Health and Safety Executive” substitute “ONR”.
- 26 (1) Section 26 (interpretation) is amended as follows.
- (2) For the definition of “the appropriate Agency” substitute—
- ““the appropriate environment authority” means—
- (a) in the case of a site in England, the Environment Agency;
  - (b) in the case of a site in Scotland, the Scottish Environment Protection Agency;
  - (c) in the case of a site in Northern Ireland, the Department of Environment in Northern Ireland;
  - (d) in the case of a site in Wales, the Natural Resources Body for Wales;
- “the appropriate national authority” means—
- (a) in relation to England and Wales and Scotland, the ONR;
  - (b) in relation to Northern Ireland, the Secretary of State;”.
- (3) Omit the definition of “inspector”.
- (4) In the definition of “nuclear site licence” for “section 1(1)” substitute “section 1(2)”.
- (5) After the definition of “occurrence” insert—
- ““ONR” means the Office for Nuclear Regulation;”.

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- (6) In the definition of “period of responsibility” for “section 5(3)” substitute “section 5(14)”.
- 27 In section 27 (Northern Ireland) omit paragraphs (b) and (c) of subsection (1).
- 28 In Schedule 1 (security provisions applicable by order under section 2), in paragraph 3(2)(cc), for “section 19 of the Health and Safety at Work etc. Act 1974” substitute “Schedule 8 to the Energy Act 2013”.
- 29 (1) Schedule 2 is amended as follows.
- (2) In paragraph 1 for “section 22(5)” substitute “section 22(10)”.
- (3) In paragraphs 1, 2, 5 and 6, for “the Minister” in each place where it appears substitute “the Secretary of State”.
- (4) In paragraph 7—
- (a) for “or, in Scotland, the Court of Session, and the High Court or Court of Session” substitute “and the High Court”;
- (b) omit “or, as the case may be, the Court of Session”.
- (5) Omit paragraph 8.
- (6) For the title substitute “Inquiries under section 22(10) relating to occurrences in Northern Ireland”.

*Consequential repeals and revocations*

- 30 In consequence of the amendments made by paragraphs 16 to 29, the provisions listed in the following Table are repealed or revoked to the extent specified—

<i>Title</i>	<i>Extent of repeal or revocation</i>
Electricity Act 1989 (c. 29)	In Schedule 16, paragraph 11.
Water Act 1989 (c. 15)	In Schedule 25, paragraph 33.
Radioactive Substances Act 1993 (c. 12)	In Schedule 4, paragraph 2.
Environment Act 1995 (c. 25)	In Schedule 22, paragraphs 7 to 9.
Energy Act 2004 (c. 20)	Section 78(1).
Energy Act 2008 (c. 32)	Section 65. In section 112(3), the words “(other than section 65)”.
Marine and Coastal Access Act 2009 (c. 23)	In Schedule 14, paragraph 6.
The Nuclear Installations Act 1965 etc. (Repeals and Modifications) Regulations 1974 (S.I. 1974/2056)	Schedule 1, except for the entry relating to section 25 of the Nuclear Installations Act 1965. In Schedule 2, paragraphs 1, 2, 3 and 6.
The Nuclear Installations Act 1965 (Repeal and	In the Schedule, paragraph 1.

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<i>Title</i>	<i>Extent of repeal or revocation</i>
<p>Modifications) Regulations 1990 (S.I. 1990/1918)</p> <p>The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750)</p> <p>The Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822 (S. 3))</p> <p>The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675)</p> <p>The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90))</p>	<p>In Schedule 1, in the entry for the Nuclear Installations Act 1965, in column 1, in paragraph (b), the words “6 and”.</p> <p>In Schedule 3, in the entry for the Nuclear Installations Act 1965, in column 1, the words —</p> <p>(a) “1(1)(b) and (2)”;</p> <p>(b) “and 22(1) and (2),”.</p> <p>In the Schedule, paragraph 5.</p> <p>In Part 1 of Schedule 26, paragraph 2.</p> <p>In Part 1 of Schedule 2, paragraph 41.</p>

### PART 3

#### NUCLEAR SECURITY

##### *Anti-terrorism, Crime and Security Act 2001 (c. 24)*

- 31 The Anti-terrorism, Crime and Security Act 2001 is amended as follows.
- 32 (1) Section 77 (regulation of security of civil nuclear industry) is amended as follows.
- (2) In subsection (3)(a)(ii), for the words following “term” substitute “not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland), or a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland and Northern Ireland), or both”.
- (3) After that subsection insert—
- “(3A) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s power to imprison), the reference to 12 months in subsection (3)(a)(ii), as it has effect in England and Wales, is to be read as a reference to 6 months.”
- (4) In subsection (5)(a), for “the Health and Safety Executive” substitute “the Office for Nuclear Regulation”.
- 33 (1) Section 80 (prohibition of disclosures of uranium enrichment technology), is amended as follows.



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(2) In subsection (4)(b), after “the Secretary of State” insert “or the Office for Nuclear Regulation”.

(3) After subsection (7) insert—

“(7A) The Secretary of State must consult the Office for Nuclear Regulation before laying a draft of the regulations, unless they give effect, without modification, to any proposals for them submitted by the Office for Nuclear Regulation under section 81(1)(a)(v) of the Energy Act 2013.”

## PART 4

### NUCLEAR SAFEGUARDS

#### *Atomic Energy Act 1946 (c. 80)*

34 The Atomic Energy Act 1946 is amended as follows.

35 (1) Section 4 (power to obtain information of materials, plants and processes) is amended as follows.

(2) In subsection (1), at the beginning insert “Subject to subsection (1A)”.

(3) After subsection (1) insert—

“(1A) No notice may be served under subsection (1) which imposes a requirement which could be imposed—

(a) by a notice served by the Office for Nuclear Regulation under section 97 of the Energy Act 2013 (power of ONR to obtain information), or

(b) by an authorised inspector under paragraph 15 of Schedule 8 to that Act (power of inspectors to require information and documents).”

36 (1) Section 5 (power of entry and inspection) is amended as follows.

(2) In subsection (1), at the beginning insert “Subject to subsection (1A)”.

(3) After subsection (1) insert—

“(1A) No authorisation to enter or inspect any premises may be given by the Minister to any person under subsection (1) if such authorisation could be given by the Office for Nuclear Regulation to an inspector under Part 1 of Schedule 8 to the Energy Act 2013 (appointment and powers of inspectors).”

37 In section 11 (restriction on disclosure of information relating to plant), after subsection (2) insert—

“(2A) The communication of information is not an offence under this section if it is—

(a) communication to the Office for Nuclear Regulation of information required under section 97 of the Energy Act 2013 (power of ONR to obtain information), or any subsequent communication of that information by the Office for Nuclear Regulation, or

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- (b) communication to an authorised inspector of information required by the inspector under paragraph 15 of Schedule 8 to that Act (power of inspectors to require information and documents), or any subsequent communication of that information by an inspector.”.

38 In section 18 (definitions), in subsection (1), after the definition of “atomic energy” insert—

““inspector” means an inspector appointed under Schedule 8 to the Energy Act 2013; and “authorised”, in relation to such an inspector, is to be construed in accordance with paragraph 2(4) of that Schedule;”.

*Nuclear Safeguards and Electricity (Finance) Act 1978 (c. 25)*

39 The Nuclear Safeguards and Electricity (Finance) Act 1978 is amended as follows.

40 In section 2 (rights of International Atomic Energy Agency inspectors), in subsection (8) for “Secretary of State” substitute “Office for Nuclear Regulation”.

41 In section 3 (regulations for giving effect to certain provisions of Safeguards Agreement) —

(a) after subsection (1) insert—

“(1A) Regulations under this section may in particular modify functions of, or confer functions on, the Office for Nuclear Regulation.”;

(b) after subsection (2) insert—

“(2A) The Secretary of State must consult the Office for Nuclear Regulation before making regulations under this section unless the regulations give effect, without modification, to any proposals for them submitted by the Office for Nuclear Regulation under section 81(1)(a)(v) of the Energy Act 2013.”

*Nuclear Safeguards Act 2000 (c. 5)*

42 The Nuclear Safeguards Act 2000 is amended as follows.

43 (1) Section 1(1) (interpretation) is amended as follows.

(2) In the definition of “Additional Protocol information” after “Secretary of State” insert “or the Office for Nuclear Regulation”.

(3) In the definition of “authorised officer” for “Secretary of State” substitute “Office for Nuclear Regulation”.

44 (1) Section 2 (information and records for purposes of the Additional Protocol) is amended as follows.

(2) In subsection (1), for “Secretary of State” substitute “Office for Nuclear Regulation”.

(3) In subsection (2), for “Secretary of State”, in both places where it appears, substitute “Office for Nuclear Regulation”.

(4) In subsection (3)(a) for “Secretary of State” substitute “Office for Nuclear Regulation”.

45 (1) Section 3 (identifying persons who have information) is amended as follows.

(2) In subsection (1), for “him” substitute “the Office for Nuclear Regulation”.

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- (3) In subsection (2)(b), for “Secretary of State” substitute “Office for Nuclear Regulation”.
- (4) In subsection (3)(a), for “Secretary of State” substitute “Office for Nuclear Regulation”.
- (5) After subsection (3) insert—
- “(3A) The Secretary of State must consult the Office for Nuclear Regulation before making regulations under this section unless the regulations give effect, without modification, to any proposals for them submitted by the Office for Nuclear Regulation under section 81(1)(a)(v) of the Energy Act 2013.”
- (6) In subsection (5), for “Secretary of State” substitute “Office for Nuclear Regulation”.
- 46 (1) Section 4 (powers of entry in relation to Additional Protocol information) is repealed.
- (2) Sub-paragraph (1) does not affect the power in section 12(4) of the Nuclear Safeguards Act 2000 to extend section 4 of that Act outside the United Kingdom.
- 47 (1) Section 5 (rights of access etc. for Agency inspectors) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) The Secretary of State must consult the Office for Nuclear Regulation before making an order under subsection (3) unless the order gives effect, without modification, to any proposals for such an order submitted by the Office for Nuclear Regulation under section 81(1)(a)(v) of the Energy Act 2013.”
- (3) In subsection (6) for “Secretary of State” substitute “Office for Nuclear Regulation”.
- 48 In section 6 (restriction on disclosure), after subsection (3) insert—
- “(3A) It is not an offence under this section to disclose information held by the Office for Nuclear Regulation if the disclosure is not in contravention of Part 3 of the Energy Act 2013.”.
- 49 In section 7 (giving false or misleading information), in paragraphs (a) and (b) for “Secretary of State” substitute “Office for Nuclear Regulation”.

## PART 5

### OTHER ENACTMENTS

#### *Explosives Act 1875 (c. 17)*

- 50 The Explosives Act 1875 is amended as follows.
- 51 In section 61 (keeping and carriage of samples by an inspector appointed by the Health and Safety Executive under section 19 of the 1974 Act), at the end insert the following paragraphs—
- “The reference to an inspector appointed by the Health and Safety Executive under section 19 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”) is to be read, in relation to a relevant nuclear site, as a reference to an inspector appointed by the Office for Nuclear Regulation under that section.

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For this purpose a relevant nuclear site is one in relation to which the Office for Nuclear Regulation has responsibility for the enforcement of any of the relevant statutory provisions (within the meaning of Part 1 of the 1974 Act) by virtue of section 18(1A) or (2) of the 1974 Act.”

- 52 In section 74 (seizure and detention of explosives liable to forfeiture), after subsection (6) insert the following paragraphs—

“In this section, any reference to an inspector appointed by the Health and Safety Executive under section 19 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”) is to be read, in relation to anything found on a relevant nuclear site, as a reference to an inspector appointed by the Office for Nuclear Regulation under that section.

For this purpose a relevant nuclear site is one in relation to which the Office for Nuclear Regulation has responsibility for the enforcement of any of the relevant statutory provisions (within the meaning of Part 1 of the 1974 Act) by virtue of section 18(1A) or (2) of the 1974 Act.”

*Factories Act 1961 (c. 34)*

- 53 In section 176(1) of the Factories Act 1961 (general interpretation), in the definition of “inspector”, for the words from “means” to “and references” substitute “, in relation to a factory, means an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”)—

- (a) in the case of a factory on a site in relation to which the Office for Nuclear Regulation has responsibility for the enforcement of any of the relevant statutory provisions (within the meaning of Part 1 of the 1974 Act) by virtue of section 18(1A) or (2) of that Act, by the Office for Nuclear Regulation;
- (b) in any other case, by the Health and Safety Executive,

and references”.

*Parliamentary Commissioner Act 1967 (c. 13)*

- 54 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), at the appropriate place insert—  
“Office for Nuclear Regulation.”

*House of Commons Disqualification Act 1975 (c. 24)*

- 55 (1) Schedule 1 to the House of Commons Disqualification Act 1975 is amended as follows.
- (2) In Part 2 (bodies of which all members are disqualified), at the appropriate place insert—  
“The Office for Nuclear Regulation.”
- (3) In Part 3 (other disqualifying offices), at the appropriate place insert—  
“Member of staff of the Office for Nuclear Regulation (within the meaning of Part 3 of the Energy Act 2013).”

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*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 56 (1) Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 is amended as follows.
- (2) In Part 2 (bodies of which all members are disqualified), at the appropriate place insert—
- “The Office for Nuclear Regulation.”
- (3) In Part 3 (other disqualifying offices), at the appropriate place insert—
- “Member of staff of the Office for Nuclear Regulation (within the meaning of Part 3 of the Energy Act 2013).”

*Employment Protection Act 1975 (c.71)*

- 57 In Schedule 15 to the Employment Protection Act 1975, omit paragraph 13 (amendments of section 44 of the Health and Safety at Work etc. Act 1974).

*Civil Aviation Act 1982 (c. 16)*

- 58 In section 23 of the Civil Aviation Act 1982 (disclosure of information), in subsection (4), after paragraph (b) insert—
- “(ba) by the CAA or a member or employee of the CAA—
- (i) to, or to a member of, the Office for Nuclear Regulation, or
- (ii) to a member of staff of the Office for Nuclear Regulation (within the meaning of Part 3 of the Energy Act 2013);”.

*Water Act 1989 (c. 15)*

- 59 In section 174 of the Water Act 1989 (general restrictions on disclosure of information), in subsection (2), after paragraph (g) insert—
- “(ga) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;”.

*Electricity Act 1989 (c. 29)*

- 60 The Electricity Act 1989 is amended as follows.
- 61 (1) Section 3C (health and safety) is amended as follows.
- (2) In subsection (1), for the words following “consult” substitute “—
- (a)
- the Health and Safety Executive about all electricity safety issues, and
- (b) the Office for Nuclear Regulation about all electricity safety issues relating to nuclear sites (within the meaning of Part 3 of the Energy Act 2013),
- which may be relevant to the carrying out of their respective functions under this Part.”
- (3) In subsection (3), after “Health and Safety Executive” insert “or the Office for Nuclear Regulation”.

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- 62 In section 56C (references to the Competition Commission), in subsection (6)(c), after “Health and Safety Executive” insert “, the Office for Nuclear Regulation”.

*Radioactive Material (Road Transport) Act 1991 (c. 27)*

- 63 (1) The Radioactive Material (Road Transport) Act 1991, apart from section 1(1), is repealed.
- (2) In section 1(1) of that Act, for “In this Act” substitute “In this subsection (which applies for the purposes of section E5 of Part 2 of Schedule 5 to the Scotland Act 1998)”.

*Water Industry Act 1991 (c. 56)*

- 64 In section 206 of the Water Industry Act 1991 (restriction on disclosure of information), in subsection (3), after paragraph (g) insert—
- “(ga) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;”.

*Water Resources Act 1991 (c. 57)*

- 65 In section 204 of the Water Resources Act 1991 (restriction on disclosure of information), in subsection (2), after paragraph (g) insert—
- “(ga) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;”.

*Radioactive Substances Act 1993 (c. 12)*

- 66 The Radioactive Substances Act 1993 is amended as follows.
- 67 In section 16 (grant of authorisations), as it has effect in relation to Scotland, in subsection (4A)—
- (a) in the opening words, omit “in any part of Great Britain”;
- (b) in paragraph (a) for “Health and Safety Executive” substitute “Office for Nuclear Regulation”.
- 68 In section 17 (revocation and variation of authorisations), as it has effect in relation to Scotland, in subsection (2A)—
- (a) in the opening words omit “in any part of Great Britain”;
- (b) in paragraph (a) for “Health and Safety Executive” substitute “Office for Nuclear Regulation”.

*Railways Act 1993 (c. 43)*

- 69 In section 145 of the Railways Act 1993 (general restrictions on disclosure of information), in subsection (2), after paragraph (e) insert—
- “(ea) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;”.

*Coal Industry Act 1994 (c. 21)*

- 70 In section 59(3)(e) of the Coal Industry Act 1994 (relevant authorities in relation to all of their functions), after sub-paragraph (ii) insert—

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“(ia) the Office for Nuclear Regulation;”.

*Deregulation and Contracting Out Act 1994 (c. 40)*

- 71 (1) Section 37 of the Deregulation and Contracting Out Act 1994 (power to repeal certain health and safety provisions) is amended as follows.
- (2) In subsection (1), after paragraph (b) insert—
- “(ba) any of the relevant nuclear provisions,
  - (bb) any provision of regulations under section 74 of the Energy Act 2013 which has effect in place of any of the relevant nuclear provisions,”.
- (3) In subsection (2), after paragraph (ac) insert—
- “(ad) in the case of regulations under paragraph (ba) or (bb) of that subsection, the Office for Nuclear Regulation,”.
- (4) In subsection (7) for “or (b)” substitute “(b), (ba) or (bb)”.
- (5) In subsection (9)(a), for “or (b)” substitute “(b), (ba) or (bb)”.
- (6) After subsection (9) insert—
- “(10) In subsection (1), “the relevant nuclear provisions” means—
    - (a) sections 1, 3 to 6, 22 and 24A of the Nuclear Installations Act 1965, and
    - (b) any regulations made under any of those sections, so far as they have effect in England and Wales or Scotland.”

*Scotland Act 1998 (c. 46)*

- 72 In Part 2 of Schedule 5 to the Scotland Act 1998 (specific reservations), in section D4 (nuclear energy), after “occurrences.” insert—
- “The Office for Nuclear Regulation.”

*Greater London Authority Act 1999 (c. 29)*

- 73 In section 235 of the Greater London Authority Act 1999 (restrictions on disclosure of information), in subsection (2), after paragraph (f) insert—
- “(fa) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;”.

*Regulation of Investigatory Powers Act 2000 (c. 23)*

- 74 In Part 1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000 (relevant authorities for the purposes of sections 28 and 29), after paragraph 20G insert—
- “20H The Office for Nuclear Regulation.”

*Freedom of Information Act 2000 (c. 36)*

- 75 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities), at the appropriate place insert—
- “The Office for Nuclear Regulation.”

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### *Transport Act 2000 (c. 38)*

- 76 In Schedule 9 to the Transport Act 2000 (air traffic: information), in paragraph 3(1), after paragraph (f) insert—
- “(fa) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;”.

### *Energy Act 2004 (c. 20)*

- 77 The Energy Act 2004 is amended as follows.
- 78 In section 14 (annual reports), in subsection (3)(g), after “with” insert “the Office for Nuclear Regulation;”.
- 79 (1) Schedule 2 (procedural requirements applicable to NDA’s strategy) is amended as follows.
- (2) In paragraph 4(2) (consultation by NDA), before paragraph (a) insert—
- “(za) the Office for Nuclear Regulation;”.
- (3) In paragraph 5(9) (approval of strategy), after paragraph (a) insert—
- “(aa) the Office for Nuclear Regulation;”.
- 80 (1) Schedule 3 (procedural requirements applicable to NDA’s annual plans) is amended as follows.
- (2) In paragraph 2(1) (consultation by NDA), before paragraph (a) insert—
- “(za) the Office for Nuclear Regulation;”.
- (3) In paragraph 3(8) (approval of annual plan), after paragraph (a) insert—
- “(aa) the Office for Nuclear Regulation;”.

### *Civil Contingencies Act 2004 (c. 36)*

- 81 In Part 3 of Schedule 1 to the Civil Contingencies Act 2004 (category 2 responders: general), after paragraph 29A insert—
- “Miscellaneous*
- 29B The Office for Nuclear Regulation.”

### *Railways Act 2005 (c. 14)*

- 82 Schedule 3 to the Railways Act 2005 (transfer of safety functions) is amended as follows.
- 83 In paragraph 1(5) (railway safety purposes), after paragraph (b) (but before the “and” immediately following it) insert—
- “(ba) the Office for Nuclear Regulation;”.
- 84 (1) Paragraph 2 (ORR’s principal railway safety functions) is amended as follows.
- (2) In sub-paragraph (6), for the words following “must” substitute “—
- (a) if the proposals relate to regulations that are relevant to the ONR’s purposes (within the meaning of Part 3 of the Energy Act 2013), consult the Office for Nuclear Regulation;



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- (b) in any case, consult—
    - (i) such government departments, and
    - (ii) such other persons,as it considers appropriate.”
  - (3) In sub-paragraph (7), at the end insert “and, if the regulations are relevant to the ONR’s purposes (within the meaning of Part 3 of the Energy Act 2013), the Office for Nuclear Regulation”.
- 85 In paragraph 4 (reports and investigations), after sub-paragraph (4) insert—
- “(4A) The Office of Rail Regulation must consult the Office for Nuclear Regulation before taking any step under sub-paragraph (1) in relation to a matter which appears to the Office of Rail Regulation to be, or likely to be, relevant to the ONR’s purposes (within the meaning of Part 3 of the Energy Act 2013).”

*Fire (Scotland) Act 2005 (asp. 5)*

- 86 (1) Section 61 of the Fire (Scotland) Act 2005 (enforcing authorities) is amended as follows.
- (2) In subsection (7), for “Health and Safety Executive” (in both places) substitute “appropriate body”.
  - (3) After that subsection insert—
    - “(7A) For the purposes of subsection (7), “appropriate body” means—
      - (a) in relation to a workplace which is, or is on, premises for which it is the enforcing authority, the Office for Nuclear Regulation;
      - (b) in relation to any other workplace, the Health and Safety Executive.”
  - (4) Subsection (9) is amended as follows.
  - (5) In paragraph (za)—
    - (a) omit sub-paragraphs (i) and (ii);
    - (b) for sub-paragraph (iv) substitute—
      - “(iv) which are a workplace which is, or is on, a construction site, other than one in relation to which the Office for Nuclear Regulation is responsible for health and safety enforcement;”.
  - (6) After that paragraph insert—
    - “(zaa) in relation to relevant premises—
      - (i) for which a licence is required by virtue of section 1 of the Nuclear Installations Act 1965 or for which a permit is required by virtue of section 2 of that Act;
      - (ii) for which such a licence or permit would be required but for the fact that the premises are used by, or on behalf of, the Crown; or
      - (iii) which are a workplace which is, or is on, a construction site in relation to which the Office for Nuclear Regulation is responsible for health and safety enforcement,

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the Office for Nuclear Regulation;”.

(7) In paragraph (b)—

- (a) in sub-paragraph (i), for “(za)(ii), (iii)” substitute “(za)(iii), (zaa)(ii)”;
- (b) in sub-paragraph (ii), for “(za)(ii)” substitute “(zaa)(ii)”.

(8) After subsection (9) insert—

“(9A) For the purposes of subsection (9)—

- (a) “construction site” means a construction site, as defined in regulation 2(1) of the Construction (Design and Management) Regulations 2007, to which those Regulations apply, other than one to which regulation 46(1) of those Regulations applies;
- (b) the Office for Nuclear Regulation is responsible for health and safety enforcement in relation to a construction site if, by virtue of regulations under section 18(2) of the Health and Safety at Work etc. Act 1974 (enforcement), it is responsible for the enforcement of any of the relevant statutory provisions (within the meaning of Part 1 of that Act) in relation to the site.”

(9) In subsection (10), after “(9)” insert “or (9A)”.

*Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541)*

87 The Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541) is amended as follows.

88 (1) Article 25 (enforcing authorities) is amended as follows.

(2) That Article becomes paragraph (1) and is amended as follows.

(3) In paragraph (b)—

- (a) omit sub-paragraphs (i) and (ii);
- (b) for sub-paragraph (iv) substitute—

“(iv) any workplace which is, or is on, a construction site, other than one in relation to which the Office for Nuclear Regulation is responsible for health and safety enforcement;”.

(4) After that paragraph insert—

“(bb) the Office for Nuclear Regulation in relation to—

- (i) any premises for which a licence is required by virtue of section 1 of the Nuclear Installations Act 1965 or for which a permit is required by virtue of section 2 of that Act;
- (ii) any premises for which such a licence or permit would be required but for the fact that the premises are used by, or on behalf of, the Crown;
- (iii) any workplace which is, or is on, a construction site in relation to which the Office for Nuclear Regulation is responsible for health and safety enforcement;”.

(5) In paragraph (e)—

- (a) in sub-paragraph (i), for “(b)(ii)” substitute “(bb)(ii)”;
- (b) in sub-paragraph (ii), for “(b)(ii)” substitute “(bb)(ii)”.

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(6) After Article 25(1) insert—

“(2) For the purposes of paragraph (1)—

- (a) “construction site” means a construction site, as defined in regulation 2(1) of the Construction (Design and Management) Regulations 2007, to which those Regulations apply, other than one to which regulation 46(1) of those Regulations applies;
- (b) the Office for Nuclear Regulation is responsible for health and safety enforcement in relation to a construction site if, by virtue of regulations under section 18(2) of the Health and Safety at Work etc. Act 1974 (enforcement), it is responsible for the enforcement of any of the relevant statutory provisions (within the meaning of Part 1 of that Act) in relation to the site.”

89 In Article 26 (enforcement of Order), in paragraph (3), after “Health and Safety Executive” (in both places) insert “, Office for Nuclear Regulation”.

*Government of Wales Act 2006 (c. 32)*

90 In Schedule 7 to the Government of Wales Act 2006 (subjects to which Acts of the Assembly may relate), in Part 1, in the exceptions to paragraph 4 (economic development), after “nuclear installations” insert “and the Office for Nuclear Regulation”.

*National Health Service Act 2006 (c. 41)*

91 In section 2A of the National Health Service Act 2006 (Secretary of State’s duty as to protection of public health)—

- (a) in subsection (3)(b), for “the Health and Safety Executive” substitute “a relevant body”;
- (b) in subsection (4)(a), for “Health and Safety Executive” substitute “relevant body”;
- (c) after subsection (4) insert—

“(5) For the purposes of subsections (3) and (4), each of the following is a relevant body—

- (a) the Health and Safety Executive;
- (b) the Office for Nuclear Regulation.”.

*Road Safety Act 2006 (c. 49)*

92 Section 57 of the Road Safety Act 2006 (which amends section 2 of the Radioactive Material (Road Transport) Act 1991) is repealed.

*Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19)*

93 In section 25 of the Corporate Manslaughter and Corporate Homicide Act 2007, in the definition of “health and safety legislation”, at the end insert “and provision dealing with health and safety matters contained in Part 3 of the Energy Act 2013 (nuclear regulation)”.

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### *Regulatory Enforcement and Sanctions Act 2008 (c. 13)*

- 94 In Schedule 6 to the Regulatory Enforcement and Sanctions Act 2008 (enactments specified for the purposes of orders under Part 3), the entry for sections 2 to 6 of the Radioactive Material (Road Transport) Act 1991 is repealed.

### *Energy Act 2008 (c. 32)*

- 95 The Energy Act 2008 is amended as follows.
- 96 In section 46 (approval of a funded decommissioning programme), in subsection (6), for paragraph (a) substitute—  
“(a) the Office for Nuclear Regulation,”.
- 97 In section 50 (power to disapply section 49), in subsection (2), for paragraph (a) substitute—  
“(a) the Office for Nuclear Regulation,”.
- 98 In section 54 (nuclear decommissioning: regulations and guidance), in subsection (8), for paragraph (a) substitute—  
“(a) the Office for Nuclear Regulation,”.
- 99 In section 59 (offence of further disclosure of information), in subsection (2)(c)—  
(a) for “the Health and Safety Executive” substitute “the Office for Nuclear Regulation”;  
(b) for “the Executive” substitute “the Office for Nuclear Regulation”.
- 100 In section 63 (co-operation with other public bodies), in subsection (2), for paragraph (a) substitute—  
“(a) the Office for Nuclear Regulation;”.

### *Borders, Citizenship and Immigration Act 2009 (c. 11)*

- 101 (1) Part 1 of the Borders, Citizenship and Immigration Act 2009 (which provides for certain functions of the Commissioners for Her Majesty’s Revenue and Customs to be exercisable concurrently by the Secretary of State or the Director of Border Revenue) is amended as follows.
- (2) In section 1 (general customs functions of the Secretary of State), in subsection (6), after paragraph (a) (but before the “and” immediately following it) insert—  
“(aa) sections 98 and 99 of the Energy Act 2013 (HMRC functions in relation to Office for Nuclear Regulation etc.),”.
- (3) In section 7 (customs revenue functions of the Director of Border Revenue) in subsection (7), after paragraph (a) (but before the “and” immediately following it) insert—  
“(aa) sections 98 and 99 of the Energy Act 2013 (HMRC functions in relation to Office for Nuclear Regulation etc.),”.

### *Equality Act 2010 (c. 15)*

- 102 In Schedule 19 to the Equality Act 2010 (public authorities: general), after the entry for the Health and Safety Executive insert—  
“The Office for Nuclear Regulation.”.

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*Health and Social Care Act 2012 (c. 7)*

- 103 In section 58(6) of the Health and Social Care Act 2012 (radiation protection functions), after paragraph (b) insert—  
“(c) the Office for Nuclear Regulation.”.

SCHEDULE 13

Section 129

TRANSFER SCHEMES UNDER SECTION 129

- 1 (1) On the transfer date, the designated property, rights and liabilities that are to be transferred from the Oil and Pipelines Agency (“the transferor”) to the Secretary of State (“the transferee”) are transferred and vest in accordance with the scheme.
- (2) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (3) A certificate by the Secretary of State that anything specified in the certificate has vested in the Secretary of State by virtue of a scheme is conclusive evidence for all purposes of that fact.
- (4) In this Schedule—  
“civil service” means the civil service of the state;  
“designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;  
“property” includes interests of any description;  
“the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect;  
“TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- 2 (1) A scheme may make provision—
- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
  - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
  - (c) about the continuation of legal proceedings;
  - (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
  - (e) for transferring property, rights and liabilities irrespective of any requirement for consent which would otherwise apply;
  - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
  - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
  - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
  - (i) for apportioning property, rights or liabilities;

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- (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
  - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme;
  - (l) if the TUPE regulations do not apply in relation to the transfer, make provision which is the same or similar.
- (2) Sub-paragraph (1)(b) does not apply to references in primary legislation or in subordinate legislation.
- 3 For the purposes of this Schedule—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
  - (b) the terms of the individual’s employment in the civil service are to be regarded as constituting the terms of the contract of employment.

## SCHEDULE 14

Section 144

### CONSUMER REDRESS ORDERS

#### PART 1

##### GAS CONSUMERS

- 1 (1) The Gas Act 1986 is amended as set out in sub-paragraphs (2) to (7).
- (2) After section 30F insert—

#### **“30G Consumer redress orders**

- (1) This section applies where the Authority is satisfied that—
- (a) a regulated person has contravened, or is contravening, any relevant condition or requirement, and
  - (b) as a result of the contravention, one or more consumers have suffered loss or damage or been caused inconvenience.
- (2) The Authority may make an order (a “consumer redress order”) requiring the regulated person to do such things as appear to the Authority necessary for the purposes of—
- (a) remedying the consequences of the contravention, or
  - (b) preventing a contravention of the same or a similar kind from being repeated.
- (3) A consumer redress order must specify the following—
- (a) the regulated person to whom the order applies;
  - (b) the contravention in respect of which the order is made;
  - (c) the affected consumers, or a description of such consumers;
  - (d) the requirements imposed by the order;
  - (e) the date by which the regulated person must comply with such requirements.

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- (4) As soon as practicable after making a consumer redress order, the Authority must—
  - (a) serve a copy of the order on the regulated person to whom the order applies, and
  - (b) either—
    - (i) serve a copy of the order on each affected consumer, or
    - (ii) publish the order in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of affected consumers.
- (5) The date specified in a consumer redress order under subsection (3)(e) may not be earlier than the end of the period of 7 days from the date of the service of a copy of the order on the regulated person.
- (6) Different dates may be specified under subsection (3)(e) in relation to different requirements imposed by the order.
- (7) This section is subject to sections 30H to 30O.
- (8) In this section and in sections 30H to 30O—
  - “affected consumers”, in relation to a consumer redress order (or proposed order), are those consumers that the Authority is satisfied have suffered loss or damage, or been caused inconvenience, as a result of the contravention in respect of which the order is (or would be) made;
  - “consumers” means consumers in relation to gas conveyed through pipes;
  - “consumer redress order” means an order under subsection (2).

### **30H Remedial action under a consumer redress order**

- (1) The things mentioned in section 30G(2) that a regulated person may be required to do under a consumer redress order (“the required remedial action”) include, in particular—
  - (a) paying an amount to each affected consumer by way of compensation for the loss or damage suffered, or for the inconvenience caused, as a result of the contravention;
  - (b) preparing and distributing a written statement setting out the contravention and its consequences;
  - (c) terminating or varying any contracts entered into between the regulated person and affected consumers.
- (2) Where the required remedial action includes the payment of compensation, the order must specify—
  - (a) the amount of compensation to be paid, and
  - (b) the affected consumers, or a description of such consumers, to whom it is to be paid.
- (3) Where the required remedial action includes the preparation and distribution of a statement, the order may specify the information to be contained in the statement and the form and manner in which it is to be distributed.

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- (4) The manner so specified may in particular include—
  - (a) sending a copy of the statement to each affected consumer;
  - (b) publishing the statement in such manner as the Authority considers appropriate for the purpose of bringing the statement to the attention of those consumers.
- (5) Where the required remedial action includes the termination or variation of a contract with an affected consumer—
  - (a) the order may specify the terms on which the contract is to be terminated or the way in which it is to be varied,
  - (b) the requirement has effect only if, and to the extent that, the affected consumer consents to the termination of the contract on those terms or to its variation in that way, and
  - (c) the order may specify the steps to be taken by the regulated person for the purpose of enabling the affected consumer to give such consent.

### **30I Other procedural requirements in relation to consumer redress orders**

- (1) Before making a consumer redress order the Authority must give notice stating that it proposes to make the order.
- (2) A notice under subsection (1) must specify—
  - (a) the regulated person to whom the order will apply,
  - (b) the contravention in respect of which the order is to be made,
  - (c) the affected consumers, or a description of such consumers,
  - (d) the requirements to be imposed by the order and the period within which such requirements are to be complied with, and
  - (e) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed order may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (3) Before varying any proposal stated in a notice under subsection (1) the Authority must give notice specifying—
  - (a) the proposed variation and the reasons for it, and
  - (b) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed variation may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (4) Before revoking a consumer redress order the Authority must give notice—
  - (a) stating that it proposes to revoke the order and the reasons for doing so, and
  - (b) specifying the time (not being less than 21 days from the relevant date) within which representations or objections to the proposed revocation may be made,



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and the Authority must consider any representations or objections which are duly made and not withdrawn.

- (5) A notice required to be given under this section is to be given—
- (a) by serving a copy of the notice on the regulated person, and
  - (b) either—
    - (i) by serving a copy of the notice on each affected consumer, or
    - (ii) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of affected consumers.
- (6) The “relevant date”, in relation to a notice under this section, is—
- (a) in a case where the notice is published in accordance with subsection (5)(b)(ii), the date on which it is published;
  - (b) in any other case, the latest date on which a copy of the notice is served in accordance with subsection (5)(a) and (b)(i).

### **30J Statement of policy with respect to consumer redress orders**

- (1) The Authority must prepare and publish a statement of policy with respect to—
- (a) the making of consumer redress orders, and
  - (b) the determination of the requirements to be imposed by such orders (including, in particular, the considerations the Authority will have regard to in determining such requirements).
- (2) The Authority must have regard to its current statement of policy—
- (a) in deciding whether to make a consumer redress order in respect of a contravention, and
  - (b) in determining the requirements to be imposed by any such order.
- (3) The Authority may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) Publication under this section is to be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority must consult such persons as it considers appropriate when preparing or revising its statement of policy.

### **30K Time limits for making consumer redress orders**

- (1) Where no final or provisional order has been made in relation to a contravention, the Authority may not give a consumer redress order in respect of the contravention later than the end of the period of 5 years from the time of the contravention.
- (2) Subsection (1) does not apply if before the end of that period—
- (a) the notice under section 30I(1) relating to the order is served on the regulated person, or

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- (b) a notice relating to the contravention is served on the regulated person under section 38(1).
- (3) Where a final or provisional order has been made in relation to a contravention, the Authority may give a consumer redress order in respect of the contravention only if the notice relating to the consumer redress order under section 30I(1) is served on the regulated person—
  - (a) within 3 months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within 6 months from the making of the provisional order.

### **30L Enforcement of consumer redress orders**

- (1) Compliance with a consumer redress order is enforceable by civil proceedings by the Authority—
  - (a) for an injunction or interdict,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (2) Proceedings under subsection (1) are to be brought—
  - (a) in England and Wales, in the High Court, or
  - (b) in Scotland, in the Court of Session.
- (3) The obligation of a regulated person to comply with a consumer redress order is a duty owed to any person who may be affected by a contravention of the order.
- (4) Without limiting the Authority's right to bring civil proceedings under subsection (1), a duty owed to any person ("P") by virtue of subsection (3) may be enforced by civil proceedings by P for any appropriate remedy or relief.
- (5) For the purposes of subsection (4), the duty owed to P may in particular be enforced by P as if it were contained in a contract between P and the regulated person who owes the duty.

### **30M Appeals against consumer redress orders**

- (1) A regulated person in respect of whom a consumer redress order is made may make an application to the court under this section if the person is aggrieved by—
  - (a) the making of the order, or
  - (b) any requirement imposed by the order.
- (2) An application under subsection (1) must be made within 42 days from the date of service on the regulated person of a copy of the order under section 30G(4)(a).
- (3) On an application under subsection (1) the court may—
  - (a) quash the order or any provision of the order, or

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- (b) vary any such provision in such manner as the court considers appropriate.
- (4) The court may exercise the powers under subsection (3) only if it considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the following grounds—
  - (a) that the making of the order was not within the power of the Authority under section 30G;
  - (b) that any of the requirements under section 30G(4) and 30I have not been complied with in relation to the making of the order and the interests of the regulated person have been substantially prejudiced by the non-compliance;
  - (c) that it was unreasonable of the Authority to require something to be done under the order (whether at all or in accordance with the provisions of the order).
- (5) If an application is made under this section in relation to a consumer redress order, a requirement imposed by the order does not need to be carried out in accordance with the order until the application has been determined.
- (6) Where the court substitutes a lesser amount of compensation for an amount required by the Authority in a consumer redress order, it may require the payment of interest on the substituted amount at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which any compensation under a consumer redress order is to be paid a date before the determination of the application under this section, it may require the payment of interest on the amount from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a consumer redress order is not to be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—
  - (a) in relation to England and Wales, the High Court;
  - (b) in relation to Scotland, the Court of Session.

### **30N Consumer redress orders: miscellaneous**

- (1) If—
  - (a) compensation is required to be paid under a consumer redress order, and
  - (b) it is not paid by the date by which it is required to be paid in accordance with the order,the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) The Authority may not make a consumer redress order where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
- (3) The Authority’s power to make a consumer redress order as a result of a contravention of a relevant condition or requirement is not to be taken as limiting the Authority’s power to impose a penalty under section 30A in

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relation to the same contravention (whether instead of, or in addition to, making a consumer redress order).

- (4) The power of the Authority to make a consumer redress order is not exercisable in respect of any contravention before the coming into force of Schedule 14 to the Energy Act 2013.

### **300 Maximum amount of penalty or compensation**

- (1) The maximum amount of penalty that may be imposed on a regulated person in respect of a contravention may not exceed 10 per cent of the person's turnover.
- (2) The maximum amount of compensation that a regulated person may be required to pay in respect of a contravention may not exceed 10 per cent of the person's turnover.
- (3) Subsections (1) and (2) are subject to subsection (4) if, in respect of a contravention, both a penalty is imposed and compensation is required to be paid.
- (4) The maximum amount in total of the penalty and compensation combined in respect of the contravention may not exceed 10 per cent of the regulated person's turnover.
- (5) The Secretary of State may by order provide for how a person's turnover is to be determined for the purposes of this section.
- (6) An order under subsection (5) may make different provision for penalties and compensation.
- (7) An order under subsection (5) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (8) In this section—  
     “compensation” means compensation that a regulated person is required to pay by a consumer redress order;  
     “penalty” means a penalty imposed on a regulated person under section 30A.”
- (3) In section 28 (orders for securing compliance), in subsection (8) for “30F” substitute “30O”.
- (4) In section 30A (penalties), for subsections (8) and (9) substitute—  
     “(8A) This section is subject to section 300 (maximum amount of penalty or compensation that may be imposed).”
- (5) In the title of section 30E, after “Appeals” insert “against penalties”.
- (6) In section 38 (power to require information), in subsection (1) for “30F” substitute “30O”.
- (7) In section 64 (provisions as to orders), in subsection (2) for “30A” substitute “30O”.

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- (8) An order under section 30A(8) of the Gas Act 1986 that is in force immediately before the coming into force of this paragraph—
- (a) is, on the coming into force of this paragraph, to have effect as if made in accordance with section 30O(5) of that Act (as inserted by this paragraph), and
  - (b) is to be taken as applying in relation to a requirement to pay compensation imposed by a consumer redress order made under section 30G of that Act (as inserted by this paragraph) as it applies in relation to a penalty imposed under section 30A of that Act.

## PART 2

### ELECTRICITY CONSUMERS

- 2 (1) EA 1989 is amended as set out in sub-paragraphs (2) to (6).  
(2) After section 27F insert—

#### “27G Consumer redress orders

- (1) This section applies where the Authority is satisfied that—
- (a) a regulated person has contravened, or is contravening, any relevant condition or requirement, and
  - (b) as a result of the contravention, one or more consumers have suffered loss or damage or been caused inconvenience.
- (2) The Authority may make an order (a “consumer redress order”) requiring the regulated person to do such things as appear to the Authority necessary for the purposes of—
- (a) remedying the consequences of the contravention, or
  - (b) preventing a contravention of the same or a similar kind from being repeated.
- (3) A consumer redress order must specify the following—
- (a) the regulated person to whom the order applies;
  - (b) the contravention in respect of which the order is made;
  - (c) the affected consumers, or a description of such consumers;
  - (d) the requirements imposed by the order;
  - (e) the date by which the regulated person must comply with such requirements.
- (4) As soon as practicable after making a consumer redress order, the Authority must—
- (a) serve a copy of the order on the regulated person to whom the order applies, and
  - (b) either—
    - (i) serve a copy of the order on each affected consumer, or
    - (ii) publish the order in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of affected consumers.

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- (5) The date specified in a consumer redress order under subsection (3)(e) may not be earlier than the end of the period of 7 days from the date of the service of a copy of the order on the regulated person.
- (6) Different dates may be specified under subsection (3)(e) in relation to different requirements imposed by the order.
- (7) This section is subject to sections 27H to 27O.
- (8) In this section and in sections 27H to 27O—
  - “affected consumers”, in relation to a consumer redress order (or proposed order), are those consumers that the Authority is satisfied have suffered loss or damage, or been caused inconvenience, as a result of the contravention in respect of which the order is (or would be) made;
  - “consumers” means consumers in relation to electricity conveyed by distribution systems or transmission systems;
  - “consumer redress order” means an order under subsection (2).

## **27H Remedial action under a consumer redress order**

- (1) The things mentioned in section 27G(2) that a regulated person may be required to do under a consumer redress order (“the required remedial action”) include, in particular—
  - (a) paying an amount to each affected consumer by way of compensation for the loss or damage suffered, or for the inconvenience caused, as a result of the contravention;
  - (b) preparing and distributing a written statement setting out the contravention and its consequences;
  - (c) terminating or varying any contracts entered into between the regulated person and affected consumers.
- (2) Where the required remedial action includes the payment of compensation, the order must specify—
  - (a) the amount of compensation to be paid, and
  - (b) the affected consumers, or a description of such consumers, to whom it is to be paid.
- (3) Where the required remedial action includes the preparation and distribution of a statement, the order may specify the information to be contained in the statement and the form and manner in which it is to be distributed.
- (4) The manner so specified may in particular include—
  - (a) sending a copy of the statement to each affected consumer;
  - (b) publishing the statement in such manner as the Authority considers appropriate for the purpose of bringing the statement to the attention of those consumers.
- (5) Where the required remedial action includes the termination or variation of a contract with an affected consumer—
  - (a) the order may specify the terms on which the contract is to be terminated or the way in which it is to be varied,

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- (b) the requirement has effect only if, and to the extent that, the affected consumer consents to the termination of the contract on those terms or to its variation in that way, and
- (c) the order may specify the steps to be taken by the regulated person for the purpose of enabling the affected consumer to give such consent.

## **27I Other procedural requirements in relation to consumer redress orders**

- (1) Before making a consumer redress order the Authority must give notice stating that it proposes to make the order.
- (2) A notice under subsection (1) must specify—
  - (a) the regulated person to whom the order will apply,
  - (b) the contravention in respect of which the order is to be made,
  - (c) the affected consumers, or a description of such consumers,
  - (d) the requirements to be imposed by the order and the period within which such requirements are to be complied with, and
  - (e) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed order may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (3) Before varying any proposal stated in a notice under subsection (1) the Authority must give notice specifying—
  - (a) the proposed variation and the reasons for it, and
  - (b) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed variation may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (4) Before revoking a consumer redress order the Authority must give notice—
  - (a) stating that it proposes to revoke the order and the reasons for doing so, and
  - (b) specifying the time (not being less than 21 days from the relevant date) within which representations or objections to the proposed revocation may be made,and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (5) A notice required to be given under this section is to be given—
  - (a) by serving a copy of the notice on the regulated person, and
  - (b) either—
    - (i) by serving a copy of the notice on each affected consumer, or
    - (ii) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of affected consumers.

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- (6) The “relevant date”, in relation to a notice under this section, is—
- (a) in a case where the notice is published in accordance with subsection (5)(b)(ii), the date on which it is published;
  - (b) in any other case, the latest date on which a copy of the notice is served in accordance with subsection (5)(a) and (b)(i).

#### **27J Statement of policy with respect to consumer redress orders**

- (1) The Authority must prepare and publish a statement of policy with respect to—
- (a) the making of consumer redress orders, and
  - (b) the determination of the requirements to be imposed by such orders (including, in particular, the considerations the Authority will have regard to in determining such requirements).
- (2) The Authority must have regard to its current statement of policy—
- (a) in deciding whether to make a consumer redress order in respect of a contravention, and
  - (b) in determining the requirements to be imposed by any such order.
- (3) The Authority may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) Publication under this section is to be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority must consult such persons as it considers appropriate when preparing or revising its statement of policy.

#### **27K Time limits for making consumer redress orders**

- (1) Where no final or provisional order has been made in relation to a contravention, the Authority may not give a consumer redress order in respect of the contravention later than the end of the period of 5 years from the time of the contravention.
- (2) Subsection (1) does not apply if before the end of that period—
- (a) the notice under section 27I(1) relating to the order is served on the regulated person, or
  - (b) a notice relating to the contravention is served on the regulated person under section 28(2).
- (3) Where a final or provisional order has been made in relation to a contravention, the Authority may give a consumer redress order in respect of the contravention only if the notice relating to the consumer redress order under section 27I(1) is served on the regulated person—
- (a) within 3 months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within 6 months from the making of the provisional order.



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## **27L Enforcement of consumer redress orders**

- (1) Compliance with a consumer redress order is enforceable by civil proceedings by the Authority—
  - (a) for an injunction or interdict,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (2) Proceedings under subsection (1) are to be brought—
  - (a) in England and Wales, in the High Court, or
  - (b) in Scotland, in the Court of Session.
- (3) The obligation of a regulated person to comply with a consumer redress order is a duty owed to any person who may be affected by a contravention of the order.
- (4) Without limiting the Authority’s right to bring civil proceedings under subsection (1), a duty owed to any person (“P”) by virtue of subsection (3) may be enforced by civil proceedings by P for any appropriate remedy or relief.
- (5) For the purposes of subsection (4), the duty owed to P may in particular be enforced by P as if it were contained in a contract between P and the regulated person who owes the duty.

## **27M Appeals against consumer redress orders**

- (1) A regulated person in respect of whom a consumer redress order is made may make an application to the court under this section if the person is aggrieved by—
  - (a) the making of the order, or
  - (b) any requirement imposed by the order.
- (2) An application under subsection (1) must be made within 42 days from the date of service on the regulated person of a copy of the order under section 27G(4)(a).
- (3) On an application under subsection (1) the court may—
  - (a) quash the order or any provision of the order, or
  - (b) vary any such provision in such manner as the court considers appropriate.
- (4) The court may exercise the powers under subsection (3) only if it considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the following grounds—
  - (a) that the making of the order was not within the power of the Authority under section 27G;
  - (b) that any of the requirements under sections 27G(4) and 27I have not been complied with in relation to the making of the order and the interests of the regulated person have been substantially prejudiced by the non-compliance;

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- (c) that it was unreasonable of the Authority to require something to be done under the order (whether at all or in accordance with the provisions of the order).
- (5) If an application is made under this section in relation to a consumer redress order, a requirement imposed by the order does not need to be carried out in accordance with the order until the application has been determined.
- (6) Where the court substitutes a lesser amount of compensation for an amount required by the Authority in a consumer redress order, it may require the payment of interest on the substituted amount at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which any compensation under a consumer redress order is to be paid a date before the determination of the application under this section, it may require the payment of interest on the amount from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a consumer redress order is not to be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—
  - (a) in relation to England and Wales, the High Court;
  - (b) in relation to Scotland, the Court of Session.

#### **27N Consumer redress orders: miscellaneous**

- (1) If—
  - (a) compensation is required to be paid under a consumer redress order, and
  - (b) it is not paid by the date by which it is required to be paid in accordance with the order,the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) The Authority may not make a consumer redress order where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
- (3) The Authority’s power to make a consumer redress order as a result of a contravention of a relevant condition or requirement is not to be taken as limiting the Authority’s power to impose a penalty under section 27A in relation to the same contravention (whether instead of, or in addition to, making a consumer redress order).
- (4) The power of the Authority to make a consumer redress order is not exercisable in respect of any contravention before the coming into force of Schedule 14 to the Energy Act 2013.

#### **27O Maximum amount of penalty or compensation**

- (1) The maximum amount of penalty that may be imposed on a regulated person in respect of a contravention may not exceed 10 per cent of the person’s turnover.

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- (2) The maximum amount of compensation that a regulated person may be required to pay in respect of a contravention may not exceed 10 per cent of the person's turnover.
  - (3) Subsections (1) and (2) are subject to subsection (4) if, in respect of a contravention, both a penalty is imposed and compensation is required to be paid.
  - (4) The maximum amount in total of the penalty and compensation combined in respect of the contravention may not exceed 10 per cent of the turnover of the regulated person.
  - (5) The Secretary of State may by order provide for how a person's turnover is to be determined for the purposes of this section.
  - (6) An order under subsection (5) may make different provision for penalties and compensation.
  - (7) An order under subsection (5) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
  - (8) In this section—
    - “compensation” means compensation that a regulated person is required to pay by a consumer redress order;
    - “penalty” means a penalty imposed on a regulated person under section 27A.”
- (3) In section 27A (penalties), for subsections (8) and (9) substitute—
- “(8A) This section is subject to section 27O (maximum amount of penalty or compensation that may be imposed).”
- (4) In the title of section 27E, after “Appeals” insert “against penalties”.
- (5) In section 28 (power to require information), in subsection (1) for “27F” substitute “27O”.
- (6) In section 106 (regulations and orders), in subsection (2)(b) for “27A” substitute “27O”.
- (7) An order under section 27A(8) of EA 1989 that is in force immediately before the coming into force of this paragraph—
- (a) is, on the coming into force of this paragraph, to have effect as if made in accordance with section 27O(5) of that Act (as inserted by this paragraph), and
  - (b) is to be taken as applying in relation to a requirement to pay compensation imposed by a consumer redress order made under section 27G of that Act (as inserted by this paragraph) as it applies in relation to a penalty imposed under section 27A of that Act.