

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;

- (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.

- (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.

Status: This is the original version (as it was originally enacted).

- (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

- (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.

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.

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.

- (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.

- (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;

- (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.

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).

Status: This is the original version (as it was originally enacted).

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.

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

- (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.

Status: This is the original version (as it was originally enacted).

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 \(N.I. 26\)](#)).

- (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.

Status: This is the original version (as it was originally enacted).

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.

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.

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.

Status: This is the original version (as it was originally enacted).

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.

- 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—

Status: This is the original version (as it was originally enacted).

“(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

Status: This is the original version (as it was originally enacted).

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

Status: This is the original version (as it was originally enacted).

- (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),”.

Status: This is the original version (as it was originally enacted).

(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

(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).

Status: This is the original version (as it was originally enacted).

- (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;

Status: This is the original version (as it was originally enacted).

- (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”—

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

- (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."

Status: This is the original version (as it was originally enacted).

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.

Status: This is the original version (as it was originally enacted).

- (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;”.

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

<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.

Status: This is the original version (as it was originally enacted).

(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

Status: This is the original version (as it was originally enacted).

- (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”.

Status: This is the original version (as it was originally enacted).

- (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.

Status: This is the original version (as it was originally enacted).

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).”

Status: This is the original version (as it was originally enacted).

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”.
- 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—
- “(iia) the Office for Nuclear Regulation;”.

Status: This is the original version (as it was originally enacted).

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.”

Status: This is the original version (as it was originally enacted).

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,

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)”.

Status: This is the original version (as it was originally enacted).

(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)”.

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.”.

Status: This is the original version (as it was originally enacted).

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 30O (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.