



# Energy Act 2013

## 2013 CHAPTER 32

### PART 3

#### NUCLEAR REGULATION

### CHAPTER 5

#### SUPPLEMENTARY

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

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

- (1) Every employee, while at work, must co-operate with any person (whether or not the employer) on whom a requirement is imposed by or under any relevant provision so far as necessary to enable the requirement to be complied with.
- (2) Failure to comply with the duty in subsection (1) is an offence.
- (3) A person who commits an offence under subsection (2) is liable—
  - (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding the statutory maximum (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.

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- (4) In the application of subsection (3) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s power to imprison), the reference in subsection (3)(a)(i) to 12 months is to be read as a reference to 6 months.
- (5) In this section—
- (a) “employee” and “employer” have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act), and
  - (b) “relevant provision” means any of the relevant statutory provisions other than—
    - (i) any provision of the Nuclear Safeguards Act 2000,
    - (ii) any provision of nuclear regulations which is identified under section 74(9) as having been made solely for the nuclear safeguards purposes.

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

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

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

- (1) It is an offence for an employer to impose a charge, or allow a charge to be imposed, on an employee in respect of anything done or provided in pursuance of a specific requirement imposed by or under any relevant provision.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction to—
    - (i) in England and Wales, a fine, or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding £20,000;
  - (b) on conviction on indictment, to a fine.

- (3) In this section—
- (a) “employer” and “employee” have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act), and
  - (b) “relevant provision” has the same meaning as in section 102.

### *Offences*

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

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

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(iii) to both.

- (8) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in subsection (7)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

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

- (1) Schedule 10 (provision relating to offences under certain relevant statutory provisions) has effect.
- (2) That Schedule contains provision about the following matters—
- (a) the place where an offence involving plant or a substance may be treated as having been committed;
  - (b) the extension of time for bringing summary proceedings in certain cases;
  - (c) the continuation of offences;
  - (d) where an offence committed by one person is due to the act or default of another person, the liability of that other person;
  - (e) offences by bodies corporate or partnerships;
  - (f) restrictions on the persons who may institute proceedings in England and Wales;
  - (g) powers of inspectors to prosecute offences;
  - (h) the burden of proof in certain cases relating to what is practicable or what are the best means for doing something;
  - (i) reliance on entries in a register or other document as evidence;
  - (j) power of the court to order a defendant to take remedial action.

### *Civil liability*

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

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

### *Supplementary*

## **108 Reporting requirements of Secretary of State**

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

## **109 Notices etc**

- (1) In this section references to a notice are to a notice or other document that is required or authorised to be given to any person under a relevant provision.
- (2) A notice to the person must be in writing.

- (3) A notice may be given by—
  - (a) delivering it to the person,
  - (b) leaving it at the person’s proper address,
  - (c) sending it by post to the person at that address, or
  - (d) in the case of a notice to be given to the owner or occupier of any premises (whether or not a body corporate), in accordance with subsection (9), (10) or (11).
- (4) A notice may—
  - (a) in the case of a body corporate, be given in accordance with subsection (3) to a director, manager, secretary or other similar officer of the body corporate, and
  - (b) in the case of a partnership, be given in accordance with subsection (3) to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.
- (5) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the “proper address” is—
  - (a) in the case of a notice to be given to a body corporate or an officer of the body, the address of the registered or principal office of the body;
  - (b) in the case of a notice to be given to a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership;
  - (c) in any other case, the last known address of the person to whom the notice is to be given.
- (6) For the purposes of subsection (5), the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (7) Subsection (8) applies if—
  - (a) a person has specified an address in the United Kingdom as one at which the person, or someone on the person’s behalf, will accept documents of the same description as a notice, and
  - (b) the address so specified is not the person’s proper address (as determined under subsection (5)).
- (8) The specified address is also to be treated as the person’s proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section.
- (9) A notice that is to be given to the owner or occupier of any premises may be given by—
  - (a) sending it by post to the person at those premises, or
  - (b) addressing it by name to the person and delivering it to some responsible person who is or appears to be resident or employed at the premises.
- (10) If the name or address of an owner or occupier of premises cannot be ascertained after reasonable inquiry, a notice to the owner or occupier may be given by—
  - (a) addressing it by the description “owner” or “occupier” of the premises to which the notice relates (and describing the premises), and
  - (b) delivering it to some responsible person who is or appears to be resident or employed there.

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- (11) If there is no person as mentioned in subsection (10)(b), then the notice may be given by fixing it, or a copy of it, to some conspicuous part of the premises.
- (12) This section is subject to provision made in regulations under this Part in respect of notices given under the regulations.
- (13) In this section—
  - “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;
  - “employed” has the same meaning as in the 1974 Act;
  - “relevant provision” means any of the relevant statutory provisions other than a provision of the Nuclear Safeguards Act 2000;
 and references to giving a notice include similar expressions (such as serving or sending).

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

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

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

- (1) Subject as follows, this Part, and regulations made under it, bind the Crown.
- (2) Part 2 of Schedule 8 (inspectors: improvement and prohibition notices) does not bind the Crown.

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- (3) Any other provision of, or of regulations under, this Part under which a person may be prosecuted for an offence—
  - (a) does not bind the Crown, but
  - (b) applies to persons in the public service of the Crown as it applies to other persons.
- (4) So far as it applies to nuclear regulations, subsection (3) is subject to any provision made by those regulations.
- (5) For the purposes of this Part and regulations made under this Part, persons in the service of the Crown are to be treated as employees of the Crown (whether or not they would be so treated apart from this subsection).
- (6) The Secretary of State may, by order—
  - (a) amend this section so as to provide for any provision made by or under this Part to apply to the Crown, or not to apply to the Crown, to any extent;
  - (b) amend any provision of sections 68 to 73 so far as it affects the extent to which any of the ONR’s purposes relates to the Crown or any of the purposes of the Crown.
- (7) Provision that may be made under subsection (6) includes in particular provision altering whether, or the extent to which, any of the ONR’s purposes relates to—
  - (a) sites or premises used or occupied by the Crown,
  - (b) sites controlled or occupied to any extent for defence purposes (within the meaning of section 70), or
  - (c) transport for those purposes.
- (8) Nothing in this section authorises proceedings to be brought against Her Majesty in her private capacity (within the meaning of the Crown Proceedings Act 1947).

## **112 Interpretation of Part 3**

- (1) In this Part—
  - “the 1974 Act” means the Health and Safety at Work etc. Act 1974;
  - “approved code of practice” has the meaning given by section 79(3);
  - “financial year”, in relation to the ONR, has the meaning given by paragraph 28 of Schedule 7;
  - “health and safety inspector” means a person appointed by the ONR under section 19 of the 1974 Act;
  - “improvement notice” has the meaning given by paragraph 3(2) of Schedule 8;
  - “inspector” means an inspector appointed under Part 1 of Schedule 8 (unless otherwise specified);
  - “member of staff”, in relation to the ONR, is to be read in accordance with paragraph 2(2) of Schedule 7;
  - “modify” includes amend, repeal or revoke (and “modification” is to be read accordingly);
  - “nuclear regulations” has the meaning given by section 74(1);
  - “nuclear site” means—
    - (a) a site in respect of which a nuclear site licence is in force, or

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- (b) a site in respect of which a period of responsibility has not ended;
  - “nuclear site licence” has the same meaning as in the Nuclear Installations Act 1965 (see section 1 of that Act);
  - “ONR” means the Office for Nuclear Regulation;
  - “ONR inquiry” has the meaning given by section 85(2);
  - “period of responsibility”, in relation to a site, means the period of responsibility (within the meaning given in section 5 of the Nuclear Installations Act 1965 (revocation and surrender of licences)) in respect of a nuclear site licence granted at any time in respect of the site;
  - “personal injury” includes—
    - (a) any disease, and
    - (b) any impairment of a person’s physical or mental condition;
  - “prohibition notice” has the meaning given by paragraph 4(2) of Schedule 8;
  - “regulatory function”, in relation to the ONR, means—
    - (a) a function of giving or revoking permission or approval in relation to any material, premises or activity;
    - (b) a function of imposing conditions or requirements in relation to any material, premises or activity;
    - (c) a function, other than a function under section 84 (investigations), which relates to securing, monitoring or investigating compliance with conditions or requirements (however imposed) in relation to any material, premises or activity;
    - (d) a function which relates to the enforcement of such requirements;
  - “relevant power” has the meaning given by paragraph 2 of Schedule 8;
  - “relevant statutory provisions” has the meaning given by section 82(2) (unless otherwise specified).

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

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

- (1) Any power to make subordinate legislation under this Part is exercisable by statutory instrument.
- (2) An instrument containing (whether alone or with other provision)—
  - (a) nuclear regulations which fall within subsection (3), or
  - (b) an order under section 111,
 may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) Nuclear regulations fall within this subsection if—
  - (a) they are the first nuclear regulations to be made,
  - (b) they include provision amending or repealing any provision of—
    - (i) the Nuclear Installations Act 1965, or



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- (ii) the Nuclear Safeguards Act 2000, or
  - (c) they include provision creating a new offence by virtue of section 75;and for this purpose nuclear regulations which revoke and re-enact an offence are not to be regarded as creating a new offence.
- (4) An instrument containing an order under paragraph 26 of Schedule 7 (payments and borrowing) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (5) An instrument containing any other subordinate legislation under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Any power to make subordinate legislation under this Part includes power—
  - (a) to make different provision for different cases;
  - (b) to make provision for some cases only or subject to exceptions;
  - (c) to make provision generally or only in particular respects.
- (7) Any subordinate legislation under this Part may include—
  - (a) consequential, incidental or supplementary provision;
  - (b) transitional, transitory or saving provision.
- (8) In this section “subordinate legislation” means an Order in Council, an order or regulations.
- (9) In relation to any modification of a provision of, or made under, any of the provisions of the Nuclear Installations Act 1965 that are relevant statutory provisions, the power conferred by subsection (7)(a) includes power to extend the modification to Northern Ireland for the purpose of ensuring that the text of the provision is uniform throughout the United Kingdom (but does not include power to alter the effect of the provision in relation to a site in Northern Ireland).

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

- (1) The Secretary of State may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, this Part.
- (2) The provision which may be made by virtue of subsection (1) includes, in particular—
  - (a) provision modifying any provision made by—
    - (i) primary legislation passed before the end of the session in which this Act was passed, or
    - (ii) an instrument made before the end of that session;
  - (b) provision for treating any regulations within subsection (3) as—
    - (i) relevant statutory provisions (or as relevant statutory provisions of a particular description),
    - (ii) regulations under section 85, or
    - (iii) regulations under section 101.
- (3) The regulations mentioned in subsection (2)(b) are regulations made under a provision within subsection (4) so far as they relate to, or to fees payable in respect of functions which relate to, any of the following purposes—
  - (a) the nuclear safety purposes;

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- (b) the nuclear security purposes;
  - (c) the nuclear safeguards purposes;
  - (d) the transport purposes.
- (4) The provisions mentioned in subsection (3) are—
- (a) section 2(2) of the European Communities Act 1972 (general implementation of Treaties);
  - (b) section 14 of the 1974 Act (power to direct investigations and inquiries);
  - (c) section 15 of that Act (health and safety regulations);
  - (d) section 43 of that Act (fees);
  - (e) section 3 of the Nuclear Safeguards Act 2000 (identifying persons who have information);
  - (f) section 77 of the Anti-terrorism, Crime and Security Act 2001 (regulation of security of civil nuclear industry).
- (5) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

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

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

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

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

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

- (1) Her Majesty may by Order in Council provide that the provisions of this Part apply, so far as specified, in relation to persons, premises, activities, articles, substances or

other matters, outside the United Kingdom as they apply within the United Kingdom or a specified part of the United Kingdom.

- (2) Such an Order in Council may—
  - (a) provide for any provisions of this Part to apply subject to modifications;
  - (b) provide for any of those provisions, as applied by the Order, to apply—
    - (i) in relation to individuals, whether or not they are British citizens, and
    - (ii) in relation to bodies corporate, whether or not they are incorporated under the law of a part of the United Kingdom;
  - (c) make provision for conferring jurisdiction on a specified court or courts of a specified description in respect of—
    - (i) offences under this Part committed outside the United Kingdom, or
    - (ii) causes of action under section 76 in respect of acts or omissions that occur outside the United Kingdom;
  - (d) make provision for questions arising out of any acts or omissions mentioned in paragraph (c)(ii) to be determined in accordance with the law in force in any specified part of the United Kingdom;
  - (e) exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under any provision of this Part committed outside the United Kingdom.
- (3) In this section “specified”, in relation to an Order in Council, means specified in the Order.
- (4) Nothing in this section affects the application outside the United Kingdom of any provision of, or made under, this Part which so applies otherwise than by virtue of an Order in Council under this section.

## **118 Review of Part 3**

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the day on which section 77 comes into force, the Secretary of State must carry out a review of the provisions of this Part.
- (2) The Secretary of State must set out the conclusions of the review in a report.
- (3) The report must, in particular—
  - (a) set out the objectives of the provisions of this Part,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.
- (4) The Secretary of State must lay the report before Parliament.