



# Energy Act 2004

## 2004 CHAPTER 20

An Act to make provision for the decommissioning and cleaning up of installations and sites used for, or contaminated by, nuclear activities; to make provision relating to the civil nuclear industry; to make provision about radioactive waste; to make provision for the development, regulation and encouragement of the use of renewable energy sources; to make further provision in connection with the regulation of the gas and electricity industries; to make provision for the imposition of charges in connection with the carrying out of the Secretary of State's functions relating to energy matters; to make provision for giving effect to international agreements relating to pipelines and offshore installations; and for connected purposes. [22nd July 2004]

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

### PART 1

#### THE CIVIL NUCLEAR INDUSTRY

### CHAPTER 1

#### NUCLEAR DECOMMISSIONING

##### *Establishment of NDA*

## 1 The Nuclear Decommissioning Authority

- (1) There shall be a body corporate to be known as the Nuclear Decommissioning Authority ("the NDA").

*Status: Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.*

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- (2) The NDA is not to be treated—
- (a) except so far as necessary for the purposes of its function under section 7(2), as performing any duty or exercising any power on behalf of the Crown; or
  - (b) as enjoying any status, immunity or privilege of the Crown;
- and the NDA's property is not to be regarded as property of the Crown, or as held on behalf of the Crown.

#### Commencement Information

**II** S. 1 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

## 2 Constitution of NDA

- (1) The NDA—
- (a) shall consist of not fewer than seven and not more than thirteen members; and
  - (b) shall have a membership comprising both non-executive members and executive members.
- (2) The non-executive members shall be—
- (a) a chairman appointed by the Secretary of State; and
  - (b) a number of other persons appointed by the Secretary of State (after consultation with the chairman);
- and (subject to subsection (1)) it is for the Secretary of State to determine how many non-executive members there are to be in addition to the chairman.
- (3) The executive members shall be—
- (a) a person appointed by the non-executive members to be the NDA's chief executive; and
  - (b) the other persons (if any) appointed by them (after consultation with the chief executive) to be executive members in addition to the chief executive;
- and it is for the non-executive members to determine (subject to subsection (8)) whether there are to be executive members in addition to the chief executive, and (if so) how many.
- (4) The approval of the Secretary of State is required for the appointment of the chief executive.
- (5) Before—
- (a) appointing a person to be the chairman or otherwise to be a non-executive member of the NDA, or
  - (b) approving the appointment of a person to be the chief executive,
- the Secretary of State must consult the Scottish Ministers.
- (6) Subsection (5) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (7) If there are executive members in addition to the chief executive, each must be a member of the staff of the NDA.

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- (8) Where the Secretary of State so provides by a direction to the NDA, the non-executive members must secure that the number of executive members in addition to the chief executive—
  - (a) is not less than the minimum set by the direction; and
  - (b) does not exceed the maximum so set;and the direction must not set a maximum of more than three.
- (9) The Secretary of State must exercise his powers under this section to secure, so far as practicable, that the number of executive members is at all times less than the number of non-executive members.
- (10) Schedule 1 (which contains further provision about the constitution, staffing and proceedings of the NDA) has effect; and subsections (1) to (9) have effect subject to paragraph 4 of that Schedule.

#### Commencement Information

**I2** S. 2 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

### *Principal function of NDA*

## **3 Designated responsibilities**

- (1) The principal function of the NDA shall be to have responsibility for securing—
  - (a) the operation, pending the commencement of their decommissioning, of designated nuclear installations;
  - (b) the decommissioning of those and other designated nuclear installations;
  - (c) the cleaning-up of designated nuclear sites;
  - (d) the operation of designated facilities for treating, storing, transporting or disposing of hazardous material;
  - (e) the treatment, storage, transportation and disposal, in designated circumstances, of hazardous material; and
  - (f) the decommissioning of designated installations comprised in NDA facilities.
- (2) The responsibilities of the NDA under this section are responsibilities to be discharged by the performance of its duties under sections 15 and 16.
- (3) A designation for the purposes of this section—
  - (a) of an installation, site or facility, and
  - (b) of the circumstances in which the NDA is to have responsibility for securing the treatment, storage, transportation or disposal of matter or waste,has (subject to section 6) to be in the form of a direction given by the Secretary of State to the NDA.
- (4) A direction must not give the NDA a responsibility mentioned in this section in relation to an installation, site or facility unless the person with control of it at the time when the direction is given is—
  - (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a publicly owned company;

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- (d) the NDA itself; or
  - (e) a person who has consented to the giving of the direction.
- (5) A direction designating an installation, site or facility must specify the paragraph or paragraphs of subsection (1) for the purposes of which it is being designated.
- (6) But, except in so far as the direction containing the designation otherwise provides, the designation of a principal nuclear site for cleaning-up is to have effect for the purposes of this Chapter as including a designation, as an installation to be decommissioned, of every installation situated in or on that site.
- (7) The Secretary of State must—
- (a) lay before Parliament a copy of every direction containing a designation;
  - (b) publish the contents of every such direction in the manner which, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it; and
  - (c) send a copy of every direction giving the NDA a responsibility in relation to an installation, site or facility to the person with control of that installation, site or facility.
- (8) The Scottish Ministers must lay before the Scottish Parliament a copy of every direction which by virtue of section 6 is given jointly by them and the Secretary of State.
- (9) The Secretary of State may exclude—
- (a) from what he lays before Parliament and publishes under this section, and
  - (b) from what is to be laid before the Scottish Parliament by the Scottish Ministers,
- anything the publication of which he considers to be against the interests of national security.

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**Commencement Information**

**I3** S. 3 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

#### **4 Additional responsibilities under designating directions**

- (1) Where the NDA is given a responsibility for securing the operation of an installation or facility, a direction may also give the NDA further responsibilities in relation to the management of the site where that installation or facility is situated.
- (2) Where the NDA is given a responsibility in relation to a principal nuclear site, a direction may give the NDA further responsibilities in relation to the operation or management of any one or more of the following—
- (a) research facilities situated in or on that site;
  - (b) facilities other than research facilities which are situated in or on that site and are neither nuclear installations nor NDA facilities;
  - (c) other land (whether or not adjacent to that site) which is owned or occupied, together with it, by the person with control of the principal nuclear site; and
  - (d) facilities of any description situated in or on such other land.

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- (3) The NDA is not to be given further responsibilities under subsection (1) or (2) except where the Secretary of State considers it appropriate to do so—
  - (a) for the purpose of facilitating the carrying out by the NDA of any of its functions; or
  - (b) for a purpose otherwise incidental to the carrying out of those functions.
- (4) Where a direction gives the NDA a responsibility for securing the treatment, storage, transportation or disposal of matter or waste, it may also give the NDA responsibility for securing the design, construction and operation of a facility for that purpose.
- (5) Subsection (4) of section 3 applies to giving the NDA a responsibility mentioned in this section as it applies to giving it a responsibility mentioned in that section.
- (6) In this section “direction” means a direction under section 3.

#### Commencement Information

**I4** S. 4 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## 5 Supplemental provisions of designating directions

- (1) A direction comes into force at the time which is specified in the direction or determined in accordance with provision contained in it.
- (2) A direction giving the NDA responsibilities in relation to an installation, site or facility which—
  - (a) is a nuclear installation, a principal nuclear site or a facility situated in or on a principal nuclear site, but
  - (b) is not one in relation to which the NDA is to have a financial responsibility under section 21,may require the person with control of the installation, site or facility to make payments to the Secretary of State.
- (3) A direction may also impose requirements with respect to the charges which (subject to section 21) are to be imposed by the NDA in connection with the discharge of responsibilities given to the NDA by the direction.
- (4) Subject to subsections (5) and (6), a direction may be modified or revoked by a subsequent direction.
- (5) A direction must not modify or revoke a direction relating to the responsibility of the NDA in relation to an installation, site or facility unless the person with control of the installation, site or facility is, at the time when the modification or revocation comes into force—
  - (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a publicly owned company;
  - (d) the NDA itself; or
  - (e) a person who has consented to the modification or revocation.
- (6) A direction in so far as it gives the NDA responsibility—
  - (a) for the decommissioning of an installation, or

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- (b) for the cleaning-up of a principal nuclear site,  
 may be revoked only if the condition set out in subsection (7) is satisfied.
- (7) The condition is—
- (a) in the case of a direction given by the Secretary of State, that he is satisfied that the NDA has discharged all its responsibilities in relation to the decommissioning or cleaning-up of the installation or site; and
- (b) in the case of a direction given jointly by the Secretary of State and the Scottish Ministers, that he and those Ministers are so satisfied.
- (8) The Secretary of State must pay sums received by him by virtue of subsection (2) into the Consolidated Fund.
- (9) In this section “direction” means a direction under section 3.

#### Commencement Information

- I5** S. 5(1) in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1
- I6** S. 5(2)-(9) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 6 Designations relating to Scotland

- (1) A direction under section 3 which—
- (a) gives the NDA responsibilities falling within subsection (2), or
- (b) removes or varies any such responsibilities,  
 may be given only by the Secretary of State and the Scottish Ministers, acting jointly.
- (2) The following responsibilities fall within this subsection—
- (a) responsibility for the cleaning-up of a site in Scotland which is a principal nuclear site without being a licensable site;
- (b) responsibility for the cleaning-up of a contaminated site in Scotland;
- (c) responsibility for the operation of facilities for treating or storing hazardous material in or on a site in Scotland which is a principal nuclear site without being a licensable site;
- (d) responsibility for the operation in or on a nuclear site in Scotland of a facility for the disposal of hazardous material;
- (e) responsibility, in specified circumstances, for the disposal at a site in Scotland of hazardous material;
- (f) responsibility for the treatment or storage of hazardous material that may, in the discharge of that responsibility, be treated or stored in or on a site in Scotland which is not a licensable site;
- (g) responsibility for the decommissioning of an installation comprised in NDA facilities that are situated in or on a site in Scotland which is a principal nuclear site without being a licensable site.
- (3) Before giving a direction under section 3 which—
- (a) gives the NDA responsibilities for the operation in or on a licensable site in Scotland of a facility for the non-processing treatment of hazardous material;
- (b) gives it responsibilities not falling within subsection (2)(f) for the non-processing treatment or the storage of hazardous material the treatment or

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storage of which, in the discharge of those responsibilities, may take place in or on a site in Scotland;

(c) gives it responsibilities for the operation in or on a licensable site in Scotland of a facility for the storage of hazardous material; or

(d) removes or varies any responsibilities mentioned in paragraph (a) or (c),

the Secretary of State must consult the Scottish Ministers.

(4) In this section—

“licensable site” means a site that falls within paragraph (a), (b) or (d) of the definition of a “principal nuclear site” in section 36(2);

“non-processing treatment” means treatment that does not consist in the processing or reprocessing of spent or irradiated nuclear fuel.

#### Commencement Information

I7 S. 6 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

### *Other functions of NDA*

## 7 Supplemental functions

(1) In addition to its function under section 3, the NDA shall have the function, to the extent that it considers it appropriate to do so, of—

(a) carrying out research into matters relating to the decommissioning of nuclear installations, the cleaning-up of nuclear sites and the other activities in relation to which it has functions;

(b) promoting the carrying out of research by others into those matters;

(c) distributing information about those matters;

(d) educating and training persons about those matters;

(e) giving encouragement and other support to activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities.

(2) The NDA shall also have the function, to the extent that it is required to do so by the Secretary of State, of acting on his behalf in relation to agreements to which he is a party and which relate to expenditure incurred, or to be incurred, by him or by others—

(a) on the decommissioning of nuclear installations;

(b) on the cleaning-up of nuclear sites; or

(c) on the treatment, storage, transportation or disposal of hazardous material.

(3) A requirement of the Secretary of State under subsection (2) may require the NDA to meet, in whole or part, the cost of discharging liabilities of his under the agreements in relation to which the NDA acts on his behalf.

(4) The NDA’s functions further include—

(a) to the extent that it is required to do so by the Secretary of State, giving advice to the Secretary of State or to others (whether generally or in relation to a particular installation, site or facility, or particular hazardous material) about

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- any of the things in which the NDA requires an expertise for the purpose of carrying out its functions;
- (b) to the extent that it is required to do so by the Scottish Ministers, giving advice to them (whether generally or in relation to a particular installation, site or facility, or particular hazardous material) about any of those things (so far as they concern Scotland); and
  - (c) giving to the Secretary of State and the Scottish Ministers such further general advice about the things in which the NDA requires an expertise for the purpose of carrying out its functions as it considers appropriate.
- (5) The references in subsection (4) to the things in which the NDA requires an expertise for the purpose of carrying out its functions include, in particular—
- (a) the operation and decommissioning of nuclear installations;
  - (b) the cleaning-up of nuclear sites; and
  - (c) the treatment, storage, transportation and disposal of hazardous material.
- (6) It shall be the duty of the NDA to secure that the discharge of its responsibilities under section 3(1) is not adversely affected—
- (a) by the doing of anything mentioned in subsection (1); or
  - (b) by the carrying out of its functions by virtue of subsection (4)(c).
- (7) Where—
- (a) the NDA provides advice to the Scottish Ministers in pursuance of a requirement imposed by them under this section, and
  - (b) the requirement is not one imposed with the agreement of the Secretary of State,
- the NDA may charge for the provision of the advice.
- (8) The amount of the charge shall be such sum as may be—
- (a) agreed between the NDA and the Scottish Ministers; or
  - (b) in the absence of agreement, determined by the Secretary of State.

#### **Commencement Information**

**I8** S. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **8 Special functions in relation to pensions etc.**

- (1) The NDA shall have the function, to the extent that it considers it appropriate to do so, of—
- (a) establishing schemes for the payment of pensions, allowances or gratuities to or in respect of one or more different descriptions of relevant employees;
  - (b) maintaining such schemes (whether or not established by the NDA); and
  - (c) administering a scheme for the payment of compensation in respect of personal injuries or death caused to relevant employees or to others employed in the nuclear industry.
- (2) In this section “relevant employees” means—
- (a) employees of the UKAEA;



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- (b) persons the duties of whose employment with any other person relate (in whole or in part) to activities carried on for purposes connected with the carrying out by the NDA of any of its functions; or
  - (c) a person employed in the nuclear industry who is of such a description as may be designated for the purposes of this subsection by the Secretary of State.
- (3) Before making a designation for the purposes of subsection (2)(c), the Secretary of State must consult the NDA.

#### Commencement Information

**I9** S. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *General duties and powers of NDA*

## **9 General duties when carrying out functions**

- (1) It shall be the duty of the NDA, in carrying out its functions, to have particular regard to each of the following—
- (a) relevant Government policy;
  - (b) the need to safeguard the environment;
  - (c) the need to protect persons from risks to their health and safety from activities involving the use, treatment, storage, transportation or disposal of hazardous material; and
  - (d) the need to preserve nuclear security.
- (2) It shall also be the duty of the NDA, in carrying out its functions—
- (a) to promote, and to ensure, the maintenance and development in the United Kingdom of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites;
  - (b) to promote effective competition for contracts to provide it with the services it must secure in order to discharge its responsibilities;
  - (c) to secure the adoption of what it considers to be good practice by the persons with control of designated installations, designated sites and designated facilities; and
  - (d) subject to subsection (1) and to paragraphs (a) to (c) of this subsection, to secure value for money in all its dealings with others.
- (3) In the carrying out of its functions with respect to—
- (a) the operation of the installations and facilities designated as installations or facilities whose operation is to be secured by the NDA, and
  - (b) the management of designated sites,
- the NDA shall have the further duty to act in the manner that it considers is most beneficial to the public.
- (4) In the case of each designated installation, designated site or designated facility, it shall be the duty of the NDA, in carrying out its function by virtue of section 7(1)(e)—
- (a) to have regard, in particular, to the extent to which the person with control of the installation, site or facility was doing anything falling within subsection (5) prior to its designation; and

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- (b) to consider what obligations in relation to the doing of anything falling within that subsection should be imposed on any person with whom the NDA is proposing, in connection with the discharge of any of its responsibilities in relation to the installation, site or facility, to enter into a contract for that person to provide services.
- (5) What falls within this subsection is anything that is done for the purpose of giving encouragement and other support to—
- (a) activities benefiting the social or economic life of communities living near the installation, site or facility; or
  - (b) activities producing other environmental benefits for those communities.
- (6) Where the NDA is proposing, in connection with the discharge of any of its responsibilities in relation to a designated installation, designated site or designated facility, to enter into a contract with any person for him to provide any services, it shall be the duty of the NDA, before entering into that contract—
- (a) to require that person to produce his proposed strategy for the procurement of the goods and services that he will need to procure for the purpose of carrying out his obligations under the contract; and
  - (b) to consider the likely effect of the implementation of that strategy on the economic life of communities living near the installation, site or facility.
- (7) In this section “relevant Government policy” means all current policies which—
- (a) relate to the decommissioning of nuclear installations, the cleaning-up of nuclear sites or other activities in relation to which the NDA has functions; and
  - (b) have been published by or on behalf of Her Majesty’s Government in the United Kingdom or a devolved administration, have been notified to the NDA by the Secretary of State or have been notified both to the NDA and to the Secretary of State by a devolved administration.
- (8) In subsection (7) “devolved administration” means the Scottish Ministers, the National Assembly for Wales or a department in Northern Ireland.
- (9) In this Chapter “nuclear security” means the security of each of the following—
- (a) nuclear installations and nuclear sites;
  - (b) hazardous material;
  - (c) apparatus and software used or stored in or on a nuclear installation or nuclear site;
  - (d) apparatus and software used in connection with the treatment, storage, transportation or disposal of hazardous material;
  - (e) sensitive nuclear information.
- (10) In subsection (9) “sensitive nuclear information” means—
- (a) information relating to a treatment of uranium that increases the proportion of the isotope 235 contained in the uranium;
  - (b) information capable of being used in connection with such a treatment of uranium;
  - (c) information relating to activities carried out in, on or in relation to—
    - (i) nuclear installations or nuclear sites, or
    - (ii) hazardous material,
 which the NDA has been notified by the Secretary of State is information that needs to be protected in the interests of national security; and

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- (d) information about nuclear security.

#### Commencement Information

**I10** S. 9 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## 10 Powers for carrying out functions

- (1) The NDA shall have power, for the purpose of carrying out its functions, to do all such things as appear to it to be likely to facilitate the carrying out of its functions, or to be incidental to carrying them out.
- (2) The powers of the NDA include, in particular—
- (a) power to operate electricity generating stations;
  - (b) power to apply for and hold nuclear site licences, registrations under section 7 of the 1993 Act and authorisations under sections 13 and 14 of that Act;
  - (c) power to make grants or loans to persons undertaking activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities;
  - (d) power to make grants or loans to persons carrying out research into matters relating to the decommissioning of nuclear installations, the cleaning-up of nuclear sites or other activities in relation to which the NDA has functions;
  - (e) power to use its facilities, and facilities on designated sites, for the carrying out of research on behalf of others into any matter whatever;
  - (f) power to use those facilities for the carrying on of any activities, in addition to such research, that it considers appropriate for generating funds for application towards the carrying out of its functions;
  - (g) power to delegate to the UKAEA the maintenance of any such scheme as is referred to in section 8(1)(a) and (b);
  - (h) power itself to do anything that the NDA has a function of securing others to do;
  - (i) power to enter into contracts for others to secure the things that it has a function of securing;
  - (j) power to enter into contracts for others to do anything else that it may do for the purpose of, or in connection with, the carrying out of its functions;
  - (k) power to acquire or establish subsidiaries and to carry out its functions through subsidiaries.
- (3) The NDA may impose charges in respect of the things that it does or secures in the discharge of its responsibilities—
- (a) on persons with control of installations, sites and facilities in the case of which it does not have a financial responsibility under section 21; and
  - (b) on other persons for whom it does or secures the doing of anything for which it does not have a financial responsibility under that section.
- (4) Charges imposed under subsection (3) must not be imposed except—
- (a) in accordance with a direction under section 3; or
  - (b) with the approval of the Secretary of State.

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### Commencement Information

**III** S. 10 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

## *Strategies, plans and reports*

VALID FROM 31/03/2005

### **11 Strategy for carrying out functions**

- (1) It shall be the duty of the NDA—
  - (a) to prepare its strategy for carrying out its functions; and
  - (b) from time to time to revise that strategy.
- (2) On the NDA being given a new responsibility for securing the decommissioning or cleaning-up of an installation or site, it must consider—
  - (a) whether the objectives and policy already contained in its current strategy apply in the case of that installation or site in a manner that it considers appropriate; and
  - (b) if it considers that they do not, what revision of its strategy is required.
- (3) Schedule 2 (which makes provision about the preparation and revision of the NDA's strategy, about consultation and about the approval and publication of the strategy) has effect.

VALID FROM 31/03/2005

### **12 Contents of strategy**

- (1) The strategy prepared under section 11 must include both—
  - (a) the NDA's strategy for decommissioning and cleaning up the installations and sites designated as installations or sites to be decommissioned or cleaned up; and
  - (b) its strategy for the operation of the installations and facilities designated as installations or facilities whose operation it is to secure.
- (2) The strategy must set out—
  - (a) the priorities the NDA has adopted with respect to the discharge of its responsibilities;
  - (b) how it proposes to ensure the maintenance and development in the United Kingdom of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites;
  - (c) how it proposes to promote effective competition for contracts to provide it with the services it must secure in order to discharge its responsibilities;
  - (d) its proposals for ensuring the adoption of what it considers to be good practice by the persons with control of designated installations, designated sites and designated facilities;

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- (e) how it proposes to give encouragement or other support to activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities; and
  - (f) an explanation of how and why it arrived at the decisions and proposals which are set out in the strategy.
- (3) The strategy must also set out the steps that the NDA proposes to take—
- (a) for giving appropriate publicity to its responsibilities and strategy;
  - (b) for explaining them both to persons having a particular interest in matters relating to the carrying out by the NDA of its functions and to the general public;
  - (c) for ensuring that the NDA is kept informed at all times of the opinions about such matters of persons having such a particular interest; and
  - (d) for facilitating the communication by such persons of their opinions to the NDA.
- (4) The strategy required by subsection (1)(a) must contain—
- (a) objectives describing what the NDA intends decommissioning or cleaning-up to achieve in the case of different installations and sites; and
  - (b) the NDA's policy as to the means by which it intends those objectives to be achieved.
- (5) In the case of a site which is to be cleaned up, those objectives must include, in particular, a statement of the condition to which the site needs to be restored.
- (6) In setting out its policy as to the means of achieving the objectives mentioned in subsection (4), the NDA must describe—
- (a) the procedure it proposes to adopt for ensuring the preparation, and revision from time to time, of plans for the identification and carrying out of the decommissioning or cleaning-up work that is or continues to be needed in the case of each designated installation or designated site;
  - (b) the manner in which it proposes to secure that the work identified by such plans is carried out in accordance with them;
  - (c) an outline of the work that has been identified as needed in the case of each designated installation or designated site for which plans have been prepared;
  - (d) the period over which that work is to be carried out in the case of each installation or site; and
  - (e) the expenses it expects to incur in respect of the carrying out of the decommissioning and cleaning-up work for which it has a responsibility.
- (7) The strategy required by subsection (1)(b) must set out—
- (a) the expenditure that the NDA expects to incur on the running costs of installations and facilities whose operation it has a responsibility to secure, and on the management of the sites where they are located;
  - (b) capital expenditure that the NDA expects to incur in connection with the discharge of its responsibilities in relation to those installations and facilities, and with the management of those sites; and
  - (c) the income that it considers it is likely to secure from the operation of those installations and facilities and from the management of those sites.

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- (8) An objective or policy set out in the NDA’s strategy may be framed in one or more of the following ways—
- (a) by reference to a particular installation or site;
  - (b) by reference to different descriptions of installation or site;
  - (c) so as to become applicable to an installation or site of a particular description on the NDA being given responsibility for an installation or site of that description.
- (9) In this section references, in relation to the preparation of a strategy, to a site, installation or facility designated for any purpose include references to a site, installation or facility designated by a direction which is not yet in force.

### 13 Annual plans

- (1) The NDA must, for each financial year, prepare a plan—
- (a) for the carrying out, during that year, of work towards decommissioning the installations designated as installations to be decommissioned;
  - (b) for the carrying out, during that year, of work towards cleaning up the sites designated as sites to be cleaned up;
  - (c) for the operation, during that year, of the installations and facilities designated as installations or facilities whose operation is to be secured by the NDA; and
  - (d) for the carrying out during that year of its other functions.
- (2) The plan must be prepared and, not less than three months before the commencement of the financial year to which it relates, submitted for approval—
- (a) in a case where it contains anything relating to responsibilities of the NDA falling within section 6(2), to the Secretary of State and the Scottish Ministers; and
  - (b) in any other case, to the Secretary of State.
- (3) The plan for a financial year, so far as it relates to decommissioning and cleaning-up, must set out—
- (a) a summary of the decommissioning and cleaning-up work which the NDA is intending should be carried out during that year;
  - (b) the arrangements that have been made, or are to be made, for securing that agreements for the carrying out of that work are entered into;
  - (c) the agreements (if any) that have already been entered into for that purpose or under which that work is to be carried out;
  - (d) an estimate of the expenditure that will be incurred by the NDA during that year in respect of decommissioning or cleaning-up work carried out during that year or previously or in respect of decommissioning and cleaning-up work to be carried out in subsequent years;
  - (e) any proposals to which it intends to give effect during that year that relate to, or will affect, the management of installations or sites designated as installations or sites to be decommissioned or cleaned up; and
  - (f) the extent to which its plans for the year contribute to the achievement of the objectives set out in its strategy.
- (4) The plan for a financial year, so far as it relates to the operation of installations and facilities, must set out—

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- (a) an estimate of the expenditure that will be incurred during that year on the running costs of the installations and facilities and on the management of the sites where they are located;
  - (b) an estimate of the capital expenditure that will be incurred during that year in connection with the discharge of the NDA's responsibilities in relation to those installations and facilities and with the management of those sites;
  - (c) an estimate of the income it is likely to secure during that year from the operation of the installations and facilities and from the management of those sites; and
  - (d) any proposals to which the NDA intends to give effect during that year that relate to or will affect the operation of the installations or facilities, or the management of the sites where they are located.
- (5) The plan for a financial year, so far as it relates to the NDA's other functions, must—
  - (a) set out all the activities of significance that the NDA proposes to carry on during that year in the carrying out of those other functions; and
  - (b) an estimate of the expenditure that will be incurred in the carrying out of those other functions.
- (6) The plan for a financial year must also set out any other matters that the Secretary of State directs the NDA to include in its plan for that year.
- (7) In this section references, in relation to the preparation of a plan for a financial year, to a site, installation or facility designated for any purpose include references to a site, installation or facility designated by a direction which—
  - (a) is not yet in force; but
  - (b) is to come into force during that financial year.
- (8) Schedule 3 (which makes provision about consultation and about the approval and publication of the NDA's annual plan) has effect.

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**Commencement Information**

**I12** S. 13 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## 14 Annual reports

- (1) As soon as reasonably practicable after the end of each financial year, the NDA must prepare and send to the Secretary of State a report on—
  - (a) the discharge of its responsibilities during that year; and
  - (b) the carrying out of its other functions.
- (2) If during the year to which the report relates the NDA has had responsibilities which—
  - (a) fall within subsection (2) of section 6, or
  - (b) are mentioned in subsection (3) of that section,it must also send a copy of that report to the Scottish Ministers.
- (3) The report must contain—
  - (a) a description of what has been done, during the year to which it relates, towards achieving the NDA's objectives, as set out in the approved strategy in force during that year;

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- (b) a general description of the work carried out during that year for the purpose of decommissioning the installations designated as installations to be decommissioned;
  - (c) a general description of the work carried out during that year for the purpose of cleaning up the sites designated as sites to be cleaned up;
  - (d) a report on every change occurring during that year in the identity of persons with control of designated installations, designated sites and designated facilities;
  - (e) a report of every significant change during that year to the contractual arrangements of the NDA that are in force with respect to the carrying out (whether or not during that year) of decommissioning or cleaning-up work;
  - (f) a report on the extent to which the NDA has implemented its plan for that year;
  - (g) a report of the NDA's dealings during that year with the Health and Safety Executive, the Environment Agency and the Scottish Environment Protection Agency;
  - (h) a report containing an assessment of the performance in relation to safety and environmental matters of the persons (other than the NDA itself) who have control of designated installations, designated sites and designated facilities;
  - (i) a report of the NDA's dealings during that year with such persons with responsibilities in relation to nuclear security as have been nominated for the purposes of this subsection by the Secretary of State; and
  - (j) any other matters which the NDA is directed by the Secretary of State to include in that report.
- (4) Before giving a direction for the purposes of subsection (3)(j) the Secretary of State must consult the Scottish Ministers.
- (5) The report must deal separately with—
- (a) activities relating to the decommissioning of installations or the cleaning-up of sites; and
  - (b) the NDA's other activities.
- (6) The Secretary of State must lay a copy of every report received by him under this section before Parliament.
- (7) The Secretary of State must also arrange for a copy of the report to be published in the manner which, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (8) The Scottish Ministers must lay a copy of every report received by them under this section before the Scottish Parliament.
- (9) The Secretary of State may exclude—
- (a) from what he lays before Parliament or arranges to be published under this section, and
  - (b) from what is to be laid before the Scottish Parliament by the Scottish Ministers,
- anything falling within subsection (10).
- (10) The following falls within this subsection—
- (a) anything the publication of which the Secretary of State considers to be against the interests of national security;



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- (b) anything relating to the private affairs of an individual the publication of which the Secretary of State considers would seriously and prejudicially affect the interests of that individual; and
- (c) anything of a commercial nature relating specifically to the affairs of a particular body of persons the publication of which the Secretary of State considers would seriously and prejudicially affect the interests of that body.

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**Commencement Information**

**I13** S. 14 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Implementation of strategies and plans*

**15 Duty to decommission and clean up installations and sites**

- (1) This section applies where the NDA has a responsibility for securing the decommissioning of an installation or the cleaning-up of a site.
- (2) It shall be the duty of the NDA to take all such steps as it considers appropriate—
  - (a) for securing the implementation in the case of that installation or site of the NDA’s approved strategy for decommissioning and cleaning-up;
  - (b) for the achievement of the objectives set out in that strategy that are applicable to that installation or site; and
  - (c) for giving effect in each financial year to its approved plan for that year, so far as it relates to the decommissioning of that installation or the cleaning-up of that site.
- (3) In the case of a designated site which is a contaminated site, that duty has effect subject to such general and specific directions relating to the manner in which the NDA is to discharge its responsibilities in relation to that site as may be given to it—
  - (a) in the case of a site in Scotland, by the Secretary of State and the Scottish Ministers, acting jointly; and
  - (b) in any other case, by the Secretary of State.
- (4) The NDA must comply with all such directions.

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**Commencement Information**

**I14** S. 15 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**16 Duties to operate installations and to provide treatment etc.**

- (1) This section applies where the NDA has a responsibility for securing—
  - (a) the operation of a nuclear installation;
  - (b) the operation of a facility for treating, storing, transporting or disposing of hazardous material;
  - (c) the operation of any other facility;
  - (d) the treatment, storage, transportation or disposal, in designated circumstances, of hazardous material; or

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- (e) the management of any land not comprised in a site designated as a site to be cleaned up.
- (2) That responsibility is an obligation to secure that—
- (a) the installation or facility is operated,
  - (b) the hazardous material is treated, stored, transported or disposed of, or
  - (c) the land is managed,
- in accordance with general and specific directions.
- (3) The power to give directions under subsection (2) is exercisable—
- (a) in relation to any matter connected with responsibilities of the NDA falling within section 6(2), by the Secretary of State and the Scottish Ministers, acting jointly; and
  - (b) in relation to any other matter, by the Secretary of State.
- (4) In discharging that responsibility the NDA must also act—
- (a) in accordance with the NDA's approved strategy for the operation of designated installations and designated facilities; and
  - (b) in each financial year, in accordance with the NDA's approved plan for that year.

#### Commencement Information

**I15** S. 16 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 17 Duty to use installations etc. for purposes of NDA

- (1) This section applies—
- (a) in the case of every designated nuclear installation and every designated installation comprised in an NDA facility;
  - (b) in the case of every designated site which is a principal nuclear site; and
  - (c) in the case of every designated facility situated in or on a principal nuclear site.
- (2) The person with control of the installation, site or facility must secure that neither the installation, site or facility nor any interest or right in relation to it is used or disposed of except for purposes which—
- (a) facilitate the discharge of the NDA's responsibilities in relation to designated installations, designated sites and designated facilities; and
  - (b) secure that there is no contravention, in relation to the discharge of those responsibilities, of any obligations imposed by or under any enactment on the person with control of the installation, site or facility.
- (3) Subsection (2) does not prevent the use or disposal of an installation, site or facility where the NDA has consented to that use or disposal.
- (4) Where the NDA has an interest in the installation, site or facility, the person with control of it shall have the right, as against the NDA, to use it for the purposes authorised by subsection (2) and to put it to any use to which the NDA has consented.
- (5) Except—
- (a) where the NDA otherwise directs, or

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- (b) where the person with control of the installation, site or facility is, has been or will be subject to charges by the NDA in respect of the discharge of its responsibilities in relation to that installation, site or facility,  
that person must account for, and pay, to the NDA all sums and other benefits received by him in respect of the use or disposal by him of an interest or right in relation to the installation, site or facility.
- (6) A reference in this section to facilitating the discharge of the NDA's responsibilities in relation to an installation, site or facility includes a reference to doing anything which is required or authorised by or for the purposes of—
- (a) an agreement between the NDA and the person with control of the installation, site or facility; or
- (b) an agreement between the NDA and a body corporate of which that person is a subsidiary.
- (7) Nothing in subsection (5) prohibits the inclusion in such an agreement of provision for sums and benefits mentioned in that subsection to be accounted for and paid to the NDA in a case falling within paragraph (b) of that subsection.
- (8) A reference in this section to an interest or right in relation to an installation or site includes a reference to any interest or right in relation to—
- (a) anything located in or on the installation or site;
- (b) a facility operated from the installation or site;
- (c) a process carried on in or on the installation or site; or
- (d) information or documents relating to the installation or site or to anything mentioned in paragraphs (a) to (c).
- (9) References in this section to the disposal of an interest in a site include references to—
- (a) the granting of an estate or interest in the site, or of a licence to use it; or
- (b) entering into an agreement to grant such an estate, interest or licence;
- and references to sums received in respect of such a disposal include references to sums that are paid periodically (by way of rent or otherwise) by a tenant or licensee or by a party to such an agreement.

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**Commencement Information**

**I16** S. 17 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **18 Directions by NDA to the person with control**

- (1) This section applies in every case where one of the following is designated—
- (a) a nuclear installation or an installation comprised in an NDA facility;
- (b) a principal nuclear site; or
- (c) a facility situated in or on a principal nuclear site.
- (2) It shall be the duty of the person with control of the installation, site or facility—
- (a) to prepare such plans for the decommissioning or operation of the installation, for the cleaning-up or management of the site or for the operation of the facility as the NDA may direct;
- (b) to prepare such plans for the cleaning-up of any related sites as the NDA may direct;

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- (c) to submit his plans to the NDA for approval;
  - (d) to comply with all such further directions falling within subsection (3) as the NDA may give him from time to time with respect to the installation, site or facility; and
  - (e) to comply with such directions as the NDA may give him for the purpose of securing or facilitating the discharge by the NDA of such of its responsibilities by virtue of section 3(1)(e) or 4(1), (2) or (4) or any direction under section 16(2) as—
    - (i) were conferred on it by reference to the site, installation or facility; or
    - (ii) fall to be discharged in relation to it, or to anything in or on it.
- (3) The directions that may be given by the NDA are—
- (a) directions (in the case of an installation or site) requiring the carrying out, pending the preparation and approval of plans required by the NDA, of specified decommissioning or cleaning-up work in or on the installation or site or related sites;
  - (b) directions requiring the installation, site or facility to be operated or managed, pending the preparation and approval of such plans, in the specified manner;
  - (c) directions to modify in the specified manner, and to resubmit, a plan submitted to the NDA for approval, or approved by it, under this section;
  - (d) directions (in the case of an installation or site) requiring the carrying out, pending the preparation and approval of modifications of a plan, of specified decommissioning or cleaning-up work in or on the installation or site or related sites;
  - (e) directions requiring the implementation of a plan that the NDA has approved;
  - (f) directions requiring specified transactions to be entered into, and other specified steps to be taken, for the purposes of or in connection with the implementation of such a plan;
  - (g) directions requiring the provision to the NDA of all the information that it requires in order—
    - (i) to discharge its responsibilities in relation to the installation, site or facility and in relation to related sites; or
    - (ii) to enter into an agreement for the purpose of discharging those responsibilities.
- (4) It shall be the duty of the person holding the majority of the voting rights in a company with control of the installation, site or facility to comply with such directions as may be given to it by the NDA for the purpose of securing that the company with control of the installation, site or facility complies with its obligations under this section.
- (5) Directions must not be given by the NDA under this section except for the purpose—
- (a) of giving effect to its plan under section 13 for a particular financial year; or
  - (b) of otherwise giving effect to its strategy under section 11 or achieving the objectives set out in that strategy.
- (6) A person required to prepare plans for the purposes of this section must comply with the directions of the NDA as to—
- (a) the persons with whom, and
  - (b) the manner in which,
- he must consult before preparing the plans, or before submitting them to the NDA for approval.

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- (7) A direction under this section cannot authorise a contravention in relation to an installation, site or facility of any obligation to which the person with control of it is subject by or under an enactment.
- (8) In this section “related site”, in relation to a designated installation, designated site or designated facility, means a site the designation of which specifies, in accordance with section 19, that it is to be treated, by reference to that installation, site or facility, as a related site for the purposes of this section.

#### Commencement Information

**I17** S. 18 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 19 Designation as a related site for the purposes of s. 18

- (1) A direction designating a contaminated site—
- (a) may specify that the site is to be treated for the purposes of section 18 as a related site; and
  - (b) if it does so, must specify the installation, site or facility by reference to which the Secretary of State is satisfied as mentioned in subsection (2)(a).
- (2) A direction must not specify that a site is to be treated as a related site unless—
- (a) the Secretary of State is satisfied that it has become contaminated (whether radioactively or chemically) as a result of nuclear activities in or on a particular installation, site or facility;
  - (b) that installation, site or facility was at the time of the contamination, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (c) the installation, site or facility is also designated (whether by that direction or as a consequence of a previous direction); and
  - (d) the person with control of that installation, site or facility—
    - (i) is a Crown appointee, the UKAEA, a publicly owned company or the NDA itself; or
    - (ii) has consented to the specification of the installation, site or facility for the purposes of subsection (1)(b).
- (3) On the giving by the Secretary of State of a direction specifying that a site is to be treated as a related site, he must send a copy of the direction to every person with control of an installation, site or facility by reference to which it is to be so treated.
- (4) For the purposes of this section something is contaminated as a result of nuclear activities in or on a particular installation, site or facility if the contamination (whenever occurring), or any of it, is the direct or indirect result of one or more of the following—
- (a) activities carried on in or on that installation, site or facility;
  - (b) the storage or disposal of any matter or substance in or on that installation, site or facility;
  - (c) an incident occurring in or on that installation, site or facility;
  - (d) the discharge of anything from that installation, site or facility;

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- (e) the transportation of hazardous material to or from that installation, site or facility;
- (f) an incident affecting hazardous material being transported to or from that installation, site or facility.

**Commencement Information**

**I18** S. 19 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**20 Duty to comply with directions under s. 18**

- (1) The duty of a person to whom a direction is given under section 18 to comply with that direction is a duty owed to the NDA, and to no one else.
- (2) That duty is to be enforceable by the NDA in civil proceedings—
  - (a) for an injunction or interdict;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.
- (3) That duty is subject to the obligation of the NDA to discharge its financial responsibilities under section 21.
- (4) A person with control of an installation, site or facility is not to be subject to that duty to the extent that he is relieved of it by the provisions of an agreement—
  - (a) between the NDA and that person; or
  - (b) between the NDA and a body corporate of which that person is a subsidiary.
- (5) The Secretary of State may by order provide, in the case of an installation, site or facility the person with control of which is a Crown appointee, that the Crown appointee is not to be subject, to the extent specified in the order, to the duty to comply with directions under section 18.
- (6) An order for the purposes of subsection (5) is subject to the negative resolution procedure.

**Commencement Information**

**I19** S. 20 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Financial provisions*

**21 Financial responsibilities of NDA**

- (1) The NDA's responsibility for securing—
  - (a) the decommissioning or operation of an installation or facility to which this section applies, or
  - (b) the cleaning-up of a site to which this section applies, or of a related site,
 includes the financial responsibility for the decommissioning or operation of the installation or facility, or for the cleaning-up.

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- (2) This section applies to an installation, site or facility which becomes a designated installation, site or facility at a time when the person with control of it is—
- (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a wholly-owned subsidiary of the UKAEA;
  - (d) any other publicly owned company which was so owned on 4th July 2002; or
  - (e) a wholly-owned subsidiary of such a company.
- (3) Where—
- (a) the NDA has financial responsibility for decommissioning, operating or cleaning up an installation, site or facility, and
  - (b) a person other than the NDA is the person with control of it,
- that other person is not to be, or to be capable of becoming, liable to meet any of the costs of doing the things that are required to be secured by the NDA in the discharge of its responsibilities in relation to that installation, site or facility.
- (4) Accordingly, where the NDA has the financial responsibility in the case of an installation, site or facility—
- (a) it must not impose charges on the person with control of the installation, site or facility in respect of anything mentioned in subsection (3);
  - (b) it must meet the costs of the doing by that person of anything that he is authorised or required to do by virtue of section 17;
  - (c) it must also meet the costs of the performance by him of his duty to comply with directions under section 18; and
  - (d) that person is not to be required for any purpose to make, or to continue to make, financial provision for meeting costs which fall, by virtue of its financial responsibility, to be met by the NDA.
- (5) Nothing in so much of this section as—
- (a) restricts the extent to which a person is, or may become, liable to meet any costs in relation to a site, installation or facility, or
  - (b) requires any costs in relation to an installation, site or facility to be reimbursed or otherwise met by the NDA,
- is to be construed as restricting the extent to which the person with control of the installation, site or facility may be or become subject, in relation to a person other than the NDA, to the liability or obligation in respect of which the costs arise.
- (6) It shall be the duty of the NDA for the purpose of discharging its financial responsibilities to make all such arrangements as it thinks fit for securing that the person with control of the installation, site or facility is able to meet, as they become due, all his liabilities to persons other than the NDA in respect of matters for which the NDA has financial responsibility or that those liabilities are otherwise discharged.
- (7) It shall also be the duty of the NDA to make all such arrangements as it thinks fit for securing that amounts paid under this section to that person include such sums (if any) as the NDA considers it appropriate to pay by way of incentives to that person to discharge his duty to comply with directions under section 18 in the manner that the NDA thinks most effective.
- (8) The NDA is to be taken to have discharged its responsibility for meeting costs under this section if it is satisfied that those costs—

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- (a) have been met by another person directly or indirectly out of money provided by Parliament; or
  - (b) are to be so met.
- (9) The preceding provisions of this section have effect in relation to an installation, site or facility subject to the terms of—
- (a) any agreement between the NDA and the person with control of the installation, site or facility; or
  - (b) any agreement between the NDA and a body corporate of which that person is a subsidiary.
- (10) The NDA’s financial responsibilities under this section are in addition to its financial responsibilities apart from this section.
- (11) In this section “related site” has the same meaning as in section 18.

**Commencement Information**

**I20** S. 21 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**22 Expenditure and receipts of NDA**

- (1) The Secretary of State may make grants to the NDA.
- (2) Grants made under this section are to be on such terms as the Secretary of State may determine.
- (3) The NDA must pay to the Secretary of State all sums received by it otherwise than under subsection (1).
- (4) The Secretary of State must pay sums received by him under subsection (3) into the Consolidated Fund.
- (5) In determining—
  - (a) whether to make a grant under this section to the NDA, and
  - (b) the amount of such a grant,
 the Secretary of State must have regard, in particular, to the extent to which he considers that the NDA should exercise its power to make grants or loans of the kind mentioned in section 10(2)(c) in order to mitigate the effects of the cessation (whether before or after designation) of the operation of a designated installation.

**Commencement Information**

**I21** S. 22 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

**23 Borrowing by the NDA**

- (1) The NDA has no power to borrow money except in accordance with this section.
- (2) The NDA may borrow from the Secretary of State, and the Secretary of State may lend to the NDA, sums in sterling that it requires for or in connection with the carrying out of its functions.



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- (3) Where a loan is made to the NDA by the Secretary of State—
  - (a) the loan must be repaid to him at such times and by such methods as he may determine; and
  - (b) interest on the loan must be paid to him at such rates and at such times as he may determine;and nothing in section 22(3) requires the repayment of sums received by way of such a loan otherwise than in accordance with a determination under this subsection.
- (4) The NDA may also borrow temporarily (by overdraft or otherwise) from persons other than the Secretary of State sums in sterling that it requires for or in connection with the carrying out of its functions.
- (5) The consent of the Secretary of State is required for borrowing under subsection (4).
- (6) The approval of the Treasury is required—
  - (a) for a loan to the NDA by the Secretary of State;
  - (b) for a determination by the Secretary of State under subsection (3); and
  - (c) for a consent by the Secretary of State to any borrowing under subsection (4).
- (7) The powers conferred by this section are subject to section 24.

#### Commencement Information

**I22** S. 23 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 24 Limit on NDA borrowing

- (1) The NDA may not borrow if the effect would be—
  - (a) to take the aggregate amount mentioned in subsection (2) over its borrowing limit; or
  - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (2) That amount is the aggregate of—
  - (a) amounts outstanding from the NDA in respect of the principal of sums borrowed by the NDA; and
  - (b) the amount of every outstanding liability of the NDA that is a liability to which it is subject by virtue of a nuclear transfer scheme and is a liability in respect of the principal of a sum borrowed by another person before the transfer took effect.
- (3) The NDA's borrowing limit is £2,000 million.
- (4) The Secretary of State may by order increase the NDA's borrowing limit.
- (5) An order under subsection (4) shall not be made unless a draft of the order has been—
  - (a) laid before Parliament; and
  - (b) approved by a resolution of the House of Commons.
- (6) The reference in this section to a nuclear transfer scheme includes a reference to a modification agreement (within the meaning of Schedule 5) in relation to such a scheme.

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### Commencement Information

**I23** S. 24 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 25 Government guarantees for NDA borrowing

- (1) The Secretary of State may guarantee—
  - (a) the repayment of the principal of any sum borrowed by the NDA from a person other than the Secretary of State;
  - (b) the payment of interest on such a sum; and
  - (c) the discharge of any other financial obligation of the NDA in connection with the borrowing of such a sum.
- (2) The Secretary of State may give a guarantee under this section in such manner, and on such terms, as he thinks fit.
- (3) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (4) If sums are paid out by the Secretary of State under a guarantee given under this section, the NDA must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (5) Payments to the Secretary of State under subsection (4) must be made at such times, and in such manner, as he may from time to time direct.
- (6) Where a sum has been paid out by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before Parliament—
  - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (7) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (6) unless—
  - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (4); and
  - (b) the NDA is not at any time during that year subject to a liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (8) The approval of the Treasury is required—
  - (a) for the giving of a guarantee under this section; and
  - (b) for the giving by the Secretary of State of a direction under subsection (4) or (5).
- (9) The Secretary of State must pay sums received by him by virtue of subsection (4) into the Consolidated Fund.

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### Commencement Information

**I24** S. 25 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 26 Accounts of NDA

- (1) The NDA must—
  - (a) keep proper accounts and proper accounting records; and
  - (b) in respect of each of its accounting years, prepare a statement of its accounts.
- (2) A statement of accounts prepared under this section must give a true and fair view of—
  - (a) the income and expenditure of the NDA for the accounting year in question; and
  - (b) its state of affairs.
- (3) Such a statement of accounts must comply with every requirement which has been notified by the Secretary of State to the NDA.
- (4) Those requirements may include, in particular, requirements relating to—
  - (a) the information to be contained in the statement;
  - (b) the manner in which that information is to be presented; or
  - (c) the methods and principles according to which the statement is to be prepared.
- (5) The approval of the Treasury is required for the imposition of a requirement under subsection (3).
- (6) The accounts of the NDA relating to each of its accounting years, including the statement of accounts prepared for the year under this section, must be audited by the Comptroller and Auditor General.
- (7) The Comptroller and Auditor General must send a copy of his report on what is audited to the NDA.
- (8) The NDA must send to the Secretary of State and to the Scottish Ministers, in respect of each of its accounting years—
  - (a) a copy of the accounts for that year that are required to be audited under this section; and
  - (b) a copy of the Comptroller and Auditor General’s report on those accounts.
- (9) The NDA must comply with any directions given to it by the Secretary of State about the times by which it must have complied with its obligations under subsections (1) (b), (6) and (8).
- (10) The Secretary of State must lay a copy of whatever is sent to him under subsection (8) before Parliament.
- (11) The Scottish Ministers must lay a copy of whatever is sent to them under subsection (8) before the Scottish Parliament.
- (12) In this section—

“accounting records” includes all books, papers and other records of the NDA relating to—

  - (a) the accounts which it is required to keep; or

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- (b) matters dealt with in those accounts;  
 “accounting year”, in relation to the NDA, means—
  - (a) the NDA’s first accounting year; or
  - (b) a financial year after the end of the NDA’s first accounting year;  
 “the NDA’s first accounting year” means—
    - (a) where the NDA is established at the beginning of a financial year, that financial year; and
    - (b) in any other case, the period which begins with the day on which the NDA is established and ends—
      - (i) if no direction is given under sub-paragraph (ii), with 31st March in the financial year current on that day; and
      - (ii) if the Secretary of State so directs, with 31st March at the end of the following financial year.

#### Commencement Information

**I25** S. 26 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 27 Tax exemption for NDA activities

- (1) For the purposes of corporation tax—
  - (a) trading income arising or accruing to the NDA or an NDA company from the carrying on of exempt activities shall be disregarded in computing the total profits of the NDA or that company; and
  - (b) trading losses incurred by the NDA or an NDA company in the carrying on of exempt activities shall be disregarded in determining the amounts that may be set off under section 393 or 393A of the Income and Corporation Taxes Act 1988 (c. 1) (trading losses) or surrendered as trading losses for the purposes of section 403 of that Act (group relief).
- (2) Schedule 4 (which makes further provision for the purposes of the exemption granted by this section) has effect.
- (3) Activities are exempt for the purposes of this section and Schedule 4 if they—
  - (a) are activities carried on in connection with anything mentioned in section 3(1); and
  - (b) are specified for the purposes of this section in regulations made by the Treasury.
- (4) In this section and Schedule 4 “NDA company” means—
  - (a) a company the whole of the ordinary share capital in which is owned directly or indirectly by the NDA; or
  - (b) a company that is a relevant site licensee.
- (5) A company is a relevant site licensee for the purposes of subsection (4) if—
  - (a) it is not a company falling within paragraph (a) of that subsection;
  - (b) it holds a nuclear site licence for a site the whole or part of which is either a designated site or a site in or on which there is a designated installation or designated facility;

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- (c) in a case where there is in force a management contract relating to the whole or a part of the site to which that licence relates, or to an installation or facility in or on that site, the parties to the contract include either—
- (i) the company in question; or
  - (ii) a company which owns directly or indirectly at least 90 per cent of the ordinary share capital of that company; and
- (d) such further conditions that are required by regulations made by the Treasury to be satisfied have been satisfied.
- (6) The concurrence of the Secretary of State is required for the making of any regulations under this section by the Treasury.
- (7) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (8) In this section—
- “management contract” means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities;
  - “owned directly or indirectly” has the same meaning as in section 838 of the Income and Corporation Taxes Act 1988 (c. 1) (subsidiaries), and “owns directly or indirectly” is to be construed accordingly;
  - “trading income”, in relation to the NDA or an NDA company, means (subject to subsection (9)) income which falls or (apart from this section) would fall to be included—
    - (a) in respect of a trade, and
    - (b) as chargeable to tax under Case I of Schedule D,in the total profits for the purposes of corporation tax of the NDA or that company;
  - “trading losses”, in relation to the NDA or an NDA company, means losses incurred in a trade in respect of which the NDA or that company is or (apart from this section) would be within the charge to corporation tax under Case I of Schedule D.
- (9) For the purposes of this section income consisting in—
- (a) anything giving rise to a credit that would fall to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships), or
  - (b) a credit falling to be brought into account under Schedule 26 to the Finance Act 2002 (c. 23) (derivative contracts),
- is to be treated as trading income accruing to the NDA or an NDA company from the carrying on of exempt activities to the extent only that it would fall (apart from this section) to be taken into account as trading income from a trade consisting in the carrying on of such activities by the NDA or that company.
- (10) This section and Schedule 4 are to be construed as one with the Corporation Tax Acts.

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**Commencement Information**

**I26** S. 27 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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## 28 Taxation of NDA activities chargeable under Case VI of Schedule D

- (1) For the purposes of the Corporation Tax Acts so much of any activity of the NDA as—
  - (a) is an activity the profits and gains from which would (apart from this section) be chargeable to tax under Case VI of Schedule D, and
  - (b) is not excluded from the operation of this section by subsection (2),
 shall be treated as an activity carried on by it as part of a trade in respect of which it is within the charge to tax under Case I of Schedule D.
- (2) Any activity is excluded from the operation of this section if—
  - (a) it is carried on by the NDA otherwise than in connection with something mentioned in section 3(1)(a), (d) or (e) of this Act; and
  - (b) the profits and gains from it would, in the NDA's case, be chargeable to tax under Case VI of Schedule D by virtue of an enactment other than just section 18 of the Income and Corporation Taxes Act 1988 (c. 1).
- (3) All activities treated under this section as carried on by the NDA as part of a trade—
  - (a) shall be treated as carried on as part of the same trade; and
  - (b) may be treated as carried on as part of another trade carried on by the NDA.
- (4) Subsection (3) is subject to any other provision made by or under the Corporation Tax Acts that requires an activity to be treated as carried on as part of a separate trade (with or without any other activity).
- (5) This section is to be construed as one with the Corporation Tax Acts.

### Commencement Information

I27 S. 28 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 29 Disregard for tax purposes of cancellation etc. of provisions

- (1) This section applies where—
  - (a) a relevant provision is recognised in the accounts of a relevant company in accordance with generally accepted accounting practice;
  - (b) that provision relates to decommissioning or cleaning-up which the NDA acquires responsibility for securing by virtue of a direction under section 3; and
  - (c) that responsibility includes the financial responsibility under section 21.
- (2) In computing the profits, gains or losses of the company for the purposes of corporation tax, no amount shall be brought into account in respect of a credit or debit to which subsection (3) applies.
- (3) This subsection applies to a credit or debit if—
  - (a) it arises on the occurrence of an event mentioned in subsection (4); and
  - (b) it relates to the effect of that event on the relevant provision or the subject matter of the provision.
- (4) The events referred to in subsection (3) are—
  - (a) the coming into force of the direction mentioned in subsection (1)(b); and

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- (b) a transfer of property, rights or liabilities of the company to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by section 39.
- (5) In this section—
- “BNFL company” means BNFL or a wholly-owned subsidiary of BNFL;
  - “relevant company” means a BNFL company that is publicly owned;
  - “relevant provision” means a provision for liabilities or charges as defined in paragraph 89 of Schedule 4 to the Companies Act 1985 (c. 6).
- (6) This section is to be construed as one with the Corporation Tax Acts.

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**Commencement Information**

**I28** S. 29 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### **30 Disregard for tax purposes of provisions recognised by NDA**

- (1) This section applies where—
- (a) by virtue of a direction under section 3 the NDA acquires the responsibility for securing the cleaning-up of a site falling within subsection (2), or the decommissioning of an installation or facility in or on such a site;
  - (b) that responsibility includes the financial responsibility under section 21; and
  - (c) on the coming into force of the direction mentioned in paragraph (a), the NDA recognises in its accounts, in accordance with generally accepted accounting practice, a relevant provision that relates to that responsibility.
- (2) A site falls within this subsection if—
- (a) at the time the direction mentioned in subsection (1)(a) comes into force there is a nuclear site licence in force in relation to the site; and
  - (b) the holder of that licence at that time is a BNFL company that is publicly owned.
- (3) In computing the profits, gains or losses of the NDA for the purposes of corporation tax, no amount shall be brought into account in connection with the recognition of the relevant provision in the accounts of the NDA.
- (4) But subsection (3) shall not affect the amount (if any) to be brought into account in computing the profits, gains or losses of the NDA in connection with an adjustment at a time after the first recognition of the relevant provision in the accounts of the NDA.
- (5) In this section—
- “BNFL company” means BNFL or a wholly-owned subsidiary of BNFL;
  - “relevant provision” means a provision for liabilities or charges as defined in paragraph 89 of Schedule 4 to the Companies Act 1985.
- (6) This section is to be construed as one with the Corporation Tax Acts.

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**Commencement Information**

**I29** S. 30 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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### *Nuclear Decommissioning Funding Account*

#### **31 Establishment and maintenance of the Account**

- (1) For the purpose of ensuring transparency as respects the funding of the carrying out of the NDA's functions, it shall be the duty of the Secretary of State to establish and maintain an account (to be known as the "Nuclear Decommissioning Funding Account").
- (2) The Account, when first established, is to have an opening balance of such amount as the Secretary of State may determine.
- (3) Every amount paid to the NDA by way of grant under section 22(1) must be shown in the Account as a debit.
- (4) The following amounts are to be shown in the Account as credits—
  - (a) every amount received by the Secretary of State in pursuance of a requirement under section 5(2);
  - (b) every amount received by the NDA that is required to be paid by it to the Secretary of State under section 22(3);
  - (c) such amount in respect of each financial year as the Secretary of State may determine; and
  - (d) amounts representing interest, at such rate and in respect of such periods as the Secretary of State may determine, on outstanding credit balances of the Account.
- (5) The Secretary of State—
  - (a) may make a single determination for the purposes of subsection (4)(c) in relation to more than one financial year;
  - (b) must make every determination for those purposes in accordance with the policy most recently published under subsection (6);
  - (c) must revise a determination made for those purposes if he considers it necessary to do so in order to take account of any revision of the policy in accordance with which it was made, or last revised; and
  - (d) must publish every determination made for those purposes, and every revision of such a determination, in such manner as, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (6) The Secretary of State—
  - (a) must prepare, and may from time to time revise, a statement of his policy with respect to the determination of amounts for the purposes of subsection (4)(c); and
  - (b) must publish that statement, and every revision of it, in such manner as, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (7) The policy contained in the statement under subsection (6) must—
  - (a) set out the basis on which determinations for the purposes of subsection (4)(c) are to be made;
  - (b) secure that amounts credited to the Account in accordance with subsection (4)(c) are at least enough to prevent the credit balance of the Account falling at any time below such level as the Secretary of State determines to be appropriate; and



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- (c) set out the basis on which the Secretary of State’s determination for the purposes of paragraph (b) has been made.
- (8) The time at which an amount is to be debited or credited to the Account in accordance with this section is to be the time determined by the Secretary of State.
- (9) The consent of the Treasury is required for every determination by the Secretary of State for the purposes of this section.

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**Commencement Information**

**I30** S. 31 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 32 Examination of the Account

- (1) As soon as practicable after the end of each relevant financial year, the Secretary of State must prepare a statement of the Nuclear Decommissioning Funding Account.
- (2) The statement must show—
  - (a) the credits and debits made to the account during the period for which it is prepared; and
  - (b) the determinations made or revised during that period for the purposes of section 31(4)(c).
- (3) The period for which each statement is to be prepared is the period which—
  - (a) begins—
    - (i) in the case of the first statement, with the establishment of the Account; and
    - (ii) in any other case, immediately after the end of the period for which the previous statement was prepared; and
  - (b) ends with the last day of the last relevant financial year to end before the statement’s preparation.
- (4) A statement prepared under this section must be sent to the Comptroller and Auditor General before the 30th September in the financial year in which it is prepared.
- (5) The Comptroller and Auditor General must, before 31st December in the financial year in which he receives a statement under this section—
  - (a) examine and report on it; and
  - (b) lay copies of it, and of his report on it, before Parliament.
- (6) In this section “relevant financial year” means a financial year in the course of which the Secretary of State has made or revised a determination for the purposes of section 31(4)(c).

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**Commencement Information**

**I31** S. 32 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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### *Supplementary provisions of Chapter 1 of Part 1*

#### **33 Validity of transactions**

- (1) A person who enters into a transaction with the NDA is not required to see or to enquire whether the transaction constitutes or involves—
  - (a) conduct by the NDA which is for the purposes of, or conducive or incidental to, the carrying out of its functions;
  - (b) a contravention of section 7(6) or 9; or
  - (c) a contravention of a direction given by the Secretary of State.
- (2) A transaction entered into by the NDA is not invalidated because the transaction constitutes or involves—
  - (a) conduct by the NDA which is neither for the purposes of, nor conducive or incidental to, the carrying out of its functions;
  - (b) a contravention of section 7(6) or 9; or
  - (c) a contravention of a direction given by the Secretary of State.

#### **Commencement Information**

**I32** S. 33 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### **34 Amendment of Schedule 12 to the 1989 Act**

- (1) In sub-paragraph (1) of paragraph 1 of Schedule 12 to the 1989 Act (financial assistance by the Secretary of State in respect of nuclear liabilities), for paragraph (c) and the word “or” immediately preceding it substitute—
  - “(ba) the cleaning-up of a principal nuclear site; or
  - (c) the decommissioning of a nuclear installation.”
- (2) After sub-paragraph (4) of paragraph 1 of that Schedule insert—
  - “(5) In this paragraph “cleaning-up”, “decommissioning”, “nuclear installation” and “principal nuclear site” have the same meanings as in Chapter 1 of Part 1 of the Energy Act 2004.”
- (3) After paragraph 3 of that Schedule insert—
  - “3A The Secretary of State shall not—
    - (a) make any grant or loan under this Schedule for the purpose of meeting any expenditure, or
    - (b) give any guarantee in respect of borrowing undertaken for the purpose of meeting any expenditure,
 if the expenditure is expenditure on anything for which the Nuclear Decommissioning Authority has a financial responsibility under section 21 of the Energy Act 2004.”

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**Commencement Information**

**I33** S. 34 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**35 Power to modify Chapter 1 of Part 1**

- (1) The Secretary of State may by order modify the following provisions of this Chapter—
  - (a) section 2 and Schedule 1;
  - (b) sections 11 and 12 and Schedule 2; and
  - (c) section 13 and Schedule 3.
- (2) Before making an order under this section the Secretary of State must consult the Scottish Ministers.
- (3) The consent of the Scottish Ministers is required for the making of an order under this section that modifies any of those Ministers' functions under this Chapter.
- (4) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

**Commencement Information**

**I34** S. 35 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**36 Meaning of “nuclear site” etc. and “person with control”**

- (1) In this Chapter “nuclear site” means a principal nuclear site or a contaminated site.
- (2) In this Chapter—

“contaminated site” means the whole or a part of a site which is not a principal nuclear site but—

  - (a) has been and remains contaminated (whether radioactively or chemically) as a result of nuclear activities; or
  - (b) is the location of hazardous material;

“principal nuclear site” means the whole or a part of a site of any of the following descriptions—

  - (a) a site in respect of which a nuclear site licence is or is required to be in force;
  - (b) a site in respect of which such a licence would be required to be in force if the licensing requirements of the 1965 Act applied to the Crown;
  - (c) a site not falling within paragraph (a) or (b) in or on which there is an NDA facility;
  - (d) a site on which there is an installation used for practical research into the production of energy by the fusion of atomic nuclei;
  - (e) a site which has been a site falling within paragraphs (a) to (d) but which, without being such a site, remains contaminated (whether radioactively or chemically) as a result of nuclear activities carried on while it was such a site or before it became one.

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- (3) References in this Chapter to the person with control of an installation, site or facility are references—
- (a) in the case of—
    - (i) a site in relation to which a nuclear site licence is held by a person whose period of responsibility (within the meaning of the 1965 Act) is still current, or
    - (ii) a nuclear installation in or on such a site,
 to that person;
  - (b) in the case of an installation or site which—
    - (i) is an installation in or on a site occupied by or on behalf of the Crown or is itself such a site, and
    - (ii) is an installation or site in the case of which there is a person appointed by an order made by the Secretary of State to be the person with control,
 to that person;
  - (c) in the case of a facility which—
    - (i) is not an installation to which paragraph (a) or (b) applies; but
    - (ii) is operated on a single site to which one of those paragraphs does apply,
 to the person with control of the site;
  - (d) in the case of an installation or facility which—
    - (i) is not an installation or facility to which paragraph (a), (b) or (c) applies; but
    - (ii) is operated on a single site by a person who (without being the owner of the site) is in occupation of it,
 to the occupier of the site;
  - (e) in the case of a facility which is operated otherwise than on a single site, to the operator of the facility;
  - (f) in the case of anything in or under the territorial sea adjacent to the United Kingdom, to the Secretary of State;
  - (g) in the case of a site to which none of the preceding paragraphs applies, to the owner of the site;
  - (h) in the case of an installation or facility to which none of those paragraphs applies, to the occupier of the site where the installation or facility is located.
- (4) An order for the purposes of subsection (3)(b) is subject to the negative resolution procedure.
- (5) For the purposes of this section something is contaminated as a result of nuclear activities if the contamination (whenever occurring), or any of it, is the direct or indirect result of one or more of the following—
- (a) activities carried on in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (b) the storage or disposal of any matter or substance in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;

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- (c) an incident occurring in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
- (d) the discharge of anything from an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
- (e) the transportation of hazardous material to or from a principal nuclear site or an installation or facility in or on such a site;
- (f) an incident affecting hazardous material being transported to or from a principal nuclear site or an installation or facility in or on such a site.

#### Commencement Information

**I35** S. 36 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I36** S. 36 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

### 37 General interpretation of Chapter 1 of Part 1

(1) In this Chapter—

“apparatus” includes machinery, equipment, appliances, tanks, containers, pipes and conduits;

“cleaning-up” and “decommissioning”, in relation to a site or installation, includes—

(a) the treatment, storage, transportation and disposal of hazardous material and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes; and

(b) the construction of buildings and other structures to be used in connection with the cleaning-up or decommissioning of the site or installation;

“contaminated site” has the meaning given by section 36(2);

“control”, in relation to an installation, site or facility, is to be construed in accordance with section 36(3);

“Crown appointee”, in relation to an installation, site or facility, means—

(a) a Minister of the Crown; or

(b) a person for the time being holding an appointment under section 36(3)

(b) as the person with control of it;

“designated”, in relation to an installation, site or facility, is to be construed in accordance with subsection (2);

“facility” includes a business or other undertaking and installations, vehicles or other property comprised in or used for the purposes of a business or other undertaking;

“hazardous material” means—

(a) nuclear matter;

(b) radioactive waste; and

(c) any other article or substance that has been and remains contaminated (whether radioactively or chemically) as a result (within the meaning of section 36) of nuclear activities;

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“installation” includes buildings, structures and apparatus (whether or not fixed to land);

“NDA facility” means a facility which—

- (a) is being or has been used for or in connection with the storage, disposal or treatment of hazardous material; and
- (b) is a facility for the operation of which the NDA has or has had a responsibility;

“nuclear installation” means—

- (a) an installation which is situated in or on a principal nuclear site but is not comprised in an NDA facility;
- (b) pipes, conduits and other apparatus which are not situated in or on a principal nuclear site but are connected to an installation falling within paragraph (a);

“nuclear security” has the meaning given by section 9(9);

“nuclear site” has the meaning given by section 36(1);

“principal nuclear site” has the meaning given by section 36(2);

“publicly owned”, in relation to a company, is to be construed in accordance with subsection (3);

“site” includes—

- (a) land within the United Kingdom;
- (b) an area of territorial waters adjacent to the United Kingdom;
- (c) the seabed and subsoil in any such area;

“treat”, in relation to any matter or substance, includes processing and reprocessing (including any use as a material in a process for the manufacture of nuclear fuel), and cognate expressions are to be construed accordingly;

“vehicle” includes vessel;

“voting rights” is to be construed in accordance with subsection (5).

- (2) An installation, site or facility is designated for the purposes of this Chapter if—
  - (a) it is designated by a direction under section 3; or
  - (b) the NDA otherwise has responsibilities in relation to it by virtue of such a direction.
- (3) For the purposes of this Chapter a body corporate is a publicly owned company if it is a company limited by shares and that company is one in which—
  - (a) a person specified in subsection (4) holds all the shares; or
  - (b) two or more persons so specified, taken together, hold all the shares.
- (4) The persons mentioned in subsection (3) are—
  - (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) the NDA;
  - (d) the UKAEA;
  - (e) a publicly owned company; or
  - (f) a nominee of a person falling within paragraphs (a) to (e).
- (5) Section 736A of the Companies Act 1985 (c. 6) (meaning of “voting rights” etc.) applies for construing references in this Chapter to holding voting rights in a company as it applies for construing section 736(1)(a) of that Act.

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- (6) Sections 17 to 20 bind the Crown.
- (7) In this section—
- “company” has the same meaning as in the Companies Act 1985;
  - “nuclear matter” means material which—
    - (a) is nuclear matter within the meaning of the 1965 Act; or
    - (b) would be such matter if it did not fall within an exception prescribed by regulations under that Act;
  - “radioactive waste” has the same meaning as in the 1993 Act.

#### Commencement Information

- I37** S. 37 in force at 24.8.2004 for specified purposes by [S.I. 2004/2184](#), [art. 2\(1\)](#), [Sch. 1](#)
- I38** S. 37 in force at 5.10.2004 in so far as not already in force by [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)

## CHAPTER 2

### TRANSFERS RELATING TO NUCLEAR UNDERTAKINGS

#### *Transfer by scheme of property etc.*

#### **38 Nuclear transfer schemes**

- (1) The Secretary of State may make a scheme providing for one or more transfers authorised by this Chapter (a “nuclear transfer scheme”).
- (2) Nothing in this Chapter authorises the transfer in accordance with a nuclear transfer scheme of a nuclear site licence.
- (3) Before making—
- (a) a nuclear transfer scheme which transfers property, rights or liabilities to or from the NDA or a subsidiary of the NDA, or
  - (b) a nuclear transfer scheme not falling within paragraph (a) which he is proposing to make for purposes connected with the carrying out of the NDA’s functions,
- the Secretary of State must consult the NDA.
- (4) Before making a nuclear transfer scheme which transfers property, rights or liabilities to any person—
- (a) from BNFL, or
  - (b) from a wholly-owned subsidiary of BNFL,
- the Secretary of State must consult BNFL.
- (5) Before making a nuclear transfer scheme that transfers property, rights or liabilities to any person—
- (a) from the UKAEA, or
  - (b) from a wholly-owned subsidiary of the UKAEA,
- the Secretary of State must consult the UKAEA.

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- (6) The consent of the Treasury is required for the making of a nuclear transfer scheme.
- (7) A nuclear transfer scheme shall come into force at such time as the Secretary of State may appoint, whether in the scheme or subsequently.
- (8) Schedule 5 (which makes further provision about nuclear transfer schemes) has effect.

#### Commencement Information

**I39** S. 38 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 39 Transfers of publicly owned assets

- (1) A nuclear transfer scheme may provide for a transfer to—
  - (a) a publicly owned company,
  - (b) the NDA, or
  - (c) a consenting person,
 of property, rights and liabilities falling within subsection (2) that are set out in the scheme.
- (2) The property, rights and liabilities that may be transferred are—
  - (a) securities of BNFL;
  - (b) securities of a company falling within subsection (3);
  - (c) property, rights and liabilities of BNFL or the UKAEA;
  - (d) property, rights and liabilities of a company falling within subsection (3);
  - (e) property, rights and liabilities of a wholly-owned subsidiary of BNFL, of the UKAEA or of a company falling within that subsection.
- (3) A company falls within this subsection if—
  - (a) it is a nuclear company that is publicly owned; or
  - (b) it is a company designated for the purposes of this section by an order made by the Secretary of State.
- (4) The Secretary of State may designate a company for the purposes of this section only if it is a publicly owned company to which—
  - (a) securities of BNFL,
  - (b) property, rights or liabilities of BNFL, or
  - (c) property, rights or liabilities of a wholly-owned subsidiary of BNFL,
 were transferred (whether in accordance with a nuclear transfer scheme or otherwise) at a time when both the company and BNFL were publicly owned.
- (5) The Secretary of State must lay a copy of every order under subsection (3) before Parliament.
- (6) Nothing in this section authorises—
  - (a) a transfer of securities of BNFL, or
  - (b) a transfer of property, rights or liabilities of BNFL or of a wholly-owned subsidiary of BNFL,
 at a time when BNFL is no longer publicly owned.
- (7) Nothing in this section authorises—



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- (a) a transfer of securities of a company designated for the purposes of this section, or
  - (b) a transfer of property, rights or liabilities of such a company or of a wholly-owned subsidiary of such a company,
- at a time when the company is no longer publicly owned.
- (8) Schedule 6 (which makes provision about the structure etc. of publicly owned companies to which transfers are made that are authorised by this section) has effect.
- (9) For the purposes of this section a person is a consenting person, in relation to a nuclear transfer scheme, if he has consented to the provisions of the scheme so far as they relate to him.

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**Commencement Information**

**I40** S. 39 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### **40 Transfers with the consent of the transferor**

- (1) A nuclear transfer scheme may provide for a transfer to—
- (a) a publicly owned company, or
  - (b) the NDA,
- of property, rights and liabilities falling within subsection (3) that are set out in the scheme.
- (2) But property, rights and liabilities may be transferred by virtue of this section only if the person who is entitled or subject to them has consented to their transfer in accordance with a nuclear transfer scheme.
- (3) The property, rights and liabilities that may be transferred are—
- (a) securities of a nuclear company that is not publicly owned;
  - (b) property and rights of such a company in or in relation to a nuclear site or an installation in or on such a site; or
  - (c) property, rights and liabilities to which such a company is entitled or subject—
    - (i) in respect of such a site or installation;
    - (ii) in connection with or by reference to activities carried on in or on such a site or installation; or
    - (iii) for purposes connected with that site or installation or with any such activities.
- (4) In subsection (3) references to the property, rights and liabilities of a company, or to which a company is entitled or subject, include references to the property, rights and liabilities of any of its wholly-owned subsidiaries.

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**Commencement Information**

**I41** S. 40 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 41 Recovery of property from private ownership

- (1) This section applies in the case of a nuclear company (“the transferred company”) all the shares in which were transferred for the purposes of a management contract to the contractor or to a subsidiary of the contractor where—
  - (a) the contractor is in breach of that contract; or
  - (b) that contract has come to an end, whether by the expiry of the period for which it was in force or otherwise.
- (2) A nuclear transfer scheme may provide for the transfer to—
  - (a) a publicly owned company,
  - (b) the NDA, or
  - (c) a consenting contractor,
 of the property, rights and liabilities falling within subsection (3) that are set out in the scheme.
- (3) The property, rights and liabilities that may be transferred are—
  - (a) securities of the transferred company (whether transferred as mentioned in subsection (1) or issued afterwards);
  - (b) property, rights and liabilities to which the transferred company was entitled or subject immediately before the transfer so mentioned;
  - (c) property, rights and liabilities transferred for the purposes of the management contract, to the contractor, to a subsidiary of the contractor or to the transferred company or a wholly-owned subsidiary of the transferred company;
  - (d) property, rights and liabilities to which the transferred company or a wholly-owned subsidiary of the transferred company first became entitled or subject while that contract was in force.
- (4) Subsection (3) does not apply to property, rights or liabilities to the extent that they have been excluded from that subsection by—
  - (a) provision contained in an agreement between the NDA and the person entitled to or subject to them; or
  - (b) provision contained in a nuclear transfer scheme by virtue of which the property, rights and liabilities or the shares mentioned in subsection (1) were vested in any person.
- (5) A transfer is authorised by this section notwithstanding that what is transferred has ceased, before the transfer, to be the property or a right or liability—
  - (a) of a person to whom anything was transferred for the purposes of the management contract mentioned in subsection (1);
  - (b) of the transferred company or of a wholly-owned subsidiary of that company; or
  - (c) in the case of securities issued after the transfer mentioned in that subsection, of the person to whom they were issued.
- (6) Nothing in this section authorises the transfer of property, rights or liabilities from a company at a time when it is publicly owned.
- (7) For the purposes of this section a person is a consenting contractor, in relation to a nuclear transfer scheme, if—
  - (a) he is a contractor under a management contract other than the one that has been broken or come to an end; and

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(b) he has consented to the provisions of the scheme so far as they relate to him.

(8) In this section—

“contractor”, in relation to a management contract, means a party to the contract who is not the NDA;

“management contract” means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities; and

“transferred”, in relation to shares, property, rights or liabilities, means transferred in accordance with a nuclear transfer scheme.

#### Commencement Information

**I42** S. 41 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 42 Transfer of Nuclear Liabilities Investment Portfolio

(1) A nuclear transfer scheme may provide for the transfer from BNFL to the Secretary of State of—

- (a) the Nuclear Liabilities Investment Portfolio; or
- (b) so much of that Portfolio as may be specified in the scheme.

(2) Nothing in this section authorises a transfer at a time when BNFL is no longer publicly owned.

(3) Where cash is transferred to the Secretary of State by a transfer authorised by this section, he must pay it into the Consolidated Fund.

(4) Where the Secretary of State receives—

- (a) sums by way of income on property or rights transferred to him by a transfer authorised by this section, or
  - (b) sums in respect of the disposal of any such property or rights,
- he must pay those sums into the Consolidated Fund.

(5) The Secretary of State must comply with every direction given to him by the Treasury with respect to—

- (a) the disposal of property or rights transferred to him by a transfer authorised by this section; or
- (b) the exercise of any other right attached to, or arising in respect of, such property;

and (in a case where there is no applicable direction) the Secretary of State must not dispose of or exercise any property or rights with respect to which he may be given a direction except with the consent of the Treasury.

(6) In this section “the Nuclear Liabilities Investment Portfolio” means property and rights to which BNFL is entitled and which appear to the Secretary of State, from BNFL’s published accounts, to represent assets held by BNFL for the purpose of being able to meet costs or liabilities for which the NDA has a financial responsibility under Chapter 1 of this Part.

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#### Commencement Information

**I43** S. 42 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *Extinguishment of undertakings and tax losses*

#### 43 Undertakings given by the Secretary of State

- (1) This section applies where—
- (a) the Secretary of State has given an undertaking to a publicly owned company to make payments to that company or a subsidiary of that company; and
  - (b) it appears to him that (apart from section 21(8)) the financial responsibilities of the NDA under Chapter 1 of this Part would make it unnecessary for those amounts to be paid.
- (2) The Secretary of State may extinguish the undertaking, and every liability of his that has arisen under the undertaking, with effect from such date as he may notify to the other parties to it.
- (3) Nothing in this section authorises the extinguishment of an undertaking at a time when the company to whom payments would fall to be made under the undertaking is not publicly owned.
- (4) The extinguishment of an undertaking under this section shall neither require nor enable any sum to be brought into account in any person's case for the purposes of corporation tax.
- (5) In this section “undertaking” includes any agreement in which an undertaking to make payments is contained.

#### Commencement Information

**I44** S. 43 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 44 Extinguishment of BNFL losses for tax purposes

- (1) In relation to accounting periods beginning on or after the trigger date, all the relevant losses of every BNFL company arising before that date shall be treated for the purposes of corporation tax as extinguished.
- (2) The following are relevant losses of a BNFL company for the purposes of this section—
- (a) losses incurred by the company in a trade;
  - (b) losses incurred by the company in a transaction a profit or gain from which would have been chargeable to tax under Case VI of Schedule D;
  - (c) excesses to be carried forward in the company's case under [F1section 75(9)] of the Income and Corporation Taxes Act 1988 (c. 1);
  - (d) Schedule A losses (within the meaning of section 392A of that Act) incurred by the company;

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- (e) losses to be carried forward in the company's case under section 392B(1) of that Act;
  - (f) any tax loss of the company falling within section 400(2)(d) of that Act;
  - (g) allowable losses (within the meaning of section 8 of the Taxation of Chargeable Gains Act 1992 (c. 12)) that have accrued to the company;
  - (h) deficits of the kind mentioned in subsection (1) of section 83 of the Finance Act 1996 (c. 8) to the extent that they are to be carried forward in the company's case under subsection (3A) of that section;
  - (i) excesses of the kind mentioned in section 260 of the Capital Allowances Act 2001 (c. 2) in relation to the company;
  - (j) losses of the kind mentioned in paragraph 35(1) of Schedule 29 to the Finance Act 2002 (c. 23) incurred by the company;
  - (k) unrelieved surplus advance corporation tax of the company (within the meaning of section 32 of the Finance Act 1998 (c. 36)).
- (3) This section applies to the relevant losses of a BNFL company only if it is publicly owned on the day before the trigger date.
- (4) In this section—
- “BNFL company” means—
    - (a) BNFL;
    - (b) a company that is a 75 per cent subsidiary of BNFL at a time during the qualifying period; or
    - (c) a company (other than BNFL) that is a 75 per cent subsidiary of a BNFL parent company at a time during the qualifying period;
  - “BNFL parent company” means a company of which BNFL is a 75 per cent subsidiary;
  - “qualifying period” means the period beginning with 16th March 2004 and ending with the trigger date;
  - “trigger date” means whichever is the earlier of the following—
    - (a) the date of the first occasion on which section 21 operates so as to confer financial responsibilities on the NDA in relation to an installation, site or facility the person with control of which is a BNFL company that is publicly owned; and
    - (b) the date of the first occasion on which a transfer takes effect which is a transfer to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by section 39 of property, rights or liabilities of a BNFL company.
- (5) This section is to be construed as one with the Corporation Tax Acts.

#### Textual Amendments

- F1** Words in s. 44(2)(c) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 72(2)**

#### Commencement Information

- I45** S. 44 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), **Sch. 1**

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### *Provisions relating to transfers*

#### **45 Further provision applying to transferee companies**

- (1) Schedule 7 (which makes provision about the finances and accounts of publicly controlled companies to which property, rights and liabilities are transferred) has effect.
- (2) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (other disqualifying offices), insert (at the appropriate place)— “ Director of a publicly controlled company (within the meaning of Chapter 2 of Part 1 of the Energy Act 2004) to which transfers have been made in accordance with provisions of nuclear transfer schemes authorised by that Chapter. ”;

and the corresponding amendment shall also be made in Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25).

#### **Commencement Information**

**I46** S. 45 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### **46 Pensions**

Schedule 8 (which makes provision about pensions in connection with transfers affecting nuclear undertakings) has effect.

#### **Commencement Information**

**I47** S. 46 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### **47 Taxation**

Schedule 9 (which makes taxation provision in relation to nuclear transfer schemes) has effect.

#### **Commencement Information**

**I48** S. 47 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### **48 Supplementary powers of the Secretary of State, the NDA and the UKAEA**

- (1) The Secretary of State shall have power to enter into agreements for the purpose of accepting or imposing such contractual obligations as he thinks fit with respect to—
  - (a) nuclear transfer schemes and proposals for such schemes;
  - (b) anything connected with such a scheme or proposal; or
  - (c) the exercise of powers conferred on the Secretary of State or any other person by or under this Chapter.

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- (2) The NDA and the UKAEA shall each have power to enter into agreements for the purpose of accepting or imposing such contractual obligations as it or they think fit with respect to—
  - (a) nuclear transfer schemes and proposals for such schemes;
  - (b) anything connected with such a scheme or proposal; or
  - (c) the exercise of powers conferred on it or them, or any other person, by or under this Chapter.
- (3) The NDA and the UKAEA shall also each have power to do anything else which, in its or their opinion, is appropriate for facilitating—
  - (a) a transfer which is or is proposed to be effected in accordance with a nuclear transfer scheme; or
  - (b) any other transfer of property, rights or liabilities of the NDA or (as the case may be) the UKAEA which is or is proposed to be effected for purposes connected with the carrying out by any person of any functions conferred on that person by or under this Part.
- (4) Agreements entered into in exercise of the powers conferred by subsection (1) or (2) may, in particular, include provision for the making of payments (whether by way of consideration or otherwise)—
  - (a) to the Secretary of State, or
  - (b) to the NDA or the UKAEA,in respect of anything transferred or created in accordance with a nuclear transfer scheme.
- (5) The consent of the Treasury is required for the Secretary of State or the UKAEA to enter into an agreement in exercise of those powers.
- (6) The consent of the Secretary of State is also required for the UKAEA to enter into an agreement in exercise of those powers.
- (7) Before making any disposal of securities of a company in a case in which—
  - (a) the disposal is made in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the NDA,
  - (b) those arrangements are not arrangements to which the Secretary of State has consented under subsection (6), and
  - (c) in the opinion of the UKAEA, the disposal is one which they would not have power to make but for section 1(2) of the Atomic Energy (Miscellaneous Provisions) Act 1981 (c. 48) (disposal otherwise inconsistent with UKAEA functions),the UKAEA must consult the Secretary of State.
- (8) Subsection (4) of section 1 of the Atomic Energy (Miscellaneous Provisions) Act 1981 (which limits the cases in which the UKAEA may make share disposals that are inconsistent with its functions) shall not apply—
  - (a) to anything done by the UKAEA in exercise of powers conferred on them by or under this Chapter; or
  - (b) to any disposal of securities in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the NDA.

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- (9) Sums received by the Secretary of State in pursuance of an agreement under this section must be paid into the Consolidated Fund.
- (10) The powers conferred on the Secretary of State, the NDA and the UKAEA by this section—
- (a) are in addition to their powers apart from this section; and
  - (b) are to be disregarded in determining the extent of those powers.

**Commencement Information**

**I49** S. 48 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Supplementary provisions of Chapter 2 of Part 1*

**49 Duty to assist the Secretary of State**

- (1) This section applies where the Secretary of State proposes to make a nuclear transfer scheme.
- (2) The transferor shall have the duty, within such period as the Secretary of State may allow—
- (a) to provide the Secretary of State, and
  - (b) to secure, so far as practicable, that its subsidiaries provide the Secretary of State,
- with all such information and other assistance as the Secretary of State may require for the purposes of, or in connection with, the making of the scheme.
- (3) The duties of the transferor under this section are duties owed to the Secretary of State.
- (4) Those duties are to be enforceable by the Secretary of State in civil proceedings—
- (a) for an injunction;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.
- (5) In this section “the transferor”, in relation to a nuclear transfer scheme, means a person from whom it is proposed that property, rights or liabilities are transferred by the scheme.

**Commencement Information**

**I50** S. 49 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**50 Interpretation of Chapter 2 of Part 1**

- (1) In this Chapter —
- “nuclear company” means a body corporate with control of a designated installation, designated site or designated facility;
- “publicly controlled” is to be construed in accordance with subsection (3).



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- (2) Expressions used in this Chapter and in Chapter 1 of this Part have the same meanings in this Chapter as in that Chapter.
- (3) For the purposes of this Chapter a body corporate is a publicly controlled company if it is a company limited by shares that is either publicly owned or is otherwise a company in which—
- (a) a person specified in subsection (4) holds a majority of the voting rights; or
  - (b) two or more persons so specified, taken together, hold a majority of the voting rights.
- (4) The persons mentioned in subsection (3) are—
- (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) the NDA;
  - (d) the UKAEA;
  - (e) a publicly owned company; or
  - (f) a nominee of a person falling within paragraphs (a) to (e).
- (5) In this section “company” has the same meaning as in the Companies Act 1985 (c. 6).

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**Commencement Information**

**I51** S. 50 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## CHAPTER 3

### CIVIL NUCLEAR CONSTABULARY

#### *Civil Nuclear Police Authority*

#### **51 The Civil Nuclear Police Authority**

- (1) There shall be a body corporate to be known as the Civil Nuclear Police Authority (“the Police Authority”).
- (2) Schedule 10 (which makes further provision about the Police Authority) has effect.

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**Commencement Information**

**I52** S. 51(1) in force at 1.3.2005 by [S.I. 2005/442](#), art. 2(1), [Sch. 1](#)

**I53** S. 51(2) in force at 1.3.2005 for specified purposes by [S.I. 2005/442](#), art. 2(1), [Sch. 1](#)

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## Civil Nuclear Constabulary

### 52 The Civil Nuclear Constabulary

- (1) It shall be the function of the Police Authority to secure the maintenance of an efficient and effective constabulary, to be known as the Civil Nuclear Constabulary (“the Constabulary”).
- (2) The primary function of the Constabulary is—
  - (a) the protection of licensed nuclear sites which are not used wholly or mainly for defence purposes; and
  - (b) safeguarding nuclear material in Great Britain and elsewhere.
- (3) The Police Authority may allocate to the Constabulary the function of carrying on such other activities relating to, or connected with, the security of—
  - (a) nuclear material, or
  - (b) sites where such material is being, has been or is to be used, processed or stored,
 as the Police Authority thinks fit.
- (4) The Constabulary shall have the function of carrying on such other activities as may be allocated to it by the Police Authority in accordance with directions given to that Authority for the purposes of this section by the Secretary of State.
- (5) The Secretary of State may give the Police Authority directions restricting the exercise of its powers under subsection (3).
- (6) Subject to the provisions of this Chapter, the Police Authority may do anything which appears to it to be likely to facilitate the carrying out of its functions, or to be incidental to carrying them out.
- (7) Nothing in this section limits what a member of the Constabulary may do in the exercise of the powers and privileges conferred on him by section 56.

#### Commencement Information

**I54** S. 52(1)(6) in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

### 53 Chief constable and other senior officers

- (1) The Police Authority—
  - (a) must appoint a chief constable of the Constabulary and a deputy chief constable of the Constabulary; and
  - (b) may appoint one or more assistant chief constables of the Constabulary.
- (2) Before appointing the deputy chief constable or an assistant chief constable, the Police Authority must consult the chief constable.
- (3) The chief constable, the deputy chief constable and every assistant chief constable are to be members of the Constabulary.
- (4) The approval of the Secretary of State is required for the making of an appointment under this section.

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- (5) Schedule 11 (which makes provision about the removal and suspension of the chief constable and other senior officers) has effect.

#### Commencement Information

**I55** S. 53(1)(2)(4)(5) in force at 1.3.2005 by [S.I. 2005/442](#), [art. 2\(1\)](#), [Sch. 1](#)

VALID FROM 01/04/2005

#### **54** Functions of senior officers

- (1) In carrying out his functions in any financial year, the chief constable must have regard to—
- (a) the annual policing plan for that year issued by the Police Authority under paragraph 2 of Schedule 12; and
  - (b) the three-year strategy plan most recently issued by the Police Authority under paragraph 3 of that Schedule for a period that includes that year.
- (2) The deputy chief constable may perform a function of the chief constable—
- (a) while the chief constable is unable to act or unavailable;
  - (b) during a vacancy in the office of chief constable; or
  - (c) with the consent of the chief constable.
- (3) A consent for the purposes of subsection (2)(c) may be either general or specific.
- (4) The Police Authority may authorise an assistant chief constable to perform a function of the chief constable—
- (a) while both the chief constable and the deputy chief constable are unable to act or unavailable; or
  - (b) while the offices of chief constable and deputy chief constable are both vacant.
- (5) At any one time, only one person may be authorised to act under subsection (4).
- (6) No person shall be entitled by virtue of subsection (2)(a) or (b) or an authorisation under subsection (4) to act for a continuous period exceeding three months, except with the consent of the Secretary of State.

VALID FROM 01/04/2005

#### **55** Members of the Constabulary

- (1) The Police Authority may appoint persons to be members of the Constabulary.
- (2) Members of the Constabulary are to be employees of the Police Authority and (apart from the chief constable himself) under the direction and control of the chief constable.
- (3) A person appointed as a member of the Constabulary must, on appointment—

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- (a) be attested as a constable by making the required declaration before a justice of the peace in England and Wales; or
  - (b) make the required declaration before a sheriff or a justice of the peace in Scotland.
- (4) The required declaration is—
- (a) in the case of a declaration before a justice of the peace in England and Wales, the declaration required by section 29 of the Police Act 1996 (c. 16) in the case of a member of a police force maintained under that Act; and
  - (b) in the case of a declaration before a sheriff or a justice of the peace in Scotland, a declaration faithfully to execute the duties of the office of a member of the Civil Nuclear Constabulary.

VALID FROM 01/04/2005

### *Jurisdiction and powers of Constabulary*

#### **56 Jurisdiction of Constabulary**

- (1) A member of the Constabulary shall have the powers and privileges of a constable—
  - (a) at every place comprised in a relevant nuclear site; and
  - (b) everywhere within 5 kilometres of such a place.
- (2) A member of the Constabulary shall have the powers and privileges of a constable at every trans-shipment site where it appears to him expedient to be in order to safeguard nuclear material while it is at the site.
- (3) A member of the Constabulary shall have the powers and privileges of a constable at every other place where it appears to him expedient to be in order to safeguard nuclear material which is in transit.
- (4) A member of the Constabulary shall have the powers and privileges of a constable at every place where it appears to him expedient to be in order to pursue or to detain a person whom he reasonably believes—
  - (a) to have unlawfully removed or interfered with nuclear material being safeguarded by members of the Constabulary; or
  - (b) to have attempted to do so.
- (5) A member of the Constabulary shall have the powers and privileges of a constable throughout Great Britain for purposes connected with—
  - (a) a place mentioned in subsections (1) to (4);
  - (b) anything that he or another member of the Constabulary is proposing to do, or has done, at such a place; or
  - (c) anything which he reasonably believes to have been done, or to be likely to be done, by another person at or in relation to such a place.
- (6) This section has effect in United Kingdom waters adjacent to Great Britain as it has effect in Great Britain, but as if references to the powers and privileges of a constable were references to the powers and privileges of a constable in the nearest part of Great Britain.

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(7) In this section—

“detain”, in relation to a person, includes transferring him to the custody of another or to a place where he may be held in custody;

“relevant nuclear site” means a licensed nuclear site other than a designated defence site;

“trans-shipment site” means a place which a member of the Constabulary reasonably believes to be—

(a) a place where a consignment of nuclear material in transit is trans-shipped or stored; or

(b) a place to which a consignment of nuclear material may be brought to be trans-shipped or stored while it is in transit;

“United Kingdom waters” means waters within the seaward limits of the territorial sea;

and nuclear material is “in transit” for the purposes of this section if it is being carried (or is being trans-shipped or stored incidentally to carriage) before its delivery at its final destination.

(8) In subsection (7) “designated defence site” means a site designated by order made by the Secretary of State as a site which appears to him to be used wholly or mainly for defence purposes.

(9) An order under subsection (8) must be laid before Parliament after being made.

(10) Where an order designating a site for the purposes of section 76(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (jurisdiction of Atomic Energy Authority special constables) is in force immediately before the commencement of this section, that order shall have effect after the commencement of this section as an order made under and for the purposes of subsection (8).

## **57 Stop and search under Terrorism Act 2000**

(1) The Terrorism Act 2000 (c. 11) is amended as follows.

(2) In section 44 (authorisation to stop and search in connection with terrorism)—

(a) after subsection (4B) insert—

“(4BA) In a case in which the specified area or place is a place in which members of the Civil Nuclear Constabulary have the powers and privileges of a constable, an authorisation may also be given by a member of that Constabulary who is of at least the rank of assistant chief constable.”;

(b) in subsection (4C), after paragraph (b) insert “or

(c) a member of the Civil Nuclear Constabulary.”.

(3) In section 46 (duration of authorisation), after subsection (2) insert—

“(2A) An authorisation under section 44(4BA) does not have effect except in relation to times when the specified area or place is a place where members of the Civil Nuclear Constabulary have the powers and privileges of a constable.”

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VALID FROM 01/04/2005

### *Administration of Constabulary*

#### **58 Government, administration and conditions of service**

(1) Where—

- (a) the Police Authority makes provision about the government, administration or conditions of service of the Constabulary or its members, and
- (b) the provision relates to matters which are the subject of regulations under section 50 of the Police Act 1996 (c. 16) (regulations about the government, administration and conditions of service of police forces),

the provision made by the Police Authority may differ from those regulations only so far as necessary to take account of differences relating to the structure and circumstances of the Constabulary.

(2) Before making provision about the government, administration or conditions of service of the Constabulary or its members, the Police Authority must consult—

- (a) the chief constable;
- (b) the Civil Nuclear Police Federation; and
- (c) if the proposed provision relates to members of a rank-related association, that association.

#### **59 Members of Constabulary serving with other forces**

(1) This section applies where a member of the Constabulary serves with a relevant force under arrangements made between the chief officer of that force and the chief constable.

(2) The member of the Constabulary—

- (a) shall be under the direction and control of the chief officer of the relevant force; and
- (b) shall have the same powers and privileges as a member of that force.

(3) In this section—

“chief officer” means—

- (a) a chief officer of police of a police force for a police area in Great Britain;
- (b) the Chief Constable of the Police Service of Northern Ireland;
- (c) the Director General of the National Criminal Intelligence Service;
- (d) the Director General of the National Crime Squad;
- (e) the chief constable of the British Transport Police Force; or
- (f) the chief constable of the Ministry of Defence Police;

“relevant force” means—

- (a) a police force for a police area in Great Britain;
- (b) the Police Service of Northern Ireland;
- (c) the National Criminal Intelligence Service;
- (d) the National Crime Squad;

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- (e) the British Transport Police Force; or
- (f) the Ministry of Defence Police.

## 60 Charges

- (1) A person falling within subsection (2) must pay to the Police Authority such charges (if any) in respect of services provided by the Constabulary as are—
  - (a) agreed between that person and the Police Authority; or
  - (b) in the absence of agreement, determined by the Secretary of State.
- (2) A person falls within this subsection if—
  - (a) he is the owner or occupier of a site in respect of which services are provided by the Constabulary;
  - (b) he is a person with an interest in, or with custody or control of, nuclear material in respect of which services are so provided; or
  - (c) he is a person not falling within paragraph (a) or (b) who is the recipient of services provided by the Constabulary.
- (3) The Secretary of State may pay to the Police Authority such sums as are—
  - (a) agreed between him and that Authority, or
  - (b) in the absence of agreement, determined by the Secretary of State, in respect of services provided by the Constabulary to such persons as he may determine.
- (4) The services in respect of which charges or sums may be imposed or paid under this section include—
  - (a) services which it is the duty of the Constabulary to provide; and
  - (b) services which it is the duty of the person charged to have provided.

*Supervision and inspection etc.*

VALID FROM 01/04/2005

## 61 Planning and reports

Schedule 12 (which makes provision about planning and reporting) has effect.

VALID FROM 01/04/2005

## 62 Inspection

- (1) Her Majesty's Inspectors of Constabulary must inspect the Constabulary from time to time.
- (2) Her Majesty's Inspectors of Constabulary must also inspect the Constabulary if requested to do so by the Secretary of State either—
  - (a) generally; or

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- (b) in respect of a particular matter.
- (3) Before carrying out an inspection under this section wholly or partly in Scotland, Her Majesty’s Inspectors of Constabulary must consult the Scottish inspectors—
  - (a) in the case of any inspection by virtue of subsection (1) or (2)(a), about the scope and conduct in Scotland of the proposed inspection; and
  - (b) in any other case, about its conduct in Scotland.
- (4) Following an inspection under this section, Her Majesty’s Inspectors of Constabulary must report to the Secretary of State on the efficiency and effectiveness of the Constabulary either—
  - (a) generally; or
  - (b) in the case of an inspection under subsection (2)(b), in respect of the matter to which the inspection related.
- (5) A report under subsection (4) must be in such form as the Secretary of State may direct.
- (6) The Secretary of State must arrange for every report which he receives under subsection (4) to be published in such manner as appears to him to be appropriate.
- (7) The Secretary of State may exclude from publication under subsection (6) any part of a report if, in his opinion, the publication of that part—
  - (a) would be against the interests of national security; or
  - (b) might jeopardise the safety of any person.
- (8) The Secretary of State must send a copy of the published report—
  - (a) to the Police Authority; and
  - (b) to the chief constable.
- (9) The Police Authority must pay to the Secretary of State such amounts as he may determine in respect of an inspection carried out under this section.
- (10) The Secretary of State must pay sums received by him under subsection (9) into the Consolidated Fund.
- (11) In this section “the Scottish inspectors” means the inspectors of constabulary appointed under section 33(1) of the Police (Scotland) Act 1967 (c. 77).

### 63 Supervision by Secretary of State

- (1) The Police Authority must comply with directions given by the Secretary of State under Schedule 13.
- (2) The Secretary of State must exercise his powers under this Chapter in such manner, and to such extent, as appears to him best calculated to promote the efficiency and effectiveness of the Constabulary.
- (3) The Police Authority must pay to the Secretary of State such amounts as he may determine in respect of things done by him for or in relation to the Authority or its employees in connection with matters relating to security.
- (4) The Secretary of State must pay sums received by him under subsection (3) into the Consolidated Fund.



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### Commencement Information

**I56** S. 63 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 01/04/2005

### *Rights etc. of members of the Constabulary*

#### **64 Civil Nuclear Police Federation**

- (1) The Secretary of State may approve a body (whether corporate or unincorporate) as the body approved to carry out the functions conferred by this section.
- (2) The body approved by the Secretary of State shall be known as the Civil Nuclear Police Federation.
- (3) The function of the Civil Nuclear Police Federation shall be to represent members of the Constabulary (other than senior officers) in all matters affecting their welfare and efficiency.
- (4) Those matters do not include—
  - (a) the promotion in rank of particular individuals; or
  - (b) (except to the extent provided in subsection (5)) discipline matters affecting particular individuals.
- (5) The Civil Nuclear Police Federation may represent a member of the Constabulary (other than a senior officer)—
  - (a) at disciplinary proceedings conducted in accordance with arrangements made by the Police Authority; or
  - (b) on an appeal under any such arrangements from a decision in such proceedings.
- (6) But representation under subsection (5) must comply with any restrictions imposed by section 66.
- (7) Except so far as otherwise authorised by the Secretary of State, the Civil Nuclear Police Federation must be entirely independent of, and unassociated with, bodies and other persons who are without appropriate police connections.
- (8) But it may employ in an administrative or advisory capacity persons who are without appropriate police connections.
- (9) An authorisation for the purposes of subsection (7)—
  - (a) may be given either conditionally or unconditionally; and
  - (b) may be varied or revoked at any time.
- (10) Only the following have appropriate police connections for the purposes of this section—
  - (a) persons within the service of the Constabulary, of the Ministry of Defence Police, of the British Transport Police Force, of a police force for a police area in Great Britain or of the Police Service of Northern Ireland;

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- (b) persons not falling within paragraph (a) who are members of or employed by the Police Authority;
- (c) a federation referred to in section 59 of the Police Act 1996 (c. 16), section 3 of the Ministry of Defence Police Act 1987 (c. 4) or section 39 of the Railways and Transport Safety Act 2003 (c. 20) (police federations);
- (d) the Police Association for Northern Ireland;
- (e) a rank-related association;
- (f) a body recognised under, and for the purposes specified in, section 64(5) of the Police Act 1996 or section 35(4) of the Police (Northern Ireland) Act 1998 (c. 32) (recognition of other bodies for trade union purposes).

## 65 Rank-related associations

- (1) The Secretary of State may approve one or more bodies (whether corporate or unincorporate) as bodies approved to carry out the functions conferred by this section.
- (2) A body approved by the Secretary of State under this section shall be known as a rank-related association.
- (3) The function of a rank-related association shall be to represent, in all matters affecting their welfare and efficiency, members of the Constabulary who—
  - (a) are not members of the Civil Nuclear Police Federation or of another rank-related association; and
  - (b) hold such ranks as may be specified in the approval given for the purposes of this section by the Secretary of State.
- (4) Those matters do not include—
  - (a) the promotion in rank of particular individuals; or
  - (b) (except to the extent provided in subsection (5)) discipline matters affecting particular individuals.
- (5) A rank-related association may represent a member of the association—
  - (a) at disciplinary proceedings conducted in accordance with arrangements made by the Police Authority; or
  - (b) on an appeal under any such arrangements from a decision in such proceedings.
- (6) But representation under subsection (5) must comply with any restrictions imposed by section 66.
- (7) Except so far as otherwise authorised by the Secretary of State, a rank-related association must be entirely independent of, and unassociated with, bodies and other persons who are without appropriate police connections.
- (8) But it may employ in an administrative or advisory capacity persons who are without appropriate police connections.
- (9) An authorisation for the purposes of subsection (7)—
  - (a) may be given either conditionally or unconditionally; and
  - (b) may be varied or revoked at any time.

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- (10) In relation to a rank-related association, only the following have appropriate police connections for the purposes of this section—
- (a) persons within the service of the Constabulary, of the Ministry of Defence Police, of the British Transport Police Force, of a police force for a police area in Great Britain or of the Police Service of Northern Ireland;
  - (b) persons not falling within paragraph (a) who are members of or employed by the Police Authority;
  - (c) the Civil Nuclear Police Federation;
  - (d) another rank-related association;
  - (e) a federation referred to in section 59 of the Police Act 1996 (c. 16), section 3 of the Ministry of Defence Police Act 1987 (c. 4) or section 39 of the Railways and Transport Safety Act 2003 (c. 20) (police federations);
  - (f) the Police Association for Northern Ireland;
  - (g) a body recognised under, and for the purposes specified in, section 64(5) of the Police Act 1996 or section 35(4) of the Police (Northern Ireland) Act 1998 (c. 32) (recognition of other bodies for trade union purposes).

## **66 Representation at certain disciplinary proceedings**

- (1) This section applies where disciplinary proceedings conducted in accordance with arrangements made by the Police Authority may lead to a member of the Constabulary who is not a senior officer being—
- (a) dismissed;
  - (b) required to resign; or
  - (c) reduced in rank.
- (2) The member of the Constabulary must be given an opportunity to elect to be legally represented—
- (a) in those proceedings; and
  - (b) on any appeal under the arrangements.
- (3) If he so elects, he may be represented, at his option, by counsel or by a solicitor.
- (4) The member of the Constabulary, if he is not legally represented, may be represented in the proceedings or on an appeal only by a person who is—
- (a) a member of the Constabulary;
  - (b) a member of a police force maintained under the Police Act 1996 (c. 16);
  - (c) a constable of a police force maintained under the Police (Scotland) Act 1967 (c. 77);
  - (d) a constable of the British Transport Police Force; or
  - (e) a member of the Ministry of Defence Police.

## **67 Trade union membership**

- (1) A member of the Constabulary must not be a member of—
- (a) a trade union; or
  - (b) an association whose objects are or include controlling or influencing the pay, pensions or conditions of service of members of the Constabulary.
- (2) Subsection (1) does not prevent a member of the Constabulary—

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- (a) from being a member of the Civil Nuclear Police Federation;
  - (b) from being a member of a rank-related association; or
  - (c) with the consent of the chief constable, from continuing to be a member of a trade union to which he belonged before becoming a member of the Constabulary.
- (3) In this section “trade union” has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

*Supplementary provisions of Chapter 3 of Part 1*

VALID FROM 01/04/2005

**68 Application of offences etc. applying to constables**

- (1) The references in section 89(1) and (2) of the Police Act 1996 and section 41(1) and (2) of the Police (Scotland) Act 1967 (assaults on constables) to a constable in the execution of his duty shall have effect as if they included references to a member of the Constabulary who—
- (a) is exercising any of the powers or privileges conferred on him by section 56; or
  - (b) is otherwise performing his duties under the direction and control of the chief constable or as an employee of the Police Authority.
- (2) Section 90 of the Police Act 1996 (impersonation of member of a police force) shall have effect as if the references to a member of a police force included references to a member of the Constabulary.
- (3) In section 91 of the Police Act 1996 (causing disaffection), for subsection (2) substitute—
- “(2) This section applies in the case of—
- (a) special constables appointed for a police area,
  - (b) members of the Civil Nuclear Constabulary, and
  - (c) members of the British Transport Police Force,
- as it applies in the case of members of a police force.”
- (4) In section 42 of the Police (Scotland) Act 1967 (c. 77) (causing disaffection), after subsection (2) insert—
- “(3) In this section—
- (a) references to the constables of any police force include references to the members of the Civil Nuclear Constabulary; and
  - (b) references to a constable include references to a member of that Constabulary.”
- (5) In section 43 of the Police (Scotland) Act 1967 (impersonation of police)—
- (a) in subsection (1)(b) (wearing a police uniform without permission), after “without” insert “ being a member of the Civil Nuclear Constabulary or having ”; and

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- (b) in subsection (3), after “police authority” insert “ or by the Civil Nuclear Police Authority ”.
- (6) After subsection (3) of that section insert—
- “(3A) In its application to articles of the uniform of the Civil Nuclear Constabulary, subsection (1)(b) has effect as if for the words “or having the permission of the police authority for the police area in which he is” there were substituted the words “ and in circumstances where it gives him an appearance so nearly resembling that of a constable as to be calculated to deceive ”.
- (3B) For the purposes of this section—
- (a) “constable” includes a member of the Civil Nuclear Constabulary; and
- (b) any reference to “police” includes a reference to that Constabulary.”
- (7) In any enactment—
- (a) references to a person’s being in the custody of a constable, or to his being detained in the charge of a constable, include references to his being detained by a member of the Constabulary in the exercise of any of the powers or privileges conferred on him by section 56; and
- (b) references to a person’s accompanying a constable include references to his accompanying a member of the Constabulary.

## 69 Minor amendments relating to the Constabulary

- (1) Schedule 14 (which contains minor amendments relating to the Constabulary) has effect.
- (2) The Secretary of State may by order make such modifications of subordinate legislation as appear to him to be appropriate in consequence of any provision of this Chapter.
- (3) Orders under subsection (2) are subject to the negative resolution procedure.

### Commencement Information

**I57** S. 69(1) in force at 1.3.2005 for specified purposes by S.I. 2005/442, art. 2(1), Sch. 1

**I58** S. 69(2)(3) in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 01/04/2005

## 70 Nuclear transfer scheme for UKAEA Constabulary

- (1) The Secretary of State must make a nuclear transfer scheme providing for the transfer to the Police Authority of—
- (a) the employees of the UKAEA who are members of the UKAEA Constabulary;
- (b) such other persons employed by the UKAEA for purposes connected with that Constabulary as he considers appropriate;

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- (c) such property held by the UKAEA for purposes connected with the activities of members of the UKAEA Constabulary as he considers appropriate; and
  - (d) such rights and liabilities of the UKAEA relating to any of those activities, or to any such property, as he considers appropriate.
- (2) The nuclear transfer scheme that provides for the transfer of members of the UKAEA Constabulary to the Police Authority must provide for the transfer to the Police Authority, at the same time, of everyone who immediately before that time is employed by the UKAEA exclusively for purposes connected with that Constabulary.
- (3) Chapter 2 of this Part shall have effect as if the nuclear transfer scheme required by this section were a scheme authorised by section 39 but did not require the consent of the Police Authority to any of its provisions.
- (4) From the date on which the nuclear transfer scheme required by this section comes into force, the members of the UKAEA Constabulary who are transferred by the scheme shall hold office as members of the Constabulary as if they had—
- (a) been appointed by the Police Authority in accordance with section 55; and
  - (b) on appointment made the declaration required by that section.
- (5) In this section “members of the UKAEA Constabulary”, in relation to a nuclear transfer scheme, means persons who, on the date on which the scheme comes into force, are special constables appointed on the nomination of the UKAEA under section 3 of the Special Constables Act 1923 (c. 11).

## 71 Interpretation of Chapter 3 of Part 1

- (1) In this Chapter—
- “chief constable” means the chief constable of the Constabulary;
  - “the Civil Nuclear Police Federation” is to be construed in accordance with section 64(2);
  - “the Constabulary” means the Civil Nuclear Constabulary;
  - “licensed nuclear site” means a site in respect of which a nuclear site licence is or is required to be in force;
  - “nuclear material” means—
    - (a) any fissile material in the form of—
      - (i) uranium metal, alloy or chemical compound; or
      - (ii) plutonium metal, alloy or chemical compound;
    - (b) any other fissile material prescribed by regulations made by the Secretary of State;
  - “the Police Authority” means the Civil Nuclear Police Authority;
  - “rank-related association” is to be construed in accordance with section 65(2);
  - “senior officer” means the chief constable or the deputy chief constable or an assistant chief constable of the Constabulary.
- (2) References in this Chapter to the functions of the Police Authority include references to securing that the functions of the Constabulary are carried out.
- (3) Any power of the Secretary of State under this Chapter to give directions—

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- (a) restricting the exercise by the Police Authority of its powers,
- (b) requiring functions to be carried out or objectives to be met by the Constabulary or the Police Authority, or
- (c) imposing obligations on the Police Authority or any of its members or employees,

includes power to impose restrictions, confer functions, require objectives to be met or impose obligations at or in relation to places outside Great Britain.

- (4) Regulations under subsection (1) are subject to the negative resolution procedure.
- (5) Where regulations under subsection (7) of section 76 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (jurisdiction of Atomic Energy Authority special constables) prescribing material to be treated as nuclear material for the purposes of that section are in force immediately before the commencement of this section, those regulations shall have effect after the commencement of this section as regulations made under and for the purposes of subsection (1).

#### Commencement Information

**I59** S. 71 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

## CHAPTER 4

### AUTHORISATIONS RELATING TO RADIOACTIVE WASTE

#### 72 Transfer of authorisations

After section 16 of the 1993 Act (grant of authorisations) insert—

##### “16A Transfer of authorisations

- (1) This section applies where—
  - (a) a person (“the transferor”) holds an authorisation granted under section 13 in respect of the disposal of radioactive waste on or from premises situated on a nuclear site; and
  - (b) an application is made under this section for a transfer (in whole or in part) of that authorisation to another person (“the transferee”).
- (2) An application under this section is one which—
  - (a) is made to the authorising authority jointly by the transferor and the transferee;
  - (b) is accompanied by the appropriate amount; and
  - (c) in the case of an application for a transfer relating to part only of the premises, identifies the part in question.
- (3) The appropriate amount for the purposes of subsection (2) is—
  - (a) if the application is made to the appropriate Agency, the amount of the charge (if any) that is prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; and
  - (b) if it is made to the chief inspector, the prescribed fee.

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- (4) The authorising authority must, on receipt of the application (but subject to directions under section 25 and to subsection (6)), send a copy of the application to every local authority in whose area radioactive waste may be disposed of under the authorisation to which the application relates.
- (5) Before granting the application, the authorising authority must (subject to subsection (6)) consult everyone whom it would have been required to consult under section 16(4A) and (5) if—
  - (a) the transferee had applied for the grant of the authorisation that he would hold were the application to be granted; and
  - (b) in the case of a partial transfer, the transferor had applied for the grant (in place of his existing authorisation) of the authorisation he would hold in those circumstances.
- (6) The authorising authority may proceed with the application without—
  - (a) sending a copy of the application to a local authority mentioned in subsection (4), or
  - (b) consulting an authority or body mentioned in section 16(5) about the proposed transfer,
 if it appears to the authorising authority that arrangements for the disposal of radioactive waste are unlikely to be changed, as a result of the transfer, in a way that would be of interest to that authority or body.
- (7) The authorising authority may grant the application if, and only if, it is satisfied—
  - (a) that the transferee has or will have operational control over the disposals to which the transferred authorisation will relate;
  - (b) that he is able and willing to ensure compliance with the limitations and conditions of the authorisation that he will hold if the application is granted; and
  - (c) that no other grounds exist on which it would be reasonable to refuse to grant the application.
- (8) Where the authorising authority grants the application, it must—
  - (a) fix the date from which the transfer applied for is to have effect;
  - (b) furnish the transferee with a certificate containing all material particulars of the authorisation he holds as a result of the transfer;
  - (c) in the case of a partial transfer, furnish the transferor with a similar certificate as respects the authorisation he holds as a result of the transfer; and
  - (d) subject to directions under section 25, send a copy of the certificate furnished to the transferee, and of any certificate furnished to the transferor—
    - (i) to every local authority in whose area radioactive waste may be disposed of under the authorisation to which the certificate relates; and
    - (ii) to every person consulted about the transfer under so much of subsection (5) as requires consultation in accordance with section 16(5).



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- (9) The time fixed as the time from which the transfer is to have effect must be not less than twenty-eight days after the day (if any) on which the authorising authority, when it fixes that time, expects copies of the certificates mentioned in paragraph (d) of subsection (8) to be sent out in accordance with that paragraph.
- (10) Subsection (9) does not apply if, in the opinion of the authorising authority, it is necessary for the transfer to have immediate effect or otherwise to be expedited.
- (11) In this section “authorising authority”—
- (a) in relation to an authorisation having effect in Great Britain, means the appropriate Agency; and
  - (b) in relation to an authorisation having effect in Northern Ireland, means the chief inspector.”

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**Commencement Information**

**I60** S. 72 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, [Sch.](#)

### 73 Applications for variation of authorisations

In section 17 of the 1993 Act (revocation and variation of authorisations), after subsection (2) insert—

“(2ZA) The powers of the appropriate Agency and of the chief inspector under this section are exercisable with or without the making of an application by the person holding the authorisation.

(2ZB) But where an application for the variation of an authorisation is made by that person, it must be accompanied—

- (a) in the case of an application made to the appropriate Agency, by the charge (if any) that is prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; and
- (b) in the case of an application to the chief inspector, by the prescribed fee.”

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**Commencement Information**

**I61** S. 73 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, [Sch.](#)

### 74 Periodic reviews of authorisations

After section 17 of the 1993 Act insert—

“**17A Review of authorisations**

- (1) The authorising authority—
- (a) must carry out periodic reviews of the limitations and conditions attached to each authorisation under section 13 or 14; and

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- (b) may, at any other time, carry out any such additional review of the limitations and conditions attached to an authorisation under either of those sections as it thinks fit.

(2) In this section—

“the authorising authority”—

(a) in relation to an authorisation having effect in Great Britain, means the appropriate Agency; and

(b) in relation to an authorisation having effect in Northern Ireland, means the chief inspector;

“periodic reviews”, in relation to an authorisation, means reviews at such regular intervals as the authorising authority thinks fit in the case of that authorisation.”

**Commencement Information**

**I62** S. 74 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

**75 Consequential amendments of the 1993 Act**

Schedule 15 (which contains further amendments of the 1993 Act in connection with the provision made by sections 72 to 74) has effect.

**Commencement Information**

**I63** S. 75 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

**CHAPTER 5**

MISCELLANEOUS PROVISIONS RELATING TO NUCLEAR INDUSTRY

**76 Amendments for giving effect to international obligations**

- (1) The Secretary of State may by order make the modifications of the enactments to which this section applies that he considers appropriate for the purpose—
- (a) of facilitating the ratification by Her Majesty’s Government in the United Kingdom of an international Protocol (whether entered into before or after the passing of this Act) that relates to liability for nuclear damage; or
- (b) of exercising an option under such a Protocol, or of facilitating the exercise of such an option.
- (2) The enactments to which this section applies are—
- (a) the 1965 Act; and
- (b) any other enactment having effect in relation to a matter to which such a Protocol relates.
- (3) The following are the only international Protocols which are to be taken for the purposes of this section to be Protocols relating to liability for nuclear damage—

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- (a) the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21st September 1988; and
  - (b) any Protocol amending the Paris Convention or the Brussels Supplementary Convention.
- (4) In this section—
- “the Brussels Supplementary Convention” means the Supplementary Convention on Third Party Liability in the Field of Nuclear Energy of 31st January 1963; and
  - “the Paris Convention” means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960.
- (5) The reference in subsection (1) to exercising an option under a Protocol is a reference to making provision the making of which, in connection with the matters to which the Protocol relates, is allowed by that Protocol.
- (6) The power under this section to modify enactments includes power to modify enactments conferring power to make subordinate legislation.
- (7) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

#### Commencement Information

**I64** S. 76 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 77 Regulation of equipment, software and information

- (1) Section 77 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (regulation of security of civil nuclear industry) is amended as follows.
- (2) In subsection (1) (matters about which security regulations may be made), after paragraph (c) insert—
- “(ca) equipment or software in the United Kingdom which—
    - (i) is capable of being used in, or in connection with, the enrichment of uranium; and
    - (ii) is in the possession or control of a person involved in uranium enrichment activities;”.
- (3) For paragraph (d) of that subsection substitute—
- “(d) sensitive nuclear information which is in the possession or control in the United Kingdom of—
    - (i) a person who is involved in activities on or in relation to a nuclear site or nuclear premises or who is proposing or likely to become so involved;
    - (ii) a person involved in uranium enrichment activities; or
    - (iii) a person who is storing, transporting or transmitting the information for or on behalf of a person falling within sub-paragraph (i) or (ii);”.
- (4) After subsection (6) insert—

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“(6A) References in this section to a person involved in uranium enrichment activities are references to a person who is or is proposing to become involved in any of the following activities (whether in the United Kingdom or elsewhere)—

- (a) the enrichment of uranium;
- (b) activities carried on with a view to, or in connection with, the enrichment of uranium;
- (c) the production, storage, transport or transmission of equipment or software for or on behalf of persons involved in uranium enrichment activities; or
- (d) activities that make it reasonable to assume that he will become involved in something mentioned in paragraphs (a) to (c).”

(5) In subsection (7) (interpretation of section)—

(a) after “this section—” insert—

““enrichment of uranium” means a treatment of uranium that increases the proportion of isotope 235 contained in the uranium;

“equipment” includes equipment that has not been assembled and its components;”

(b) in paragraph (a) of the definition of “sensitive nuclear information”, for the words from “any treatment” to “contained in the” substitute “ the enrichment of”.

**Commencement Information**

**I65** S. 77 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**78 Application of the 1965 Act to Northern Ireland**

(1) Sections 3(1A) and (6A), 4(3A) and 5(1A) of the 1965 Act (which require certain consultations in relation to nuclear site licences) shall extend to Northern Ireland.

(2) Section 27 of that Act (application of that Act to Northern Ireland) is amended as follows.

(3) For subsection (1) substitute—

“(1) In the application of this Act to Northern Ireland—

- (a) a reference to the Minister shall be construed as a reference to the Secretary of State;
- (b) sections 3(1A) and (6A), 4(3A) and 5(1A) shall have effect as if—
  - (i) for “appropriate Agency”, wherever occurring, there were substituted “ Department of the Environment in Northern Ireland ”;
  - (ii) for “Great Britain”, wherever occurring, there were substituted “ Northern Ireland ”;
  - (iii) for “Health and Safety Executive”, wherever occurring, there were substituted “ Minister ”;

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- (c) section 3(3) shall have effect as if for paragraphs (b) and (c) there were substituted—
- “(ca) the Fisheries Conservancy Board for Northern Ireland; and.””
- (4) Subsections (2) and (3) shall cease to have effect.
- (5) In subsection (5), for paragraphs (a) to (c) substitute—
- “(a) by the Minister; or  
(b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.”
- (6) Subsection (6) shall cease to have effect.

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**Commencement Information**

**I66** S. 78 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 79 Expenditure on nuclear related matters

- (1) There may be paid, out of money provided by Parliament, any expenditure incurred by the Secretary of State, with the consent of the Treasury, under or as a result of—
- (a) any option under which he or his nominee may acquire an undertaking or property from a British Energy company; or  
(b) any agreement entered into for the purpose of giving effect to the provisions of such an option, or of continuing or modifying their effect.
- (2) In this section “British Energy company” has the same meaning as in section 1 of the Electricity (Miscellaneous Provisions) Act 2003 (c. 9).

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**Commencement Information**

**I67** S. 79 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 80 Additional functions of UKAEA

- (1) The functions of the UKAEA shall include—
- (a) power to carry on such activities as they consider appropriate in connection with anything that the NDA has a responsibility for securing under this Part;  
(b) power to enter into such arrangements with the NDA or any other person as they consider appropriate for that purpose; and  
(c) power for that purpose to develop and commercially to exploit an expertise in relation to things in which the NDA requires an expertise for the purpose of carrying out its functions.
- (2) In the case of responsibilities of the NDA in relation to an installation, site or facility it is immaterial for the purposes of subsection (1) that the UKAEA is not, for the purposes of Chapter 1 of this Part, the person with control of it.
- (3) The functions of the UKAEA shall also include —

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- (a) power to manage and commercially to exploit any land or other property of theirs that is no longer required by them for or in connection with the carrying out of their other functions; and
  - (b) power to carry on a business of providing services for the administration of—
    - (i) nuclear pension schemes; and
    - (ii) such public service pension schemes as may be approved by the Secretary of State for the purposes of this subsection.
- (4) The UKAEA has power, for the purpose of carrying out its functions (whether conferred by this section or otherwise) to do all such things as appear to them to be likely to facilitate the exercise or performance of their powers and duties, or to be incidental to doing so.
- (5) The ways in which the UKAEA may carry out those functions include (by virtue of subsection (4)) carrying them out through subsidiaries and carrying them out in association with, or through arrangements with, other persons.
- (6) Subsection (5) of section 7 (things in which the NDA requires an expertise) has effect for the purposes of this section as it has effect for the purposes of subsection (4) of that section.
- (7) In this section—
- “nuclear pension scheme” means a scheme that is a nuclear pension scheme for the purposes of Schedule 8; and
  - “public service pension scheme” means a public service pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48) (see section 1) or the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (see section 1).

#### Commencement Information

**I68** S. 80 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## PART 2

### SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

#### CHAPTER 1

##### SUSTAINABLE ENERGY

### 81 Reports under section 1 of Sustainable Energy Act 2003

- (1) Section 1 of the Sustainable Energy Act 2003 (c. 30) (annual reports on progress towards sustainable energy aims) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) The report must include, in particular, all such information as the Secretary of State considers appropriate about—

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- (a) things done during the reporting period for the purposes of the development or the bringing into use of any of the energy sources or technologies mentioned in subsection (1B);
- (b) things done during that period for the purpose of ensuring the maintenance of the scientific and engineering expertise available in the United Kingdom that is necessary for the development of potential energy sources (including sources of nuclear energy); and
- (c) things done during that period for the purpose of achieving the energy efficiency aims designated under sections 2 and 3.

(1B) The energy sources and technologies referred to in subsection (1A)(a) are—

- (a) clean coal technology;
- (b) coal mine methane;
- (c) biomass;
- (d) biofuels;
- (e) fuel cells;
- (f) photovoltaics;
- (g) wave and tidal generation;
- (h) hydrogeneration;
- (i) microgeneration;
- (j) geothermal sources; and
- (k) other sources of energy, and technologies for the production of energy, the use of which would, in the opinion of the Secretary of State, cut the United Kingdom’s carbon emissions.

(1C) The references in subsection (1A) to things done during the reporting period include references to proposals of the Secretary of State published during that period.”

(3) In subsection (2) for “subsection (1)” substitute “ subsections (1) to (1C) ”.

#### **Commencement Information**

**I69** S. 81 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## **82 Microgeneration**

(1) The Secretary of State—

- (a) must prepare a strategy for the promotion of microgeneration in Great Britain; and
- (b) may from time to time revise it.

(2) The Secretary of State—

- (a) must publish the strategy within 18 months after the commencement of this section; and
- (b) if he revises it, must publish the revised strategy.

(3) In preparing or revising the strategy, the Secretary of State must consider the contribution that is capable of being made by microgeneration to—

- (a) cutting emissions of greenhouse gases in Great Britain;

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- (b) reducing the number of people living in fuel poverty in Great Britain;
  - (c) reducing the demands on transmission systems and distribution systems situated in Great Britain;
  - (d) reducing the need for those systems to be modified;
  - (e) enhancing the availability of electricity and heat for consumers in Great Britain.
- (4) Before preparing or revising the strategy, the Secretary of State must consult such persons appearing to him to represent the producers and suppliers of plant used for microgeneration, and such other persons, as he considers appropriate.
- (5) The Secretary of State must take reasonable steps to secure the implementation of the strategy in the form in which it has most recently been published.
- (6) For the purposes of this section “microgeneration” means the use for the generation of electricity or the production of heat of any plant—
- (a) which in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in subsection (7); and
  - (b) the capacity of which to generate electricity or (as the case may be) to produce heat does not exceed the capacity mentioned in subsection (8).
- (7) Those sources of energy and technologies are—
- (a) biomass;
  - (b) biofuels;
  - (c) fuel cells;
  - (d) photovoltaics;
  - (e) water (including waves and tides);
  - (f) wind;
  - (g) solar power;
  - (h) geothermal sources;
  - (i) combined heat and power systems;
  - (j) other sources of energy and technologies for the generation of electricity or the production of heat, the use of which would, in the opinion of the Secretary of State, cut emissions of greenhouse gases in Great Britain.
- (8) That capacity is—
- (a) in relation to the generation of electricity, 50 kilowatts;
  - (b) in relation to the production of heat, 45 kilowatts thermal.
- (9) In this section—
- “consumers” includes both existing and future consumers;
  - “distribution system” and “transmission system” have the same meanings as in Part 1 of the 1989 Act;
  - “fuel poverty” has the same meaning as in section 1 of the Sustainable Energy Act 2003 (c. 30);
  - “greenhouse gases” means—
- (a) carbon dioxide;
  - (b) methane;
  - (c) nitrous oxide;



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- (d) hydrofluorocarbons;
  - (e) perfluorocarbons;
  - (f) sulphur hexafluoride;
- “plant” includes any equipment, apparatus or appliance.

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**Commencement Information**

**I70** S. 82 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### **83 Sustainable development**

In each of section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (the principal objective and general duties of the Secretary of State and the Authority), in subsection (5)—

- (a) for the “and” at the end of paragraph (b) substitute—
  - “(ba) to contribute to the achievement of sustainable development; and”;
- (b) for “and shall” substitute “ and (so far as not otherwise required to do so by this subsection) shall ”.

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**Commencement Information**

**I71** S. 83 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **CHAPTER 2**

### **OFFSHORE PRODUCTION OF ENERGY**

#### *Renewable Energy Zones*

### **84 Exploitation of areas outside the territorial sea for energy production**

- (1) The rights to which this section applies shall have effect as rights belonging to Her Majesty by virtue of this section.
- (2) This section applies to the rights under Part V of the Convention that are exercisable by the United Kingdom in areas outside the territorial sea—
  - (a) with respect to the exploitation of those areas for the production of energy from water or winds;
  - (b) with respect to the exploration of such areas in that connection; or
  - (c) for other purposes connected with such exploitation.
- (3) The other purposes so connected include, in particular, the transmission, distribution and supply of electricity generated in the course of such exploitation.
- (4) Her Majesty may by Order in Council designate an area as an area within which the rights to which this section applies are exercisable (a “Renewable Energy Zone”).

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- (5) The Secretary of State may by order designate the whole or a part of a Renewable Energy Zone as an area in relation to which the Scottish Ministers are to have functions.
- (6) Orders in Council under this section, and orders under subsection (5), are subject to the negative resolution procedure.
- (7) In this section—
- “the Convention” means the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) and any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom;
- “exploration” includes the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the exploitation of an area is, in a particular case, practicable or commercially viable, or both.

**Commencement Information**

**I72** S. 84 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**85 Application of criminal law to renewable energy installations etc.**

- (1) Her Majesty may by Order in Council provide that acts and omissions which—
- (a) fall within subsection (2), and
  - (b) would, if they took place in a part of the United Kingdom, constitute an offence under the law in force in that part,
- are to be treated for the purposes of that law as taking place in that part.
- (2) An act or omission falls within this subsection if it takes place on, under or above—
- (a) a renewable energy installation situated in waters to which this section applies;
  - or
  - (b) waters to which this section applies that are within a safety zone.
- (3) Her Majesty may by Order in Council provide that a constable is to have—
- (a) on, under and above a renewable energy installation situated in waters to which this section applies, and
  - (b) on, under and above any waters to which this section applies that are within a safety zone,
- all the powers and privileges that he has in the area of the force of which he is a member.
- (4) Subsection (3) is in addition to any other enactment or any rule of law or subordinate legislation conferring a power or privilege on constables; and this section is to be disregarded in determining the extent of those other powers and privileges.
- (5) The waters to which this section applies are—
- (a) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and
  - (b) waters in a Renewable Energy Zone.

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- (6) Proceedings for anything that is an offence by virtue only of an Order in Council under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (7) In this section “subordinate legislation” includes an instrument made under an Act of the Scottish Parliament.

#### Commencement Information

**I73** S. 85 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 86 Prosecutions

- (1) Subject to subsection (2), this section applies to an offence alleged to have been committed on, under or above—
  - (a) a renewable energy installation situated in waters to which section 85 applies; or
  - (b) waters to which section 85 applies that, at the time of the alleged offence, were within a safety zone.
- (2) This section does not apply to an offence created by or under—
  - (a) the Health and Safety at Work etc. Act 1974 (c. 37);
  - (b) the Customs and Excise Acts 1979, or any enactment that has to be construed as one with those Acts or any of them;
  - (c) the Civil Aviation Act 1982 (c. 16) or any enactment that has to be construed as one with that Act;
  - (d) section 23 of the Petroleum Act 1987 (c. 12);
  - (e) the Pilotage Act 1987 (c. 21);
  - (f) section 4, 29, 35, 36, 37 or 59 of the 1989 Act, or paragraph 3 of Schedule 7 to that Act;
  - (g) the Value Added Tax Act 1994 (c. 23) or any enactment that has to be construed as one with that Act;
  - (h) the Merchant Shipping Act 1995 (c. 21);
  - (i) section 97 of this Act or Chapter 3 of this Part.
- (3) No proceedings for an offence to which this section applies shall be instituted—
  - (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) Subsection (3) does not require the consent of the Director of Public Prosecutions, or of the Director of Public Prosecutions for Northern Ireland, where the proceedings in question are proceedings for which the consent of the Attorney General, or of the Advocate General for Northern Ireland, is required apart from this section.
- (5) In relation to times before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in subsection (4) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.

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- (6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for an offence to which this section applies.

**Commencement Information**

**I74** S. 86 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**87 Application of civil law to renewable energy installations etc.**

- (1) Her Majesty may by Order in Council provide that questions arising out of—
- (a) acts or omissions taking place on, under or above a renewable energy installation situated in waters to which this section applies, or
  - (b) acts or omissions taking place on, under or above such waters in relation to a related line,
- are to be determined in accordance with the law in force in such part of the United Kingdom as may be specified in the Order.
- (2) An Order in Council under this section may also make provision for conferring jurisdiction in proceedings with respect to questions of the kind mentioned in subsection (1) on courts in one or more parts of the United Kingdom.
- (3) Jurisdiction conferred on a court by an Order in Council under this section is in addition to any jurisdiction exercisable apart from that Order by that or any other court; and this section is to be disregarded in determining the extent of any jurisdiction so exercisable.
- (4) The waters to which this section applies are—
- (a) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and
  - (b) waters in a Renewable Energy Zone.
- (5) In section 410(3) of the Communications Act 2003 (c. 21) (which enables Orders in Council under section 11 of the Petroleum Act 1998 (c. 17) to extend certain communications legislation to offshore installations), after “1998” insert “ or section 87 of the Energy Act 2004 ”.
- (6) In this section—
- “court” includes any tribunal or regulatory authority;
- “related line” means an electric line, or a part of an electric line, which—
- (a) falls within subsection (7); but
  - (b) is not an electricity interconnector (within the meaning of Part 1 of the 1989 Act).
- (7) An electric line, or a part of an electric line, falls within this subsection if it—
- (a) is used for the conveyance of electricity to or from a renewable energy installation;
  - (b) is in the course of construction at a place where it is to be so used; or
  - (c) has ceased to be so used (whether or not it is being decommissioned) and since ceasing to be so used has not been used for any other purpose.

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**Commencement Information**

**I75** S. 87 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**88 Orders in Council under ss. 85 and 87**

- (1) An Order in Council under section 85 or 87 that makes provision falling within subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament (but may by virtue of subsection (2) be subject also to the negative resolution procedure).
- (2) An Order in Council under section 85 or 87 that makes provision not falling within subsection (3) is subject to the negative resolution procedure.
- (3) Provision falls within this subsection so far as it is provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

**Commencement Information**

**I76** S. 88 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Application of 1989 Act offshore*

**89 Activities offshore requiring 1989 Act licences**

- (1) In subsection (4) of section 4 of the 1989 Act (definitions for the purposes of Part 1), after the definition of “distribute” insert—

““generate”, in relation to electricity, means generate at a relevant place;”.
- (2) After that subsection insert—

“(5) In this section—

“relevant place” means a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone; and

“system” means a system the whole or a part of which is at a relevant place; and references in this section to premises are references to premises situated at a relevant place, or at a place that is not in a Renewable Energy Zone but is in an area designated under section 1(7) of the Continental Shelf Act 1964.”
- (3) In section 6 of that Act (licences authorising supply etc.), after subsection (9) insert—

“(10) In this section “premises” has the same meaning as in section 4.”
- (4) In section 64(1) of that Act (interpretation of Part 1), after the definitions of “final order” and “provisional order” insert—

““generate”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;”.

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### Commencement Information

**I77** S. 89 in force at 1.3.2005 for specified purposes by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 19/06/2009

## 90 Modification of licence conditions for offshore transmission and distribution

- (1) If the Secretary of State considers it appropriate to do so for purposes connected with offshore transmission or offshore distribution, he may—
  - (a) modify the standard conditions of transmission licences or distribution licences;
  - (b) modify, for purposes that in relation to modifications made under paragraph (a) are incidental, consequential or transitional purposes, the conditions of a particular transmission licence or a particular distribution licence;
  - (c) modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence; and
  - (d) modify an agreement that gives effect to a code so maintained.
- (2) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (3) Subsection (2) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (4) The Secretary of State must publish every modification made by him under this section.
- (5) The publication must be in such manner as the Secretary of State considers appropriate.
- (6) Where the Secretary of State makes modifications under subsection (1)(a) of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (7) A modification under subsection (1)(b) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.
- (8) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (9) In this section—
 

“offshore distribution” means distribution within an area of offshore waters of electricity generated by a generating station in such an area;

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“offshore transmission” means transmission within an area of offshore waters of electricity generated by a generating station in such an area; and  
“offshore waters” means—

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).

(10) Expressions used in this section and in Part 1 of the 1989 Act have the same meanings in this section as in that Part.

VALID FROM 19/06/2009

## **91 Extension of transmission licences offshore**

- (1) This section applies where, at the commencement of this section, a transmission licence is in force that authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which electricity is transmitted within Great Britain, or within an area of Great Britain (the “co-ordination licence”).
- (2) The Secretary of State may make such modifications of the co-ordination licence as he considers appropriate for the purpose of applying the authorisation and conditions of the licence in relation to the transmission of electricity within one or both of the following—
  - (a) an area of the territorial sea adjacent to Great Britain; and
  - (b) an area designated under section 1(7) of the Continental Shelf Act 1964.
- (3) The modifications that may be made by the Secretary of State under subsection (2) include such modifications of the co-ordination licence (including modifications of the conditions included in it) as the Secretary of State considers appropriate for incidental, consequential or transitional purposes.
- (4) Where the Secretary of State considers it appropriate to do so for purposes that in relation to modifications made under subsection (2) are incidental or consequential purposes, he may make—
  - (a) modifications of the conditions of a particular licence (other than the co-ordination licence);
  - (b) modifications of the standard conditions of licences of any type.
- (5) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (6) Subsection (5) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (7) The Secretary of State must publish every modification made by him under this section.

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- (8) The publication must be in such manner as the Secretary of State considers appropriate.
- (9) A modification under subsection (2) or (4)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.
- (10) Where the Secretary of State makes modifications under subsection (4)(b) of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (11) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (12) Expressions used in this section and in Part 1 of the 1989 Act have the same meanings in this section as in that Part.

VALID FROM 20/05/2009

## 92 **Competitive tenders for offshore transmission licences**

After section 6B of the 1989 Act (applications for transmission licences) insert—

### **“6C Competitive tenders for offshore transmission licences**

- (1) The Authority may by regulations make such provision as appears to it to be appropriate for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom an offshore transmission licence is to be granted.
- (2) That provision may include—
  - (a) provision, in prescribed cases, for the publication of a proposal to grant an offshore transmission licence;
  - (b) provision for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (c) provision restricting the making of applications for offshore transmission licences and imposing requirements as to the period within which they must be made;
  - (d) provision for regulating the manner in which applications are considered and determined.
- (3) Regulations under this section—
  - (a) may make provision by reference to a determination by the Authority or to the opinion of the Authority as to any matter; and
  - (b) may dispense with or supplement provision made in relation to applications for transmission licences by or under section 6A or 6B above.



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- (4) The approval of the Secretary of State is required for the making of regulations under this section.
- (5) In this section—
- “offshore transmission licence” means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission; and
- “prescribed” means prescribed in or determined under regulations made by the Authority.
- (6) In subsection (5) “offshore transmission” means the transmission within an area of offshore waters of electricity generated by a generating station in such an area.
- (7) In subsection (6) “offshore waters” means—
- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964.”

### 93 Consents for generating stations offshore

- (1) In section 36(1) of the 1989 Act (consent required for construction etc. of generating stations), after “constructed” insert “ at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be ”.
- (2) Before paragraph 8 of Schedule 8 to that Act (procedure for consents under sections 36 and 37) insert—

#### “Generating stations not within areas of relevant planning authorities

- 7A (1) This paragraph applies to every case where an application for a consent under section 36 of this Act relates to—
- (a) the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or
- (b) the extension of a generating station at or to a place the whole or a part of which is not within such an area.
- (2) This Schedule shall have effect in relation to cases to which this paragraph applies with the following modifications.
- (3) In paragraph 1(1), for the words from “land to which” onwards substitute “ place to which the application relates, that is, the place where it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated. ”
- (4) Paragraph 2 does not apply where no part of the place to which the application relates is within the area of a relevant planning authority.
- (5) In paragraph 4—
- (a) in sub-paragraph (1)—
- (i) in paragraph (a), for “land” substitute “ place ”; and

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- (ii) in paragraph (b), for “in the locality” substitute “ in the area specified in or determined in accordance with regulations made by the Secretary of State ”;
  - (b) in sub-paragraph (2), for the words from “the locality” onwards substitute “ the area specified in or determined in accordance with regulations made by the Secretary of State. ”; and
  - (c) in sub-paragraph (3), for “in the locality” substitute “ who are likely to be affected by the consent applied for if it is given ”.
- (6) Paragraph 5 does not apply; but sub-paragraphs (7) to (10) apply where—
- (a) a public inquiry is to be held in accordance with paragraph 2(2) or 3(2); and
  - (b) the application for consent relates to a place a part of which is in the area of one or more relevant planning authorities.
- (7) Except in so far as the Secretary of State otherwise directs, an inquiry held in accordance with paragraph 2(2) must be confined to so much of the application as relates to land within the area of the authority by whom an objection has been made.
- (8) The Secretary of State must have regard to objections made otherwise than by the authority in question in determining whether to give a direction under sub-paragraph (7) and in determining (where he gives one) what direction to give.
- (9) The Secretary of State may direct that separate inquiries may be held in relation to any or each of the following—
- (a) so much of the application as relates to land within the area of a particular relevant planning authority;
  - (b) so much of the application as relates to anywhere that is not within the area of a relevant planning authority.
- (10) For the purposes of sub-paragraph (7) a planning authority that has made an objection is to be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as meet that objection.”
- (3) In section 36(9) of that Act (definition of extension), after “land” insert “ or area of waters ”.
- (4) The functions conferred by virtue of this section on the Secretary of State are not to be exercisable by the Scottish Ministers, except in pursuance of an Order in Council made after the passing of this Act under section 63 of the Scotland Act 1998 (c. 46).

#### Commencement Information

**I78** S. 93 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

## 94 Application of regulations under 1989 Act offshore

- (1) In section 29 of the 1989 Act (regulations relating to supply and safety), after subsection (1) insert—

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“(1A) Regulations under this section may include provision for securing the purposes mentioned in subsection (1) in relation to the territorial sea adjacent to Great Britain or any Renewable Energy Zone.”

(2) In section 30 of that Act (electrical inspectors), after subsection (3) insert—

“(3A) The regulations that may be made under this section include regulations—

- (a) imposing duties on electrical inspectors in relation to anything in the territorial sea adjacent to Great Britain or a Renewable Energy Zone; or
- (b) making any other provision authorised by this section in relation to activities carried on there.”

#### Commencement Information

**I79** S. 94 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 01/10/2005

### *Safety zones for installations*

#### **95 Safety zones around renewable energy installations**

(1) This section applies where—

- (a) there is a proposal to construct a renewable energy installation in waters subject to regulation under this section, or to extend or to decommission a renewable energy installation situated in such waters;
- (b) there is a proposal to operate a renewable energy installation on completion of its construction in such waters, or of any extension of it in such waters; or
- (c) a renewable energy installation is being constructed, extended, operated or decommissioned in such waters.

(2) If the Secretary of State considers it appropriate to do so for the purpose of securing the safety of—

- (a) the renewable energy installation or its construction, extension or decommissioning,
- (b) other installations in the vicinity of the installation or the place where it is to be constructed or extended,
- (c) individuals in or on the installation or other installations in that vicinity, or
- (d) vessels in that vicinity or individuals on such vessels,

he may issue a notice declaring that such areas as are specified or described in the notice are to be safety zones for the purposes of this Chapter.

(3) The power of the Secretary of State to issue a notice under this section shall be exercisable by him either—

- (a) on an application made to him for the purpose by any person; or
- (b) where no such application is made, on his own initiative.

(4) Before issuing a notice under this section which relates, wholly or partly, to—

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- (a) an area of Scottish waters, or
  - (b) an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (5) An area may be declared to be a safety zone only if it is an area of waters around or adjacent to a place where a renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; but a safety zone may extend to waters outside the waters subject to regulation under this section.
- (6) A notice under this section—
- (a) must identify the renewable energy installation, or proposed renewable energy installation, by reference to which it is issued;
  - (b) must specify the date on which it is to come into force, or the means by which that date is to be determined;
  - (c) may contain provision by virtue of which the area of a safety zone varies from time to time by reference to factors specified in, or determinations made in accordance with, the provisions of the notice;
  - (d) may contain provision imposing prohibitions on the carrying on in a safety zone of activities specified in, or determined in accordance with, the provisions of the notice, or for the imposition of such prohibitions;
  - (e) may contain provision granting permission for vessels to enter or remain in a safety zone or for persons to carry on prohibited activities, or for the grant of such permissions;
  - (f) may confer discretions, with respect to the making of determinations for the purposes of such a notice, on such persons as may be specified or described in the notice;
  - (g) may modify or revoke a previous notice; and
  - (h) may make different provision in relation to different cases.
- (7) Where a notice is issued under this section or a determination is made for the purposes of such a notice, the Secretary of State must either—
- (a) himself publish the notice or determination in such manner as he considers appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or
  - (b) secure that it is published in that manner—
    - (i) by the applicant for the notice; or
    - (ii) in the case of a determination made by a person other than the Secretary of State, by the applicant for the notice or by the person who made the determination.
- (8) References in this section to a determination for the purposes of a notice include references to a determination made for those purposes in accordance with the notice, or with regulations under section 96—
- (a) to impose a prohibition;
  - (b) to grant a permission; or
  - (c) to impose conditions in relation to a permission.
- (9) Schedule 16 (which makes provision about the procedure for the declaration of safety zones) has effect.
- (10) The waters subject to regulation under this section are—

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- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters within a Renewable Energy Zone.

## **96 Prohibited activities in safety zones**

- (1) A vessel is not to enter or remain in a safety zone except where permission for it to do so is granted—
  - (a) by or in accordance with provision contained in a notice under section 95; or
  - (b) by or in accordance with provision contained in regulations made by the Secretary of State.
- (2) A person must not carry on an activity wholly or partly in a safety zone if his doing so is prohibited by or in accordance with provision contained in a notice under section 95.
- (3) Subsection (2) does not apply to the extent that carrying on the activity is permitted—
  - (a) by or in accordance with provision contained in such a notice; or
  - (b) by or in accordance with provision contained in regulations made by the Secretary of State.
- (4) The provision that may be made with respect to permissions for the purposes of this section includes—
  - (a) provision for the permissions to apply in relation only to such times and such periods as may be specified or described in that provision; and
  - (b) provision for the permissions to apply only to such vessels, such persons and such purposes as may be specified or described in that provision.
- (5) The provision that may be made with respect to a permission for the purposes of this section includes provision imposing conditions in relation to a permission.
- (6) The conditions may include—
  - (a) conditions imposing obligations in relation to a vessel, or individuals on it, that must be satisfied while the vessel is in the safety zone; and
  - (b) conditions imposing obligations as to the manner in which any activity to which the permission relates is to be carried on.
- (7) Regulations under this section may confer discretions, with respect to the granting or imposition in accordance with the regulations of permissions or conditions, on such persons as may be specified or described in the regulations.
- (8) Regulations under this section are subject to the negative resolution procedure.

## **97 Offences relating to safety zones**

- (1) Where a vessel enters or remains in a safety zone in contravention of section 96(1), the vessel's owner and her master are each guilty of an offence.
- (2) Where—
  - (a) a vessel enters or remains in a safety zone with a permission granted for the purposes of section 96, and
  - (b) there is a contravention of a condition of that permission in relation to the vessel or individuals on the vessel,

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the vessel's owner and her master are each guilty of an offence.

- (3) A person who carries on an activity wholly or partly in a safety zone in contravention of section 96(2) is guilty of an offence.
- (4) Where—
  - (a) a person carries on an activity wholly or partly in a safety zone with a permission granted for the purposes of section 96, and
  - (b) there is a contravention of a condition of that permission in relation to the carrying on of that activity,
 that person is guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (6) In proceedings against a person as the owner of a vessel for an offence under subsection (1) or (2), it is a defence for him to show that the existence of the safety zone—
  - (a) was not known to the master of the vessel in question at the time of the offence; and
  - (b) would not have become known to the master had he made reasonable inquiries before that time.
- (7) In any other proceedings against a person for an offence under this section, it is a defence for that person to show that the existence of the safety zone—
  - (a) was not known to him at the time of the offence; and
  - (b) would not have become known to him had he made reasonable inquiries before that time.
- (8) It is also a defence in proceedings against a person for an offence under this section for that person to show that he took all reasonable steps to prevent the contravention in question.

## **98 Supplementary provisions relating to offences under s. 97**

- (1) Where the commission of an offence under section 97 is due—
  - (a) in the case of an offence under subsection (1) or (2) of that section, to an act or omission of a person other than the owner or master of the vessel in question, or
  - (b) in the case of an offence under subsection (3) or (4) of that section, to an act or omission of a person other than the person carrying on the activity in question,
 that person is also guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (2) Where an offence under section 97 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate,
  - or

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- (b) a person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (3) Where an offence under section 97—
- (a) is committed by a Scottish firm, and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm, he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (4) Where an offence under section 97 is committed outside of the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (5) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for an offence under section 97.
- (6) In this section “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

### *Navigation and civil aviation*

## **99 Navigation**

- (1) After section 36 of the 1989 Act insert—

### **“36A Declarations extinguishing etc. public rights of navigation**

- (1) Where a consent is granted by the Secretary of State or the Scottish Ministers in relation to—
- (a) the construction or operation of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters, or
- (b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters or an extension of such an installation,
- he or (as the case may be) they may, at the same time, make a declaration under this section as respects rights of navigation so far as they pass through some or all of those places.
- (2) The Secretary of State or the Scottish Ministers may make such a declaration only if the applicant for the consent made an application for such a declaration when making his application for the consent.
- (3) A declaration under this section is one declaring that the rights of navigation specified or described in it—
- (a) are extinguished;
- (b) are suspended for the period that is specified in the declaration;

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- (c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or
  - (d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.
- (4) A declaration under this section—
- (a) has effect, in relation to the rights specified or described in it, from the time at which it comes into force; and
  - (b) continues in force for such period as may be specified in the declaration or as may be determined in accordance with provision contained in it.
- (5) A declaration under this section—
- (a) must identify the renewable energy installations, or proposed renewable energy installations, by reference to which it is made;
  - (b) must specify the date on which it is to come into force, or the means by which that date is to be determined;
  - (c) may modify or revoke a previous such declaration, or a declaration under section 100 of the Energy Act 2004; and
  - (d) may make different provision in relation to different means of exercising a right of navigation.
- (6) Where a declaration is made under this section by the Secretary of State or the Scottish Ministers, or a determination is made by him or them for the purposes of a provision contained in such a declaration, he or (as the case may be) they must either—
- (a) publish the declaration or determination in such manner as appears to him or them to be appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or
  - (b) secure that it is published in that manner by the applicant for the declaration.
- (7) In this section—
- “consent” means a consent under section 36 above;
  - “extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;
  - “relevant waters” means waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea.

### **36B Duties in relation to navigation**

- (1) Neither the Secretary of State nor the Scottish Ministers may grant a consent in relation to any particular offshore generating activities if he considers, or (as the case may be) they consider, that interference with the use of recognised sea lanes essential to international navigation—
- (a) is likely to be caused by the carrying on of those activities; or
  - (b) is likely to result from their having been carried on.
- (2) It shall be the duty both of the Secretary of State and of the Scottish Ministers, in determining—



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- (a) whether to give a consent for any particular offshore generating activities, and
  - (b) what conditions to include in such a consent,to have regard to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on.
- (3) In determining for the purposes of this section what interference, obstruction or danger is likely and its extent and nature, the Secretary of State or (as the case may be) the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of—
  - (a) the activities in question; and
  - (b) such other offshore generating activities as are either already the subject of consents or are activities in respect of which it appears likely that consents will be granted.
- (4) For the purposes of this section the effects of offshore generating activities include—
  - (a) how, in relation to those activities, the Secretary of State and the Scottish Ministers have exercised or will exercise their powers under section 36A above and section 100 of the Energy Act 2004 (extinguishment of public rights of navigation); and
  - (b) how, in relation to those activities, the Secretary of State has exercised or will exercise his powers under sections 95 and 96 and Chapter 3 of Part 2 of that Act (safety zones and decommissioning).
- (5) If the person who has granted a consent in relation to any offshore generating activities thinks it appropriate to do so in the interests of the safety of navigation, he may at any time vary conditions of the consent so as to modify in relation to any of the following matters the obligations imposed by those conditions—
  - (a) the provision of aids to navigation (including, in particular, lights and signals);
  - (b) the stationing of guard ships in the vicinity of the place where the activities are being or are to be carried on; or
  - (c) the taking of other measures for the purposes of, or in connection with, the control of the movement of vessels in that vicinity.
- (6) A modification in exercise of the power under subsection (5) must be set out in a notice given by the person who granted the consent to the person whose obligations are modified.
- (7) In this section—
  - “consent” means a consent under section 36 above;
  - “offshore generating activities” means—
    - (a) the construction or operation of a generating station that is to comprise or comprises (in whole or in part) renewable energy installations; or
    - (b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations or an extension of such an installation;

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“the use of recognised sea lanes essential to international navigation” means—

- (a) anything that constitutes the use of such a sea lane for the purposes of Article 60(7) of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941); or
- (b) any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone.

(8) In subsection (7) “extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”

(2) In paragraph 8 of Schedule 8 to that Act (supplementary provisions relating to applications under section 36 of that Act), after sub-paragraph (2) insert—

“(3) Where an application for a declaration under section 36A of this Act is made with an application for a consent under section 36 of this Act, the application for the declaration shall be treated for the purposes of this Schedule as part of the application for the consent.”

(3) In section 3D of that Act (principal objective and general duties not to apply to Secretary of State’s functions under section 36 or 37), for “section 36 or 37” substitute “sections 36 to 37”.

(4) In subsection (1) of section 35 of the Coast Protection Act 1949 (c. 74) (operations not requiring consent under section 34), after paragraph (g) insert—

“(ga) subject to subsection (3) of this section, any operations comprised in offshore generating activities carried out in accordance with a consent under section 36 of the Electricity Act 1989 granted after the commencement of section 99 of the Energy Act 2004;”.

(5) After subsection (2) of that section insert—

“(3) Operations in or as regards Scotland fall within paragraph (ga) of that subsection only if and to the extent that the Scottish Ministers by order made by statutory instrument so provide.

(4) A statutory instrument containing an order under subsection (3) shall not be made unless a draft of the instrument has been laid before and approved by a resolution of the Scottish Parliament.

(5) In that paragraph “offshore generating activities” has the same meaning as in section 36B of the Electricity Act 1989.”

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**Commencement Information**

**180** S. 99 in force at 1.3.2005 for specified purposes by [S.I. 2005/442](#), [art. 2\(1\)](#), [Sch. 1](#)

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VALID FROM 01/09/2005

## **100 Further provision relating to public rights of navigation**

- (1) This section applies where a consent falling within subsection (2) has been granted by the Secretary of State or the Scottish Ministers (“the consenting authority”) under section 36 of the 1989 Act (consent required for construction etc. of generating stations) before the commencement of section 99.
- (2) A consent falls within this subsection if it relates to—
  - (a) the construction or operation of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated in relevant waters; or
  - (b) an extension of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations so situated or an extension of such an installation.
- (3) On an application made by the generator, the consenting authority may make a declaration under this section as respects rights of navigation—
  - (a) so far as they pass through the places where the renewable energy installations are situated or are to be situated; or
  - (b) so far as they pass through some of those places.
- (4) A declaration under this section is one declaring that the rights of navigation specified or described in it—
  - (a) are extinguished;
  - (b) are suspended for the period that is specified in the declaration;
  - (c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or
  - (d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.
- (5) Subsections (4) to (6) of section 36A of the 1989 Act (declarations extinguishing etc. rights of navigation upon grant of consent under section 36 of that Act) shall apply in relation to declarations under this section as they apply in relation to declarations under that section, but with the omission of subsection (5)(c).
- (6) Before making a declaration under this section, the consenting authority must—
  - (a) publish details of the generator’s application in such manner as that authority considers appropriate;
  - (b) give notice of that application to such persons as that authority considers appropriate;
  - (c) consult the persons to whom notice has been given;
  - (d) make such arrangements as that authority considers appropriate for a copy of the application to be made available for inspection by members of the public; and
  - (e) give such opportunities to such persons as that authority considers appropriate to make representations to the authority about the application.

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- (7) The consenting authority may satisfy the requirements of paragraphs (a) to (d) of subsection (6) by securing that the things that it is required to do under those paragraphs are done on its behalf by the generator.
- (8) In this section—
- “generator”, in relation to a consent under section 36 of the 1989 Act, means the person who is constructing or operating the station in question, or making the extension in question, or who is proposing to do so;
- “relevant waters” has the same meaning as in section 36A of the 1989 Act.

## 101 Application of civil aviation regulations to renewable energy installations

- (1) Schedule 13 to the Civil Aviation Act 1982 (c. 16) (subordinate instruments) is amended as follows.
- (2) In the Table in Part 2 (provisions applying to certain powers), in the entry for section 60, in column 4 (applicable paragraphs of Part 3 of the Schedule), for “and 6” substitute “ , 6 and 7 ”.
- (3) In paragraph 6 of Part 3 (extra-territorial provisions), in sub-paragraph (4) for “sub-paragraph (5)” substitute “ sub-paragraphs (5) and (7) ”.
- (4) After sub-paragraph (6) of that paragraph insert—
- “(7) So far as relates to a provision of an Order in Council or regulation concerning aircraft on or in the neighbourhood of a renewable energy installation, this paragraph—
- (a) shall apply to all aircraft, and not only to aircraft registered in the United Kingdom; and
- (b) shall apply to the doing of anything in relation to an aircraft by any person, irrespective of nationality, or (in the case of a body corporate) of the law under which it was incorporated.
- (8) For the purposes of sub-paragraphs (5) and (7) the neighbourhood of an installation includes anywhere within 500 metres of that installation.
- (9) In this paragraph “renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”
- (5) After that paragraph insert—

“7

- (1) Without prejudice to paragraph 6 above, an Air Navigation Order may make provision in relation to renewable energy installations located within a Renewable Energy Zone as if those installations were located in a part of the United Kingdom.
- (2) Such provision may apply to any person irrespective of nationality or (in the case of a body corporate) of the law under which it was incorporated.
- (3) In this paragraph “renewable energy installation” and “Renewable Energy Zone” have the same meanings as in Chapter 2 of Part 2 of the Energy Act 2004.”

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**Commencement Information**

**181** S. 101 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Supplementary provisions of Chapter 2 of Part 2*

**102 Amendments of 1989 Act consequential on Chapter 2 of Part 2**

- (1) The 1989 Act is amended as follows.
- (2) In section 61(2) (concurrent proceedings for compulsory purchase and in respect of consents under section 36 of that Act), at the end insert “ and with any related proceedings under Schedule 16 to the Energy Act 2004 ”.
- (3) In section 62(3) (power to combine inquiries)—
  - (a) in paragraph (a), after “this Part” insert “ or Schedule 16 to the Energy Act 2004 ”; and
  - (b) in paragraph (b), after “this Part” insert “ , that Schedule ”.
- (4) In section 64(1) (interpretation of Part 1)—
  - (a) after the definition of “authorised supplier” insert—

““construct” and “construction”, in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;”;
  - (b) after the definitions of “relevant condition” and “relevant requirement” insert—

““renewable energy installation” and “Renewable Energy Zone” have the same meanings as in Chapter 2 of Part 2 of the Energy Act 2004;”.
- (5) After section 108 insert—

**“108A Extraterritorial operation of Act**

- (1) Where by virtue of this Act an act or omission taking place outside Great Britain constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (2) Provision made by or under this Act in relation to places outside Great Britain—
  - (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.”

**Commencement Information**

**182** S. 102(1)(4) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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### 103 Other amendments consequential on Chapter 2 of Part 2

- (1) In section 8 of the Continental Shelf Act 1964 (c. 29) (application of Submarine Telegraph Act 1885 to pipelines and submarine cables)—
  - (a) in subsection (1), omit “high-voltage”; and
  - (b) in subsection (1A), for the words from “pipe-lines under the high seas” onwards substitute “submarine cables and pipe-lines under the high seas includes a reference to submarine cables and pipe-lines under the territorial sea adjacent to the United Kingdom or under waters in an area designated under section 1(7) of this Act”.
- (2) In section 23 of the Police and Criminal Evidence Act 1984 (c. 60) (meaning of premises)—
  - (a) in the definition of “premises”, for the “and” at the end of paragraph (b) substitute—
    - “(ba) any renewable energy installation;”;
  - (b) after the definition of “offshore installation” insert—
    - ““renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”
- (3) In section 10(10) of the Petroleum Act 1998 (c. 17) (section to apply to installations in transit), after “transit” insert “but does not apply to an installation that is a renewable energy installation (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004)”.
- (4) After section 47 of that Act insert—

#### “47A Factors for the Secretary of State to take into account

- (1) The matters to which the Secretary of State may have regard, in exercising or performing the powers and duties conferred or imposed on him by or under this Act, include, in particular—
  - (a) activities in relevant waters for or in connection with the generation of electricity;
  - (b) proposals made by a person to carry on such activities;
  - (c) the proposals that it appears to the Secretary of State may be made in the future for the carrying on of such activities; and
  - (d) the likelihood that activities will in due course be carried on in accordance with proposals falling within paragraph (b) or (c).
- (2) The reference in subsection (1) to activities in connection with the generation of electricity in relevant waters includes—
  - (a) the transmission, distribution and supply of the electricity generated; and
  - (b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether activities in relevant waters for or in connection with the generation of electricity are, in a particular case, practicable or commercially viable, or both.
- (3) In this section—

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“distribution”, “generate”, “supply” and “transmission”, and cognate expressions, have the same meanings as in Part 1 of the Electricity Act 1989; and

“relevant waters” means—

- (a) waters in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; or
- (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004).”

#### Commencement Information

**I83** S. 103(2)(4) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 104 Interpretation of Chapter 2 of Part 2

(1) In this Chapter—

“construct”, in relation to an installation or an electric line or in relation to a generating station so far as it is to comprise renewable energy installations, includes—

- (a) placing it in or upon the bed of any waters;
- (b) attaching it to the bed of any waters;
- (c) assembling it;
- (d) commissioning it; and
- (e) installing it;

and “construction” is to be construed accordingly;

“decommission”, in relation to an installation or an electric line, includes—

- (a) removing it from the bed of any waters;
- (b) demolishing it; and
- (c) dismantling it;

“distribution” and “electric line” have the same meanings as in Part 1 of the 1989 Act;

“extend” and “extension”—

- (a) in relation to a generating station, have the same meanings as in Part 1 of the 1989 Act; and
- (b) in relation to an installation, have the same meanings as in relation to a generating station;

“installation” includes artificial island, structure and device;

“master” includes—

- (a) in relation to a hovercraft, the captain;
- (b) in relation to any submersible apparatus, the person in charge of the apparatus; and
- (c) in relation to an installation in transit, the person in charge of the transit operation;

“renewable energy installation” is to be construed in accordance with subsections (3) to (5);

“Renewable Energy Zone” has the meaning given by section 84(4);

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“safety zone” means an area which is a safety zone for the purposes of this Chapter by virtue of section 95;

“Scottish part”, in relation to a Renewable Energy Zone, means so much of that Zone as is designated under section 84(5);

“Scottish waters” means—

- (a) the internal waters of the United Kingdom that are in or are adjacent to Scotland; or
- (b) so much of the territorial sea of the United Kingdom as is adjacent to Scotland;

“submersible apparatus” has the meaning given by section 88(4) of the Merchant Shipping Act 1995 (c. 21);

“supply”, in relation to electricity, has the same meaning as in Part 1 of the 1989 Act;

“transmission”, in relation to electricity, has the same meaning as in Part 1 of the 1989 Act;

“vessel” includes—

- (a) a hovercraft;
- (b) any submersible apparatus; and
- (c) an installation in transit.

(2) References in this Chapter to the production of energy from water include, in particular, references to its production from currents and tides.

(3) In this Chapter “renewable energy installation” means—

- (a) an offshore installation used for purposes connected with the production of energy from water or winds;
- (b) an installation in the course of construction at a place where it is to be used as an offshore installation within paragraph (a);
- (c) an installation that has ceased to be an installation within paragraph (a) while remaining an offshore installation (whether or not at the same place);
- (d) an installation that is being decommissioned at a place where it has been an installation within paragraph (a) or (c);
- (e) an installation in transit to or from a place where it is to be, or has been, used for purposes that would make it, or made it, an installation within paragraph (a);
- (f) an installation in transit to or from a place where it is to be, or was, an installation within paragraph (c).

(4) In subsection (3) “offshore installation” means an installation which is situated in waters where—

- (a) it permanently rests on, or is permanently attached to, the bed of the waters; and
- (b) it is not connected with dry land by a permanent structure providing access at all times for all purposes.

(5) The purposes referred to in subsection (3)(a) include, in particular—

- (a) the transmission, distribution and supply of electricity generated using water or winds; and
- (b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the generation of



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electricity in that manner is, in a particular case, practicable or commercially viable, or both.

- (6) Provision made by or under this Chapter in relation to places outside the United Kingdom—
- (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.

**Commencement Information**

**I84** S. 104 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 01/10/2005

**CHAPTER 3**

DECOMMISSIONING OF OFFSHORE INSTALLATIONS

*Decommissioning programmes*

**105 Requirement to prepare decommissioning programmes**

- (1) This section applies where—
- (a) there is a proposal by a person to construct a relevant object in waters regulated under this Chapter, or to extend a relevant object in such waters;
  - (b) there is a proposal by a person to operate or to use a relevant object in such waters on the completion of its construction, or of any extension of it in such waters; or
  - (c) a person is constructing, extending, operating or using a relevant object in such waters or has begun in such waters to decommission such an object.
- (2) The Secretary of State may by notice require that person to submit to him a programme for decommissioning the relevant object (a “decommissioning programme”).
- (3) The Secretary of State may require a person to submit a decommissioning programme in respect of proposals made by that person only if the Secretary of State is satisfied that at least one of the statutory consents required for enabling that person to give effect to those proposals—
- (a) has been given; or
  - (b) has been applied for and is likely to be given;
- but for this purpose it is immaterial that a statutory consent that has been or may be given will have no effect before a particular time or unless particular conditions are satisfied.
- (4) Where there is more than one person to whom a notice under this section may be given—

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- (a) it may be given to any one or more of them; and
  - (b) where it is given to more than one of them, the requirement to submit a programme must be satisfied by all those persons acting jointly.
- (5) Before giving a notice under this section in relation to a relevant object which is to be or is, wholly or partly—
- (a) in an area of Scottish waters; or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (6) A notice under this section must either—
- (a) specify the date by which the decommissioning programme is to be submitted; or
  - (b) require it to be submitted on or before such date as the Secretary of State may direct.
- (7) A notice under this section may require the recipient of the notice to carry out the consultations specified in the notice before submitting the programme required of him.
- (8) A decommissioning programme—
- (a) must set out measures to be taken for decommissioning the relevant object;
  - (b) must contain an estimate of the expenditure likely to be incurred in carrying out those measures;
  - (c) must make provision for the determination of the times at which, or the periods within which, those measures will have to be taken;
  - (d) if it proposes that the relevant object will be wholly or partly removed from a place in waters regulated under this Chapter, must include provision about restoring that place to the condition that it was in prior to the construction of the object; and
  - (e) if it proposes that the relevant object will be left in position at a place in waters regulated under this Chapter or will not be wholly removed from a place in such waters, must include provision about whatever continuing monitoring and maintenance of the object will be necessary.
- (9) A notice under this section may require the recipient of the notice to submit any of the following with the decommissioning programme—
- (a) such information and documents relating to the place where the relevant object is or is to be situated as may be specified in the notice;
  - (b) such specifications relating to the relevant object as may be specified in the notice;
  - (c) such information and documents relating to the financial affairs of the recipient as may be specified in the notice; and
  - (d) details of the security (if any) that the recipient proposes to provide in relation to the carrying out of the decommissioning programme and for his compliance with any conditions of its approval.
- (10) In this Chapter—
- “relevant object” means the whole or any part of—
  - (a) a renewable energy installation; or
  - (b) an electric line that is or has been a related line;

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“waters regulated under this Chapter” means—

- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters in a Renewable Energy Zone.

(11) In this section—

“related line” means an electric line which is a line for the conveyance of electricity to or from a renewable energy installation but is not an electricity interconnector (within the meaning of Part 1 of the 1989 Act); and

“statutory consent” means a consent, licence or approval required by or under any enactment.

## **106 Approval of decommissioning programmes**

- (1) The Secretary of State may either approve or reject a programme submitted to him under section 105.
- (2) Before approving or rejecting a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
  - (a) in an area of Scottish waters, or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,the Secretary of State must consult the Scottish Ministers.
- (3) If the Secretary of State approves a programme, he may do so—
  - (a) with or without modifications; and
  - (b) either subject to conditions or unconditionally.
- (4) His power to approve it subject to conditions includes, in particular, power to approve it subject to a condition that the person who submitted the programme—
  - (a) provides such security in relation to the carrying out of the programme, and for his compliance with the conditions (if any) of its approval, as may be specified by the Secretary of State; and
  - (b) provides that security at such time, and in accordance with such requirements, as may be specified by the Secretary of State.
- (5) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the person who submitted it an opportunity of making representations about the proposed modifications or conditions.
- (6) The power of the Secretary of State to approve a programme subject to conditions includes power, where more than one person submitted it, to impose different conditions in relation to different persons.
- (7) If he rejects a programme, the Secretary of State—
  - (a) must inform the person who submitted it of his reasons for doing so; and
  - (b) may exercise his power under section 105 to require the submission of a new one.
- (8) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

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## **107 Failure to submit or rejection of decommissioning programmes**

- (1) Where—
  - (a) a notice given under section 105 is not complied with, or
  - (b) the Secretary of State rejects a programme submitted to him,the Secretary of State may himself prepare a decommissioning programme in relation to the relevant object in question.
- (2) Before himself preparing a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
  - (a) in an area of Scottish waters, or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,the Secretary of State must consult the Scottish Ministers.
- (3) Where the Secretary of State prepares a decommissioning programme under this section—
  - (a) he must give notice informing the recipient of the notice given under section 105 that he has done so; and
  - (b) this Chapter shall have effect subsequently as if the Secretary of State's programme were a programme submitted to him by the person informed and had been approved by the Secretary of State subject to the conditions specified by the Secretary of State.
- (4) Where the Secretary of State informs a person under subsection (3) that he has prepared his own decommissioning programme, he may by notice to that person require him—
  - (a) to provide such security in relation to the carrying out of the programme, and for his compliance with its conditions (if any), as may be specified by the Secretary of State; and
  - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;and a requirement under this subsection has effect as if it were a condition of the deemed approval of the programme.
- (5) The Secretary of State may by notice require the recipient of a notice under section 105 to provide him with such information and documents as he may require for the purpose of exercising his powers under subsections (1) and (4).
- (6) Information and documents required to be provided under subsection (5) must be provided within such period as may be specified in the notice under that subsection.
- (7) A person who fails, without reasonable excuse, to comply with a notice under subsection (5) is guilty of an offence.
- (8) The power of the Secretary of State to impose requirements under this section includes power, where there is more than one person on whom he may impose them, to impose different requirements in relation to different persons.
- (9) Where, having given a notice under section 105, the Secretary of State prepares his own decommissioning programme, he may recover expenditure incurred by him in, or in connection with, the exercise of his powers under this section from the recipient of the notice.

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- (10) A person liable to pay a sum to the Secretary of State by virtue of subsection (9) must also pay interest on that sum for the period which—
- (a) begins with the day on which the Secretary of State notified him of the sum payable; and
  - (b) ends with the date of payment.
- (11) The rate of interest shall be a rate determined by the Secretary of State to be comparable with commercial rates.

### **108 Reviews and revisions of decommissioning programmes**

- (1) The Secretary of State must, from time to time, conduct such reviews of a decommissioning programme approved by him as he considers appropriate.
- (2) A proposal—
- (a) to modify a decommissioning programme approved by the Secretary of State, or
  - (b) to modify a condition to which such a programme is subject,
- may be made by the Secretary of State, or by the person who submitted the programme or (if there is more than one of them) by all of them acting jointly.
- (3) A proposal—
- (a) to relieve a person of his duty under section 109(1) in relation to a decommissioning programme approved by the Secretary of State, or
  - (b) as respects such a programme, to impose that duty upon a person not previously subject to it (whether in addition to or in substitution for another person),
- may be made by the Secretary of State or by the person for the time being subject to that duty or (if there is more than one person subject to that duty) by any one or more of them.
- (4) A proposal under subsection (2) or (3) may be made only by way of notice given—
- (a) if the proposal is the Secretary of State's, to every person whose duty under section 109(1) in relation to the programme would be affected or relieved under the proposal or who would become subject to such a duty; and
  - (b) in any other case, to the Secretary of State.
- (5) An opportunity of making representations to the Secretary of State about a proposal of his under this section must be given by him to every person to whom notice of the proposal is required to have been given.
- (6) It is to be for the Secretary of State, after considering any representations made to him, to determine whether or not effect should be given to a proposal of his, or of any other person, under this section.
- (7) Before making a determination under subsection (6) with respect to a proposal in relation to a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
- (a) in an area of Scottish waters, or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.

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- (8) Where the Secretary of State makes a determination under subsection (6), he must give notice of his determination, and of his reasons for it, to—
- (a) every person who, before the determination, had a duty under section 109(1) in relation to the programme; and
  - (b) every person who will become subject to such a duty as a result of the determination.
- (9) Where the Secretary of State gives notice under subsection (8) in respect of a proposal, this Chapter shall have effect after the giving of that notice—
- (a) in the case of a proposal under subsection (2), as if the programme in question had been approved subject to the modifications specified in the determination; and
  - (b) in the case of a proposal under subsection (3), as if that programme had been submitted to the Secretary of State by the person or persons so specified.
- (10) Where the Secretary of State gives notice under subsection (8) to a person that he is to become subject to a duty under section 109(1) in relation to a programme, the Secretary of State may by notice to that person require him—
- (a) to provide such security in relation to the carrying out of the programme, and for his compliance with any conditions of its approval, as may be specified by the Secretary of State; and
  - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;
- and a requirement under this subsection has effect as if it were a condition of the approval of the programme.

#### *Implementation of decommissioning programmes*

### **109 Carrying out of decommissioning programmes**

- (1) Where a decommissioning programme is approved by the Secretary of State, it shall be the duty of the person who submitted the programme to secure—
- (a) that it is carried out in every respect; and
  - (b) that all the conditions to which the approval is subject are complied with.
- (2) Where a relevant object is subject to a decommissioning programme approved by the Secretary of State, it is an offence for a person to take any measures for decommissioning that object unless he does so—
- (a) in accordance with the programme; or
  - (b) with the agreement of the Secretary of State.

### **110 Default in carrying out decommissioning programmes**

- (1) Where—
- (a) a decommissioning programme approved by the Secretary of State is not carried out in a particular respect, or
  - (b) a condition to which the approval is subject is contravened,
- the Secretary of State may, by notice, require a person subject to the duty under section 109(1) in relation to the programme to take such remedial action as may be specified in the notice.

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- (2) Remedial action required by a notice under this section must be taken within such period as may be specified in the notice.
- (3) A person who fails to comply with a notice given to him under this section is guilty of an offence.
- (4) In proceedings against a person for an offence under this section it is a defence for him to show that he exercised due diligence to avoid the contravention in question.
- (5) If a notice under this section is not complied with, the Secretary of State may—
  - (a) himself secure the carrying out of the remedial action required by the notice; and
  - (b) recover any expenditure incurred by him in doing so from the person to whom the notice was given.
- (6) A person liable to pay a sum to the Secretary of State by virtue of subsection (5) must also pay interest on that sum for the period which—
  - (a) begins with the day on which the Secretary of State notified him of the sum payable; and
  - (b) ends with the date of payment.
- (7) The rate of interest shall be a rate determined by the Secretary of State to be comparable with commercial rates.

#### *Decommissioning regulations*

### **111 Regulations about decommissioning**

- (1) The Secretary of State may make regulations relating to the decommissioning of relevant objects in waters regulated under this Chapter.
- (2) The provision that may be contained in regulations under this section includes, in particular—
  - (a) provision prescribing standards in respect of decommissioning;
  - (b) provision prescribing standards and safety requirements in respect of anything left in place where a relevant object is not wholly removed;
  - (c) provision about the security that a person may be required to provide under this Chapter;
  - (d) provision for the prevention of pollution;
  - (e) provision for inspections, including provision as to the payment of the costs of inspections.
- (3) Regulations under this section may include provision making it an offence to contravene provisions of the regulations.
- (4) Where the regulations under this section create an offence, they must make provision as to the mode of trial and punishment of offenders; but there is no power for regulations under this section—
  - (a) to impose a penalty of imprisonment on summary conviction, or to impose a maximum fine, on summary conviction, of more than the statutory maximum; or

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- (b) to impose a maximum term of imprisonment, on conviction on indictment, of more than two years.
- (5) Before making regulations under this section, the Secretary of State must consult—
  - (a) organisations appearing to him to be representative of persons who will be affected by the regulations; and
  - (b) any other persons he considers appropriate.
- (6) Before making regulations under this section containing provision that relates to the decommissioning of relevant objects which are to be or are, wholly or partly—
  - (a) in Scottish waters, or
  - (b) in waters in a Scottish part of a Renewable Energy Zone,
 the Secretary of State must consult the Scottish Ministers.
- (7) Regulations under this section are subject to the negative resolution procedure.

*Supplementary provisions of Chapter 3 of Part 2*

**112 Duty to inform Secretary of State**

- (1) A person who becomes responsible for a relevant object must notify the Secretary of State that he has become so responsible.
- (2) For the purposes of this section a person becomes responsible for a relevant object if—
  - (a) he makes a proposal to construct the object in waters regulated under this Chapter;
  - (b) he makes a proposal for the extension or decommissioning in such waters of the object;
  - (c) he makes a proposal to operate or use the object on completion of its construction in such waters;
  - (d) he makes a proposal to operate or use the object on completion in such waters of any extension of it;
  - (e) he becomes a party to a proposal mentioned in paragraphs (a) to (d);
  - (f) he begins in such waters to construct, to extend, to operate or use or to decommission the object;
  - (g) he begins to participate in any of the following activities carried on in such waters, the construction, extension, operation or use or decommissioning of the object.
- (3) A person is not required to notify the Secretary of State that he has made a proposal, or become a party to a proposal, at any time before at least one of the statutory consents required for enabling effect to be given to the proposal has been given or applied for.
- (4) A person who notifies the Secretary of State under this section that he has made a proposal, or has become a party to a proposal—
  - (a) must specify in the notification what statutory consents required for giving effect to the proposal have been given, and what applications for such consents have been made; and
  - (b) must notify him subsequently whenever such a consent or application is given or made.



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- (5) A notification under this section must be given within such period after the obligation to give the notification arises as may be prescribed by regulations made by the Secretary of State.
- (6) A person who contravenes the requirements of this section is guilty of an offence.
- (7) Regulations under this section are subject to the negative resolution procedure.
- (8) A reference in this section to participation in activities does not include a reference—
  - (a) to participation on behalf of another person; or
  - (b) to participation by acting in pursuance of an agreement to provide a service or services to a person carrying on those activities.
- (9) In this section “statutory consent” has the same meaning as in section 105.

### **113 Offences relating to decommissioning programmes**

- (1) A person guilty of an offence under a provision of this Chapter is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (2) No proceedings for a decommissioning offence shall be instituted in England and Wales or Northern Ireland except—
  - (a) by the Secretary of State;
  - (b) by a person authorised in that behalf by the Secretary of State; or
  - (c) by or with the consent of the Director of Public Prosecutions or (as the case may be) the Director of Public Prosecutions for Northern Ireland.
- (3) Where a decommissioning offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person who was purporting to act in any such capacity,he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (4) Where such an offence—
  - (a) is committed by a Scottish firm, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (5) Where a decommissioning offence is committed outside the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for a decommissioning offence.

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(7) In this section—

“decommissioning offence” means an offence under—

- (a) a provision of this Chapter; or
- (b) regulations made under section 111;

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

## 114 Interpretation of Chapter 3 of Part 2

(1) Expressions used in this Chapter and in Chapter 2 of this Part have the same meanings in this Chapter as in that Chapter.

(2) In this Chapter—

“decommissioning programme” has the meaning given by section 105(2);

“extend” and “extension”, in relation to an electric line, have the same meanings as they have in Chapter 2 of this Part and this Chapter in relation to a renewable energy installation;

“recipient”, in relation to a notice under section 105, means the person or any one or more of the persons to whom that notice was given;

“relevant object” has the meaning given by section 105(10);

“security” includes—

- (a) a charge over a bank account or any other asset;
- (b) a deposit of money;
- (c) a performance bond or guarantee;
- (d) a letter of credit; and
- (e) a letter of comfort;

“waters regulated under this Chapter” has the meaning given by section 105(10).

(3) References in this Chapter to providing a security include references—

- (a) to securing its maintenance or renewal; and
- (b) to ensuring that its value is adjusted from time to time to take account of changes to the likely costs of the matters in respect of which it is given.

(4) References in this Chapter to the person by whom a decommissioning programme was submitted are references, in the case of a programme submitted jointly by more than one person, to each of them.

(5) Provision made by or under this Chapter in relation to places outside the United Kingdom—

- (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
- (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom.

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## CHAPTER 4

### RENEWABLES OBLIGATIONS RELATING TO ELECTRICITY

#### 115 Discharge of renewables obligation in Great Britain by payment

- (1) In section 32(3) of the 1989 Act (renewables obligation), for the words from “must” to “produce” substitute “ must, by each specified day, have produced ”.
- (2) In section 32C of that Act (payment as an alternative to complying with a renewables obligation), in subsection (1) for the words from “that” onwards substitute—
  - “(a) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the day specified as the day by which evidence must be produced for the purposes of section 32(3); and
  - (b) that an electricity supplier’s renewables obligation that was not discharged in whole or in part before the day so specified is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of such period beginning with that day as may be specified in the order.”
- (3) In subsection (2) of that section (supplementary provisions of order providing for payments)—
  - (a) after paragraph (a) insert—
    - “(aa) for the sums that must be paid in order for an obligation to be treated as having been discharged to increase at a rate specified in the order for each day after the time by which evidence had to be produced for the purposes of section 32(3);”
  - (b) in paragraph (b), for “such sums” substitute “ sums or rates falling within paragraph (a) or (aa) ”;
  - (c) in paragraph (c), after “sums” insert “ or rates ”; and
  - (d) in paragraph (d), after “sum” insert “ or rate ”.
- (4) For subsection (3) of that section substitute—

“(2A) An order under section 32 may provide that, where—

  - (a) a renewables obligation is one in relation to which provision made by virtue of subsection (1)(b) applies in the case of the electricity supplier who is subject to the obligation, and
  - (b) the period ending with such day (after the day by which the obligation had to be complied with) as may be specified in or determined under the order has not expired,

the taking of steps under section 27A in respect of a contravention by that supplier of that obligation is prohibited or otherwise restricted to the extent specified in the order.

(2B) An order under section 32 may provide that, in a case in which the amount received by the Authority, or by the Northern Ireland authority, by way of discharge payments for a period falls short of the amount due in respect of that period, every person who—

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- (a) was subject to a renewables obligation for the relevant period or for a subsequent period specified in or determined under the order, and
  - (b) is of a description so specified or determined,
- must, by the time and in the circumstances so specified or determined, make a payment (or further payment) to the Authority of an amount calculated in the manner so specified or determined.
- (2C) An order under section 32 may not by virtue of subsection (2B) confer an entitlement on the Authority to receive a payment in respect of the shortfall for any period—
- (a) in the case of a shortfall in the amount received by the Authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of subsection (2A) applies, in one or more cases, to the taking of steps in relation to contraventions of renewables obligations for that period; or
  - (b) in the case of a shortfall in the amount received by the Northern Ireland authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Northern Ireland applies, in one or more cases, to the taking of steps in relation to contraventions of Northern Ireland obligations for that period.
- (2D) The provision that may be made by virtue of subsection (2B) includes—
- (a) provision for the making of adjustments and repayments at times after a requirement to make payments in respect of a shortfall for a period has already arisen; and
  - (b) provision that sections 25 to 28 are to apply in relation to a requirement imposed by virtue of that subsection on a person who is not a licence holder as if he were a licence holder.
- (3) The amounts received by the Authority by virtue of the preceding provisions of this section must be paid by it to electricity suppliers in accordance with a system of allocation specified in an order under section 32.”
- (5) In that section, at the end insert—
- “(6) References in this section to an electricity supplier’s renewables obligation include references to its renewables obligation in relation to a particular period.
- (7) For the purposes of this section—
- (a) the amount received by the Authority by way of discharge payments for a period falls short of the amount due in respect of that period, and
  - (b) the amount received by the Northern Ireland authority by way of discharge payments for a period falls short of the amount due in respect of that period,
- if, and to the extent that, the Authority or (as the case may be) the Northern Ireland authority would have received more by way of discharge payments if every renewables obligation or (as the case may be) Northern Ireland obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.
- (8) In this section—

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“discharge payment”, in relation to a period, means—

- (a) a payment by virtue of paragraph (a) of subsection (1) for discharging (in whole or in part) an electricity supplier’s renewables obligation for that period;
- (b) so much of a payment by virtue of paragraph (b) of that subsection for securing that such an obligation is treated as discharged to any extent as does not exceed the payment that would have discharged that obligation to the same extent if it had been made before the day mentioned in that paragraph; or
- (c) so much of any payment to the Northern Ireland authority as corresponds, in relation to a Northern Ireland obligation for that period, to anything falling within paragraph (a) or (b) above;

“Northern Ireland obligation” means a renewables obligation of a Northern Ireland supplier under Article 52 of the Energy (Northern Ireland) Order 2003;

“the relevant period”—

- (a) in relation to a shortfall in amounts received by the Authority by way of discharge payments for a period, means that period; and
- (b) in relation to a shortfall in amounts received by the Northern Ireland authority by way of discharge payments for a period, means any period that includes the whole or a part of that period.”

- (6) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

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#### Commencement Information

**185** S. 115 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 116 Issue of green certificates in Great Britain

- (1) Section 32B of the 1989 Act (green certificates) is amended as follows.
- (2) In subsection (1), for “or to an electricity supplier” substitute “, to an electricity supplier or to a Northern Ireland supplier”.
- (3) After that subsection insert—

“(1A) A certificate is to certify either the matters within subsection (2) or the matters within subsection (2A).”
- (4) In subsection (2)—
  - (a) for “A certificate is to certify” substitute “ The matters within this subsection are ”;
  - (b) in paragraph (a), after “an electricity supplier” insert “ or to a Northern Ireland supplier ”.
- (5) After that subsection insert—

“(2A) The matters within this subsection are—

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- (a) that the generating station or, in the case of a certificate issued to an electricity supplier or to a Northern Ireland supplier, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate;
  - (b) that the generating station in question is not a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003; and
  - (c) that the electricity has been supplied to customers in Northern Ireland.
- (2B) An order under section 32 must—
- (a) prohibit the issue of a certificate certifying matters within subsection (2A) where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland; and
  - (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its production for the purposes of provision made by virtue of subsection (4).”
- (6) In subsection (3), after “Authority” insert “ that certifies matters within subsection (2) ”.
- (7) After that subsection insert—
- “(4) An order under section 32 may provide that—
- (a) in such cases as may be specified in the order, and
  - (b) subject to such conditions as may be so specified,
- an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a certificate that certifies matters within subsection (2A).
- (5) References in this section to the supply of electricity to customers in Northern Ireland shall be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.”
- (8) The requirements of section 32(7) of that Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

#### Commencement Information

**I86** S. 116 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 117 Use of green certificates issued in Northern Ireland

- (1) After section 32B of the 1989 Act insert—

### “32BA Use of green certificates issued in Northern Ireland

- (1) An order under section 32 may provide that—

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- (a) in such cases as may be specified in the order, and
    - (b) subject to such conditions as may be so specified,
- an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate.
- (2) In this section “Northern Ireland certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included, by virtue of Article 54 of the Energy (Northern Ireland) Order 2003, in an order under Article 52 of that Order (renewables obligations for Northern Ireland suppliers).”
  - (2) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.
  - (3) In Article 56(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (power to amend Part 7 of that Order to take account of amendments of corresponding Great Britain provisions), the reference to amendments made to sections 32 to 32C of the 1989 Act includes a reference to subsection (1) of this section.
  - (4) Subsection (3) extends to Northern Ireland only.

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**Commencement Information**

**I87** S. 117 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **118 Distributions to Northern Ireland suppliers**

- (1) In section 32C of the 1989 Act (payment of money to discharge renewables obligation and distribution of fund to electricity suppliers), after subsection (4) insert—
  - “(5) The references in subsections (3) and (4) to electricity suppliers include references to persons who are Northern Ireland suppliers.”
- (2) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

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**Commencement Information**

**I88** S. 118 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **119 Supplementary provision relating to renewables obligation in Great Britain**

- (1) In subsection (3) of section 32 of the 1989 Act (definition of renewables obligation), for “and 32C” substitute “ to 32C ”.
- (2) In subsection (7) of that section, for paragraph (d) substitute—

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- “(d) such generators of electricity from renewable sources as he considers appropriate; and”.
- (3) After subsection (8) of that section insert—
- “(8A) In this section and in sections 32A to 32C—
- “generated” means generated at any place whether situated in the United Kingdom or elsewhere, and cognate expressions shall be construed accordingly;
- “Northern Ireland authority” means the Northern Ireland Authority for Energy Regulation;
- “Northern Ireland supplier” means an electricity supplier within the meaning of Part 7 of the Energy (Northern Ireland) Order 2003.”
- (4) In section 32A of that Act (supplementary provision relating to orders under section 32), in subsection (3) for the words from “the differences” onwards substitute “no supplier would by virtue of the differences be unduly disadvantaged in competing with other suppliers”.
- (5) After that subsection insert—
- “(3A) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.”
- (6) In subsection (7) of that section, for “obligation imposed” substitute “matters dealt with”.
- (7) The requirements of section 32(7) of that Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

#### Commencement Information

**189** S. 119 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 120 Issue of green certificates in Northern Ireland

- (1) Article 54 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (which contains provision corresponding to provision contained in section 32B of the 1989 Act) is amended as follows.
- (2) After paragraph (2) insert—
- “(2A) In paragraphs (1) and (2) “Northern Ireland” does not include any part of the territorial sea of the United Kingdom.
- (2B) The provision that may be contained by virtue of this Article in an order under Article 52 includes—
- (a) provision for the person to whom a certificate is to be issued to be determined either before or after the supply of the electricity to which it relates; and



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- (b) provision for a determination as to the person to whom a certificate is to be issued to be made in accordance with such arrangements as may be specified in or determined under the order.
  - (2C) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, the arrangements within paragraph (2B)(b) that may be specified in or determined under the order include arrangements—
    - (a) requiring the determination of the person to whom the certificate is to be issued to be made by reference to financial bids made in respect of the certificate or in respect of both the certificate and the electricity to which it relates; and
    - (b) requiring that person to make a payment, in accordance with his bid, to such person as may be specified in or determined under the order.
  - (2D) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, provision falling within paragraph (2B)(b) may require the relevant person—
    - (a) to make and implement the arrangements that are specified in or determined under the order; and
    - (b) to comply with directions given to him by the Authority for that purpose.
  - (2E) A person who receives a payment in accordance with provision made by virtue of paragraph (2C)(b) shall apply the money received in such manner as the Department may direct.
  - (2F) A direction under paragraph (2E) may require that the money received or part of that money be paid to the Department.
  - (2G) Part VI shall apply in relation to a requirement imposed by virtue of paragraph (2D) or (2E) on a person who is not an electricity licence holder as if he were an electricity licence holder.”
- (3) After paragraph (3) insert—
- “(4) An order under Article 52 may confer on the Authority functions in Northern Ireland in relation to the issue of Great Britain certificates.
  - (5) In this Article—
    - “Great Britain certificates” means certificates that are or may be issued by the Gas and Electricity Markets Authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act;
    - “qualifying arrangement” means an arrangement made pursuant to an order under Article 35 of the Electricity Order (or such an arrangement as modified or replaced by virtue of an order under Article 57 of this Order);
    - “relevant person” means, in relation to electricity that is acquired, or is required to be acquired, under a qualifying arrangement, the person who acquired it, or who is required to acquire it.”
- (4) The requirements of Article 52(6) of that Order (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this

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section by consultation that took place wholly or partly before the commencement of this section.

(5) This section extends to Northern Ireland only.

**Commencement Information**

**I90** S. 120 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**121 GEMA’s power to act on behalf of Northern Ireland regulator**

(1) GEMA and the Northern Ireland Authority for Energy Regulation (“the Northern Ireland Authority”) shall be entitled—

- (a) to enter into arrangements for GEMA to act on behalf of the Northern Ireland Authority for, or in connection with, the carrying out of the 2003 renewables obligations functions; and
- (b) to give effect to those arrangements.

(2) In this section “the 2003 renewables obligations functions” means the functions conferred on the Northern Ireland Authority under or for the purposes of Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (renewables obligations for Northern Ireland suppliers).

**Commencement Information**

**I91** S. 121 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**122 Consultation in relation to Northern Ireland renewables orders**

(1) This section applies where the Department of Enterprise, Trade and Investment in Northern Ireland amends the provisions of Part 7 of the 2003 Order (renewables obligations for Northern Ireland suppliers) by way of an amending order to take account of amendments of the 1989 Act made by this Chapter.

(2) In the case of a renewables order containing provision made by virtue of the amending order, the requirements of Article 52(6) of the 2003 Order (consultation before making a renewables order) may be satisfied by consultation that took place wholly or partly before the amending order came into force (including consultation taking place before the commencement of this section).

(3) In this section—

“amending order” means an order under Article 56 of the 2003 Order;

“the 2003 Order” means the Energy (Northern Ireland) Order 2003;

“renewables order” means an order under Article 52 of the 2003 Order.

(4) This section extends to Northern Ireland only.

**Commencement Information**

**I92** S. 122 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 123 Modification of conditions of Northern Ireland electricity licences

- (1) In Part 7 of the Energy (Northern Ireland) Order 2003 (renewable energy sources), after Article 58 insert—

### “58A Modifications of licences in connection with Energy Act 2004

- (1) Where the Department or the Authority considers it necessary or expedient to do so in connection with—
- (a) amendments of this Order made by section 120 of the Energy Act 2004, or
  - (b) provision made by an order under Article 56 to take account of amendments of the Electricity Act 1989 made by Chapter 4 of Part 2 of that Act of 2004,
- it may modify the conditions of an electricity licence.
- (2) The power to make modifications under this Article includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification of a licence condition under this Article the Department shall consult the Authority and the licence holder.
- (4) Before making a modification of a licence condition under this Article the Authority shall—
- (a) consult the licence holder; and
  - (b) obtain the consent of the Department to the modification.
- (5) Paragraphs (3) and (4)(a) may be satisfied by consultation—
- (a) that, in the case of a modification within paragraph (1)(b), took place wholly or partly before the order in question comes into force; and
  - (b) that, in any case, took place wholly or partly before the commencement of this Article.
- (6) Where the Department or the Authority makes any modifications under this Article it shall publish those modifications in such manner as it considers appropriate.
- (7) The power conferred by virtue of paragraph (1)(a) may not be exercised after the end of the period of two years beginning with the commencement of this Article.
- (8) The power conferred by virtue of paragraph (1)(b) may not be exercised in relation to an order under Article 56 after the end of the period of two years beginning with the day on which the order comes into force.”

- (2) This section extends to Northern Ireland only.

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#### Commencement Information

**193** S. 123 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## CHAPTER 5

### RENEWABLE TRANSPORT FUEL OBLIGATIONS

#### 124 Imposition of renewable transport fuel obligations

- (1) The Secretary of State may by order impose on each transport fuel supplier of a specified description the obligation mentioned in subsection (2) (a “renewable transport fuel obligation”).
- (2) That obligation is an obligation, for each specified period, for the supplier to produce to the Administrator, by the specified date, evidence which—
  - (a) is of the specified kind and in the specified form; and
  - (b) shows that during the specified period the specified amount of renewable transport fuel was supplied at or for delivery to places in the United Kingdom.
- (3) An order under subsection (1) is referred to in this Chapter as an “RTF order”.
- (4) Before making an RTF order the Secretary of State must consult such persons appearing to him to represent persons whose interests will be affected by the order, and such other persons, as he considers appropriate.
- (5) The power to make an RTF order is subject to the affirmative resolution procedure.

#### Commencement Information

**I94** S. 124 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 125 The Administrator

- (1) An RTF order may, for the purposes of provision made by or under this Chapter, appoint a person as the Administrator.
- (2) Such an order may—
  - (a) confer or impose powers and duties on the Administrator for purposes connected with the implementation of provision made by or under this Chapter;
  - (b) confer discretions on the Administrator in relation to the making of determinations under such an order and otherwise in relation to his powers and duties; and
  - (c) impose duties on transport fuel suppliers for purposes connected with the Administrator’s powers and duties.
- (3) The powers that may be conferred on the Administrator by virtue of subsection (2) include, in particular—
  - (a) power to require a transport fuel supplier to provide him with such information as he may require for purposes connected with the carrying out of the Administrator’s functions;
  - (b) power to impose requirements as to the form in which such information must be provided and as to the period within which it must be provided;
  - (c) power to impose charges of specified amounts on transport fuel suppliers.

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- (4) Sums received by the Administrator by virtue of provision within subsection (3)(c) must be used by him for the purpose of meeting costs incurred by him in carrying out his functions as the Administrator.
- (5) The duties that may be imposed by virtue of subsection (2)(c) include, in particular, duties framed by reference to determinations made by the Administrator.
- (6) Only the following persons may be appointed as the Administrator—
  - (a) a body or other person established or appointed by or under any enactment to carry out other functions;
  - (b) a body established by virtue of subsection (8).
- (7) Where provision is made by an RTF order for the appointment of a body or other person within subsection (6)(a), such an order may make such modifications of any enactment relating to that body or person as the Secretary of State considers appropriate for the purpose of facilitating the carrying out of the functions of the Administrator.
- (8) An RTF order may—
  - (a) establish a body corporate to be appointed as the Administrator;
  - (b) make provision for the appointment of members of that body;
  - (c) make provision in relation to the staffing of that body;
  - (d) make provision in relation to the expenditure of that body;
  - (e) make provision regulating the procedure of that body;
  - (f) make any other provision that the Secretary of State considers appropriate for purposes connected with the establishment and maintenance of that body.
- (9) The provision that may be made by virtue of subsection (8) in relation to a body corporate includes, in particular, provision conferring discretions on—
  - (a) the Secretary of State;
  - (b) the body itself; or
  - (c) members or staff of the body.
- (10) The Secretary of State may make grants to the Administrator on such terms as the Secretary of State may determine.

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**Commencement Information**

**I95** S. 125 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 126 Determinations of amounts of transport fuel

- (1) An RTF order may make provision about how amounts of transport fuel are to be counted or determined for the purposes of provision made by or under this Chapter.
- (2) The provision that may be made by virtue of this section includes, in particular—
  - (a) provision for amounts of renewable transport fuel to count towards discharging a renewable transport fuel obligation for a period only if the fuel is of a specified description;
  - (b) provision for amounts of renewable transport fuel of a specified description to count towards discharging such an obligation only up to a specified amount;

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- (c) provision for such an obligation not to be treated as discharged unless a specified minimum amount of renewable transport fuel of a specified description has been counted towards its discharge;
  - (d) provision for only such proportion of any renewable transport fuel of a specified description as is attributable to a specified substance, source of energy, method, process or other matter to count towards discharging such an obligation;
  - (e) provision as to how that proportion is to be determined;
  - (f) provision for an amount of renewable transport fuel of a specified description to count towards discharging such an obligation only if, or to the extent that, specified conditions are satisfied in relation to its supply, the person by or to whom it was supplied or the place at or for delivery to which it was supplied;
  - (g) provision for evidence produced by a supplier in relation to any fuel not to count for the purposes of his renewable transport fuel obligation for a period if evidence in relation to the same fuel has previously been produced (whether by him or by another supplier);
  - (h) provision for evidence produced by a supplier in relation to any fuel not to count for those purposes if, after the supply to which the evidence relates, the fuel is supplied by any person at or for delivery to a place outside the United Kingdom or a specified part of the United Kingdom;
  - (i) provision about the measurement of amounts of different descriptions of transport fuel;
  - (j) provision for units of transport fuel of a specified description to count for more or less than the same units of transport fuel of other descriptions;
  - (k) provision about how measurements in different units of different descriptions of transport fuel are to be aggregated;
  - (l) provision for the application of presumptions where specified matters are shown.
- (3) The provision that may be made by virtue of this section also includes, in particular, provision which—
- (a) is made having regard to one or more of the effects mentioned in subsection (4) (whether in the United Kingdom or elsewhere); or
  - (b) requires regard to be had to one or more such effects.
- (4) Those effects are the effects of the production, supply or use of fuel of a particular description on—
- (a) carbon emissions;
  - (b) agriculture;
  - (c) other economic activities;
  - (d) sustainable development; or
  - (e) the environment generally.

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**Commencement Information**

**196** S. 126 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 127 Renewable transport fuel certificates

- (1) An RTF order may make provision for the Administrator to issue certificates to transport fuel suppliers (“RTF certificates”).
- (2) An RTF certificate is to certify—
  - (a) that the supplier to whom it is issued has supplied the amount of renewable transport fuel stated in the certificate;
  - (b) that that amount of such fuel was supplied by him during the period stated in the certificate;
  - (c) that that amount of such fuel was supplied by him during that period at or for delivery to a place in the United Kingdom or in the part of the United Kingdom stated in the certificate; and
  - (d) the other specified facts.
- (3) Such a certificate may be issued to a supplier only if—
  - (a) he applies for it in the specified manner;
  - (b) his application includes evidence of the specified kind and in the specified form; and
  - (c) the other specified conditions are satisfied.
- (4) An RTF order may authorise transfers of RTF certificates (whether for a consideration or otherwise) between persons of specified descriptions.
- (5) Such an order may also provide that such a transfer is not to be effective unless—
  - (a) the specified details of it have been notified to the Administrator in the specified manner and within the specified time; and
  - (b) the other specified requirements have been complied with.
- (6) If a supplier produces an RTF certificate to the Administrator, it is to count for the purposes of section 124(2) as sufficient evidence of the facts certified.
- (7) An RTF order may provide that, in specified circumstances, evidence produced by virtue of subsection (6) may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period even if it is produced after the time by which evidence had to be produced for the purposes of that obligation.
- (8) Such an order may also provide that, in specified circumstances, evidence produced by virtue of subsection (6) may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period that is later than the period stated in the certificate in question in accordance with subsection (2)(b).

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### Commencement Information

197 S. 127 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 128 Discharge of obligation by payment

- (1) An RTF order may provide that a person who does not wholly discharge his renewable transport fuel obligation for a period by the production of evidence must pay the Administrator the specified sum within the specified period.

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- (2) The provision that may be made by virtue of subsection (1) includes, in particular, provision—
- (a) for the specified sum to increase, in cases where that sum is not paid within a specified period, at the specified rate until it is paid or until the occurrence of a specified event;
  - (b) for specified amounts to be adjusted from time to time for inflation in the specified manner;
  - (c) for the repayment of sums in cases where provision made by virtue of section 127(7) applies in relation to a person;
  - (d) prohibiting the Administrator from taking steps to recover the specified sum or a part of that sum if specified conditions are satisfied.
- (3) Provision within subsection (2)(b) may refer, in particular, to a specified index or to other data, including any index or data as modified from time to time after the coming into force of the order.
- (4) An RTF order may provide that, in a case in which the amount of payments by virtue of subsection (1) which the Administrator has received by the specified time in respect of renewable transport fuel obligations for any period falls short of the amount due in respect of that period, the persons who—
- (a) were subject to renewable transport fuel obligations for that period, and
  - (b) are of a specified description,
- must, within the specified period and in the specified circumstances, each make a payment (or further payment) to the Administrator of an amount calculated in the specified manner.
- (5) The provision that may be made by virtue of subsection (4) includes, in particular, provision for the making of adjustments and repayments after a requirement to make payments has already arisen.
- (6) An RTF order may require the Administrator to use, to the specified extent, the sums received by him by virtue of this section for the purpose of meeting costs incurred by him in carrying out his functions as the Administrator.
- (7) To the extent the Administrator does not so use the sums so received, they must be paid by him to transport fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation.

#### **Commencement Information**

**I98** S. 128 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **129 Imposition of civil penalties**

- (1) An RTF order may—
- (a) designate a provision made by or under this Chapter for the purposes of this section; and
  - (b) provide that a person is to be liable to a civil penalty if—
    - (i) he contravenes that provision; and
    - (ii) any other specified conditions are satisfied.



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- (2) Where the Administrator is satisfied that a person (the “defaulter”) is so liable, he may give a notice to the defaulter in the specified manner (a “civil penalty notice”) imposing on the defaulter a penalty of such amount as the Administrator considers appropriate.
- (3) That penalty must not exceed the lesser of—
  - (a) the specified amount; and
  - (b) the amount equal to ten per cent of the turnover, as determined in the specified manner, of the specified business of the defaulter.
- (4) The civil penalty notice must—
  - (a) set out the Administrator’s reasons for deciding that the defaulter is liable to a penalty;
  - (b) state the amount of the penalty that is being imposed;
  - (c) set out a date before which the penalty must be paid to the Administrator;
  - (d) describe how payment may be made;
  - (e) explain the steps that the defaulter may take if he objects to the penalty; and
  - (f) set out and explain the powers of the Administrator to enforce the penalty.
- (5) The date for the payment of the penalty must not be less than 14 days after the giving of the civil penalty notice.
- (6) A penalty imposed by virtue of this section must be paid to the Administrator—
  - (a) by the date set out in the civil penalty notice by which it is imposed; and
  - (b) in a manner described in that notice.
- (7) Sums received by the Administrator by virtue of this section must be paid to the Secretary of State, who must pay them into the Consolidated Fund.

**Commencement Information**

**199** S. 129 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### **130 Objections to civil penalties**

- (1) A person to whom a civil penalty notice is given may give notice to the Administrator that he objects to the penalty on one or both of the following grounds—
  - (a) that he is not liable to pay it;
  - (b) that the amount of the penalty is too high.
- (2) The notice of objection—
  - (a) must set out the grounds of the objection and the objector’s reasons for objecting on those grounds; and
  - (b) must be given to the Administrator in the specified manner and within the specified period after the giving of the civil penalty notice.
- (3) The Administrator must consider a notice of objection given in accordance with this section and may then—
  - (a) cancel the penalty;
  - (b) reduce it;
  - (c) increase it; or

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- (d) confirm it.
- (4) The Administrator must not enforce a penalty in respect of which he has received a notice of objection before he has notified the objector of the outcome of his consideration of the objection.
- (5) That notification of the outcome of his consideration must be given, in the specified manner—
  - (a) before the end of the specified period; or
  - (b) within such longer period as he may agree with the objector.
- (6) Where, on consideration of an objection, the Administrator increases the penalty, he must give the objector a new civil penalty notice; and, where he reduces it, the notification mentioned in subsection (5) must set out the reduced amount.

#### Commencement Information

**I100** S. 130 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 131 Appeals against civil penalties

- (1) A person to whom a civil penalty notice is given may appeal to the court on one or both of the following grounds—
  - (a) that he is not liable to pay the penalty;
  - (b) that the amount of the penalty is too high.
- (2) An appeal under this section must be brought within such period after the giving of the civil penalty notice as may be set out in rules of court.
- (3) On an appeal under this section, the court may—
  - (a) allow the appeal and cancel the penalty;
  - (b) allow the appeal and reduce the penalty; or
  - (c) dismiss the appeal.
- (4) An appeal under this section is to be by way of a rehearing of the Administrator’s decision to impose the penalty.
- (5) The matters to which the court may have regard when determining an appeal under this section include all matters that the court considers relevant, including—
  - (a) matters of which the Administrator was unaware when he made his decision; and
  - (b) matters which (apart from this subsection) the court would be prevented from having regard to by virtue of rules of court.
- (6) An appeal under this section may be brought in relation to a penalty irrespective of whether a notice of objection under section 130 has been given in respect of that penalty or whether there has been an increase or reduction under that section.
- (7) In this section “the court” means—
  - (a) in England and Wales or Northern Ireland, the High Court; and
  - (b) in Scotland, the Court of Session.

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### Commencement Information

**1101** S. 131 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 132 Interpretation of Chapter 5 of Part 2

(1) In this Chapter—

“Administrator” means the person appointed by virtue of section 125 as the Administrator for the purposes of provision made by or under this Chapter;

“biofuel” means liquid or gaseous fuel that is produced wholly from biomass;

“blended biofuel” means liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel;

“civil penalty notice” has the meaning given by section 129(2);

“renewable transport fuel” means—

- (a) biofuel;
- (b) blended biofuel;
- (c) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced—
  - (i) wholly by energy from a renewable source; or
  - (ii) wholly by a process powered wholly by such energy; or
- (d) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel;

“renewable transport fuel obligation” has the meaning given by section 124(1);

“RTF order” has the meaning given by section 124(3);

“specified” means specified in, or determined in accordance with, an RTF order;

“supply” means, in relation to fuel, the supply of that fuel to any person with a view to its being used (whether by that person or persons to whom it is subsequently supplied) wholly or primarily for transport purposes;

“transport fuel” means—

- (a) renewable transport fuel;
- (b) fossil fuel; or
- (c) any solid, liquid or gaseous fuel that is neither renewable transport fuel nor fossil fuel;

“transport fuel supplier” means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom.

(2) For the purposes of this section a process powered by electricity that was generated by energy from a particular source is to be treated as being powered by energy from that source.

(3) For the purposes of this section fuel is used for transport purposes if—

- (a) it is used as fuel for one or more of the following, namely, vehicles, vessels, aircraft, trains or any other mode of transport; or
- (b) it is used for producing fuel that is intended to be so used.

(4) In this section—

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“biomass” means the biodegradable portion of a specified product, waste or residue;

“fossil fuel” has the same meaning as in section 32 of the 1989 Act;

“renewable source” means, in relation to energy, any of the following sources of energy—

- (a) wind;
- (b) solar heat;
- (c) water (including waves and tides);
- (d) geothermal sources; or
- (e) biomass.

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**Commencement Information**

**I102** S. 132 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

**PART 3**

ENERGY REGULATION

**CHAPTER 1**

ELECTRICITY TRADING AND TRANSMISSION

**133 “New trading and transmission arrangements”**

- (1) References in this Chapter to the new trading and transmission arrangements are to new arrangements relating to the trading and transmission of electricity in Great Britain designed—
- (a) to promote the creation of a single competitive wholesale electricity trading market, and
  - (b) to introduce a single set of arrangements for access to and use of any transmission system in Great Britain.
- (2) Expressions used in subsection (1) have the same meaning as in Part 1 of the 1989 Act (electricity supply), as amended by section 135.

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**Commencement Information**

**I103** S. 133 in force at 24.8.2004 by [S.I. 2004/2184](#), art. 2(1), **Sch. 1**

**134 Power to modify licence conditions**

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements (whether wholly or partly), he may modify—
- (a) the conditions of a particular licence under section 6 of the 1989 Act (licences authorising supply etc.), or

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- (b) the standard conditions of licences of any of the types of licence mentioned in subsection (1) of that section (generation, transmission, distribution or supply licences).
- (2) The power under subsection (1) includes—
  - (a) power to make modifications relating to the operation of distribution systems, and
  - (b) power to make incidental, consequential or transitional modifications.
- (3) Before making modifications under this section, the Secretary of State shall consult the holder of any licence being modified and such other persons as he considers appropriate.
- (4) Subsection (3) may be satisfied by consultation before, as well as by consultation after, the commencement of this section.
- (5) The Secretary of State shall publish any modifications under subsection (1) in such manner as he considers appropriate.
- (6) Any modification under subsection (1)(a) of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.
- (7) Where the Secretary of State modifies the standard conditions of licences of any type under subsection (1)(b), GEMA shall—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modifications in such manner as it considers appropriate.
- (8) The power under subsection (1) may not be exercised after the end of the period of eighteen months beginning with the day on which that subsection comes into force.
- (9) In subsection (2)(a), the reference to distribution systems is to be construed in accordance with section 4(4) of the 1989 Act.

**Commencement Information**

**I104** S. 134 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

**135 Alteration of transmission activities requiring licence**

- (1) Section 4 of the 1989 Act (prohibition on unlicensed activities in connection with supply of electricity) is amended as follows.
- (2) In subsection (1) (which lists the activities prohibited), for paragraph (b) substitute—
  - “(b) participates in the transmission of electricity for that purpose;”.
- (3) After subsection (3) insert—
  - “(3A) In subsection (1)(b) above, the reference to a person who participates in the transmission of electricity is to a person who—

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- (a) co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, or
- (b) makes available for use for the purposes of such a transmission system anything which forms part of it.

(3B) For the purposes of subsection (3A)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.”

(4) In subsection (4) (definitions for the purposes of Part 1), for the definition of “transmit” substitute—

““transmission”, in relation to electricity, means transmission by means of a transmission system;

“transmission system” means a system which—

- (a) consists (wholly or mainly) of high voltage lines and electrical plant, and
- (b) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.”

#### Commencement Information

**I105** S. 135 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I106** S. 135 in force at 1.9.2004 in so far as not already in force by S.I. 2004/2184, art. 2(2), Sch. 2

### 136 Transmission licences

(1) In section 6 of the 1989 Act (licences authorising supply etc.), in subsection (1) (kinds of licence which may be granted), for paragraph (b) substitute—

“(b) a licence authorising a person to participate in the transmission of electricity for that purpose (“a transmission licence”);”.

(2) After subsection (6) of that section insert—

“(6A) A transmission licence may authorise the holder to participate in the transmission of electricity in any area, or only in an area specified in the licence.

(6B) The Authority may, with the consent of the holder of a transmission licence, modify terms included in the licence in pursuance of subsection (6A) above.”

(3) In section 7 (licence conditions: general), after subsection (2) insert—

“(2A) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a transmission licence by virtue of that paragraph may—

- (a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on, or
- (b) restrict where he may carry on an activity which he is authorised by the licence to carry on.”

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### Commencement Information

**1107** S. 136 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

## 137 New standard conditions for transmission licences

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he may determine new standard conditions in relation to transmission licences.
- (2) The Secretary of State shall publish any conditions determined under subsection (1) in such manner as he considers appropriate.
- (3) Conditions published in accordance with subsection (2) shall be standard conditions for the purposes of transmission licences, subject to any modifications of the standard conditions for the purposes of licences of that type made—
  - (a) under Part 1 of the 1989 Act, or
  - (b) under this Act,after the determination under subsection (1).
- (4) The standard conditions for the purposes of transmission licences may contain provision—
  - (a) for any standard condition included in a transmission licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in, or determined under, the standard conditions;
  - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined;
  - (c) for any standard condition included in such a licence which is suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (5) In section 8A of the 1989 Act (standard conditions of licences), in subsection (1) (incorporation in future licences of conditions which are standard conditions by virtue of section 33(1) of the Utilities Act 2000 (c. 27)), for the words from “section 6(1)” to “supply licences” substitute “ section 6(1)(a), (c) or (d) (that is to say, generation licences, distribution licences or supply licences) ”.
- (6) In that section, after subsection (1) insert—

“(1A) Subject to subsection (2), each condition which by virtue of section 137(3) of the Energy Act 2004 is a standard condition for the purposes of transmission licences shall be incorporated by reference in each transmission licence granted on or after the day on which section 137(6) of that Act comes into force.”
- (7) The power under subsection (1) may not be exercised—
  - (a) after the end of the period of eighteen months beginning with the day on which that subsection comes into force, or
  - (b) on or after the day on which subsections (5) and (6) come into force.

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#### Commencement Information

**I108** S. 137(1)-(4)(7) in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), **Sch. 1**

**I109** S. 137(5)(6) in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), **Sch. 2**

### 138 Conversion of existing transmission licences

Schedule 17 (which makes provision for a licensing scheme in relation to existing transmission licences) has effect.

#### Commencement Information

**I110** S. 138 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), **Sch. 1**

PROSPECTIVE

### 139 Grant of transmission licences

- (1) If the Secretary of State considers it necessary or expedient to do so for the purpose of implementing the new trading and transmission arrangements, he may by direction—
  - (a) require GEMA to grant a transmission licence to such person, and on such terms and subject to such conditions, as the direction may provide;
  - (b) require GEMA to refuse an application for a transmission licence.
- (2) The Secretary of State shall consult GEMA before issuing a direction under subsection (1).
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the commencement of this section.
- (4) The powers under subsection (1) may not be exercised after the end of the period of eighteen months beginning with the day on which that subsection comes into force.
- (5) The power under subsection (1)(a) may only be exercised on one occasion and then only to require the grant of a single licence.
- (6) The power under subsection (1)(b) may not be exercised once the power under subsection (1)(a) has been exercised.

### 140 Duties to provide information etc. to Secretary of State

- (1) If GEMA receives an application for a transmission licence at a time when the power under section 139(1)(b) is exercisable, it shall as soon as practicable send a copy of the application to the Secretary of State.
- (2) GEMA shall provide the Secretary of State with all such information as he may require for the purposes of or in connection with the carrying-out of any of his functions under this Chapter.



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- (3) Each holder of a licence under section 6 of the 1989 Act shall provide the Secretary of State with all such information and other assistance as he may require for the purposes of or in connection with the carrying-out of any of his functions under this Chapter.
- (4) Section 105(1) of the Utilities Act 2000 (c. 27) (general restrictions on disclosure of information) does not apply to a disclosure made in pursuance of this section.

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**Commencement Information**

**I111** S. 140(2)-(4) in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), **Sch. 1**

#### 141 Property arrangements schemes

Schedule 18 (which makes provision about property arrangements schemes) has effect.

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**Commencement Information**

**I112** S. 141 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), **Sch. 2**

#### 142 Interpretation of Chapter 1 of Part 3

In this Chapter—

“transmission licence” means a licence under section 6(1)(b) of the 1989 Act;

and references to the new trading and transmission arrangements are to be construed in accordance with section 133.

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**Commencement Information**

**I113** S. 142 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), **Sch. 1**

#### 143 Amendments consequential on Chapter 1 of Part 3

- (1) Schedule 19 (which makes amendments consequential on the provisions of this Chapter) has effect.
- (2) Where the effect of—
  - (a) a modification under section 134, or
  - (b) a scheme under Schedule 17,

is to reduce in any respect the area in which the holder of a transmission licence may carry on activities, Schedule 4 to the 1989 Act shall have effect in relation to him as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.

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**Commencement Information**

**I114** S. 143 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), **Sch. 2**

**Status:** Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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## 144 Transition

The Secretary of State may by order make in connection with the coming into force of any provision of this Chapter such transitional provision or saving as he considers necessary or expedient.

### Commencement Information

**I115** S. 144 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## CHAPTER 2

### INTERCONNECTORS FOR ELECTRICITY AND GAS

#### *Electricity interconnectors*

## 145 Operators of electricity interconnectors to be licensed

- (1) The 1989 Act is amended as follows.
- (2) In subsection (1) of section 4 (licensable activities), at the end of paragraph (c) insert “or
  - (d) participates in the operation of an electricity interconnector.”.
- (3) Before subsection (4) of that section insert—
 

“(3C) A reference in this Part to participating in the operation of an electricity interconnector is a reference to—

  - (a) co-ordinating and directing the flow of electricity into or through an electricity interconnector; or
  - (b) making such an interconnector available for use for the conveyance of electricity;

and a person is not to be regarded as participating in the transmission of electricity by reason only of activities constituting participation in the operation of an electricity interconnector.

(3D) For the purposes of subsection (3C)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.

(3E) In this Part “electricity interconnector” means so much of an electric line or other electrical plant as—

  - (a) is situated at a place within the jurisdiction of Great Britain; and
  - (b) subsists wholly or primarily for the purposes of the conveyance of electricity (whether in both directions or in only one) between Great Britain and a place within the jurisdiction of another country or territory.

(3F) For the purposes of this section—

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- (a) a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964; and
  - (b) a place is within the jurisdiction of another country or territory if it is in that country or territory or in waters in relation to which authorities of that country or territory exercise jurisdiction.”
- (4) In section 5(1) (power of the Secretary of State to grant exemptions from licensing), for “or (c)” substitute “, (c) or (d)”.
- (5) In section 6 (power to grant licences), after subsection (1)(d) insert “or
- (e) a licence authorising a person to participate in the operation of an electricity interconnector (“an interconnector licence”).”
- (6) After subsection (2) of that section insert—
- “(2A) The same person may not be the holder of an interconnector licence and the holder of a licence falling within any of paragraphs (a) to (d) of subsection (1).”
- (7) Before subsection (7) of that section insert—
- “(6C) An interconnector licence authorising participation in the operation of an electricity interconnector—
- (a) must specify the interconnector or interconnectors in relation to which participation is authorised; and
  - (b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.”

#### Commencement Information

**I116** S. 145(1)(3)(5)-(7) in force at 1.12.2004 by S.I. 2004/2575, art. 2(2), Sch. 2

### 146 Standard conditions for electricity interconnectors

- (1) The Secretary of State must, before the commencement of subsection (6), determine standard conditions for electricity interconnector licences.
- (2) Those standard conditions may contain provision—
- (a) for a standard condition included in an electricity interconnector licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions;
  - (b) for the effect of a standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (3) The Secretary of State must publish the standard conditions determined by him under this section.

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- (4) The publication must be in such manner as the Secretary of State considers appropriate.
- (5) The standard conditions determined by the Secretary of State have effect subject to any modifications made under Part 1 of the 1989 Act or under this Act.
- (6) Before subsection (2) of section 8A of the 1989 Act (standard conditions) insert—
  - “(1B) Subject to subsection (2), each condition which by virtue of section 146 of the Energy Act 2004 is a standard condition for the purposes of interconnector licences shall be incorporated, by reference, in each interconnector licence granted on or after the commencement of subsection (6) of that section.”
- (7) In this section “electricity interconnector licence” means an interconnector licence under section 6(1)(e) of the 1989 Act.

#### Commencement Information

**I117** S. 146(1)-(5) (7) in force at 1.12.2004 by [S.I. 2004/2575](#), art. 2(2), [Sch. 2](#)

#### 147 Consequential amendments of the 1989 Act

- (1) The 1989 Act is amended as follows.
- (2) In section 3A—
  - (a) in subsection (1) (principal objective of GEMA in relation to electricity), at the end insert “ or the provision or use of electricity interconnectors ”; and
  - (b) in subsection (5)(a) (duty as to carrying out of functions), after “electricity”, where first occurring, insert “ or to participate in the operation of electricity interconnectors ”.
- (3) In section 29 (regulations)—
  - (a) in subsection (1)(b), after “electricity”, where first occurring, insert “ from the use of electricity interconnectors, ”;
  - (b) in subsection (2)(b), after “electricity” insert “ or in the use of electricity interconnectors ”;
  - (c) in subsection (2)(c), after “electricity” insert “ or to participate in the operation of an electricity interconnector ”.
- (4) In section 30(2)(a) (duty of inspector to inspect apparatus belonging to licence holders), after “electricity” insert “ or to participate in the operation of electricity interconnectors ”.
- (5) In section 43 (concurrent functions of GEMA and the OFT under the Enterprise Act 2002), in each of subsections (2A) and (3), after “electricity” insert “ or the use of electricity interconnectors ”.
- (6) In section 58(2) (information protected by directions), after “electricity” insert “ or to participate in the operation of electricity interconnectors ”.
- (7) In section 64(1) (interpretation), after the definitions of “electricity distributor” and “electricity supplier” insert—
  - ““electricity interconnector” has the meaning given by section 4(3E);”.

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- (8) In section 98(1) (statistical information)—
- (a) after “electricity”, where first occurring, insert “ or the use of electricity interconnectors ”; and
  - (b) at the end insert “ or to participate in the operation of electricity interconnectors ”.

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**Commencement Information**

**I118** S. 147(1)-(4)(6)-(8) in force at 1.12.2004 by S.I. 2004/2575, art. 2(2), Sch. 2

## **148 Grant of electricity interconnector licences to existing operators**

- (1) This section applies where a person is participating in the operation of an electricity interconnector at the time when the power of GEMA to grant electricity interconnector licences comes into force.
- (2) The Secretary of State shall have power to grant such a licence to that person under section 6 of the 1989 Act.
- (3) Sections 6A(5), 7 and 8A of the 1989 Act (notice of licence and licence conditions) shall have effect in relation to the grant of licences by the Secretary of State by virtue of this section as if—
- (a) references in those sections to GEMA included references to the Secretary of State; and
  - (b) in section 8A, the words “the Secretary of State and” in subsection (4)(b) and subsection (5) were omitted.
- (4) Before granting a licence to a person by virtue of this section, the Secretary of State must consult—
- (a) that person;
  - (b) GEMA; and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (6) In this section—
- “electricity interconnector licence” means an interconnector licence under section 6(1)(e) of the 1989 Act; and
  - “participating in the operation of an electricity interconnector” has the same meaning as in Part 1 of the 1989 Act.

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**Commencement Information**

**I119** S. 148 in force at 1.12.2004 by S.I. 2004/2575, art. 2(2), Sch. 2

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### *Gas interconnectors*

#### **149 Operators of gas interconnectors to be licensed**

- (1) The Gas Act 1986 (c. 44) is amended as follows.
- (2) In subsection (1) of section 5 (prohibition on unlicensed activities)—
  - (a) in paragraph (a), at the beginning insert “ otherwise than by means of a gas interconnector ”; and
  - (b) after that paragraph insert—
    - “(aa) participates in the operation of a gas interconnector;”.
- (3) After subsection (5) of that section insert—
  - “(6) A reference in this Part to participating in the operation of a gas interconnector is a reference to—
    - (a) co-ordinating and directing the conveyance of gas into or through a gas interconnector; or
    - (b) making such an interconnector available for use for the conveyance of gas.
  - (7) For the purposes of subsection (6)(b) a person shall not be regarded as making something available just because he consents to its being made available by another.
  - (8) In this Part “gas interconnector” means so much of any pipeline system as—
    - (a) is situated at a place within the jurisdiction of Great Britain; and
    - (b) subsists wholly or primarily for the purposes of the conveyance of gas (whether in both directions or in only one) between Great Britain and another country or territory.
  - (9) For the purposes of this section a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964.
  - (10) In this section “pipe-line system” includes the pipes and any associated apparatus comprised in that system.”
- (4) In section 6A(1) (power of the Secretary of State to grant exemptions from licensing), after “paragraph (a)” insert “, (aa) ”.
- (5) In section 7(3) (no licence may be issued to holder of licence under section 7A), after “under section” insert “ 7ZA or ”.
- (6) After section 7 insert—

#### **“7ZA Licences for operation of gas interconnectors**

- (1) Subject to subsection (2), the Authority may grant a licence authorising any person to participate in the operation of a gas interconnector.
- (2) A licence shall not be granted under this section to a person who is the holder of a licence under section 7 or 7A.
- (3) A licence under this section—

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- (a) must specify the interconnector or interconnectors in relation to which participation is authorised; and
  - (b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.”
- (7) In section 7A(3) (no licence may be issued to holder of licence under section 7), after “section 7” insert “ or 7ZA ”.
- (8) In—
  - (a) the definitions of “licence” in sections 4AA(8) and 48(1), and
  - (b) section 36(1) and (2)(d),after “section 7” insert “ , 7ZA ”.
- (9) In section 24(1A)(a) (references to the Competition Commission for licence modifications), after sub-paragraph (i) insert—
  - “(ia) licences under section 7ZA above,”.
- (10) In section 41C(4) (addition of activities to prohibited activities), after paragraph (a) insert—
  - “(aa) participation in the operation of a gas interconnector;”.
- (11) In section 48(1) (interpretation) after the definition of “gas fittings” insert—
  - ““gas interconnector” has the meaning given by section 5(8);”.

#### **Commencement Information**

**I120** S. 149(1)(3)(5)-(9)(11) in force at 1.12.2004 by S.I. 2004/2575, art. 2(2), **Sch. 2**

### **150 Standard conditions for gas interconnectors**

- (1) The Secretary of State must, before the commencement of subsection (6) of this section, determine standard conditions for licences under section 7ZA of the Gas Act 1986 (c. 44).
- (2) Those standard conditions may contain provision—
  - (a) for a standard condition included in a licence under section 7ZA of the Gas Act 1986 not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions;
  - (b) for the effect of a standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (3) The Secretary of State must publish the standard conditions determined by him under this section.
- (4) The publication must be in such manner as the Secretary of State considers appropriate.

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- (5) The standard conditions determined by the Secretary of State have effect subject to any modifications made under Part 1 of the Gas Act 1986 (c. 44) or under this Act.
- (6) In subsection (1) of section 8 of that Act (standard conditions)—
  - (a) after “2000” insert “ or section 150 of the Energy Act 2004 ”; and
  - (b) after paragraph (a) insert—
    - “(aa) licences under section 7ZA above;”.
- (7) After subsection (6) of that section insert—
 

“(6A) The Authority shall not make any modifications under subsection (3) above of a condition of a licence under section 7ZA unless it is of the opinion that the modifications are such that—

  - (a) the licence holder would not be unduly disadvantaged in competing with one or more other holders of licences under that section; and
  - (b) no other holder of a licence under that section would be unduly disadvantaged in competing with the holder of the licence to be modified or with any one or more other holders of licences under that section.”
- (8) In sections 23(1)(b) and (2), 26(1A) and 27(1)(b) and (2) of that Act (which relate to the modification of standard conditions), after “licences under section 7 above” insert “ , licences under section 7ZA above ”.
- (9) In sections 23(11) and 26(5) of that Act (which require the publication of modifications of standard conditions), after “section 7” insert “ , 7ZA ”.
- (10) In section 26A(9) of that Act (which also relates to the modification of such conditions), after “section 7” insert “ or section 7ZA ”.

#### Commencement Information

**1121** S. 150(1)-(5) (7)-(10) in force at 1.12.2004 by [S.I. 2004/2575](#), art. 2(2), [Sch. 2](#)

VALID FROM 14/08/2006

#### 151 Disapplication of existing regimes

- (1) In each of sections 9(1A) and 9A(1A) of the Pipe-lines Act 1962 (c. 58) (pipe-lines to which provision for construction of additional pipe-lines do not apply), for “neither upstream petroleum pipe-lines nor gas pipe-lines” substitute “ not an upstream petroleum pipe-line, a gas pipe-line or a gas interconnector ”.
- (2) In section 10(1)(b)(ii) of that Act (pipe-lines excluded from provisions for securing use of pipelines), for “is not” substitute “ is neither comprised in a gas interconnector nor ”.
- (3) The following provisions of that Act shall cease to have effect—
  - (a) section 10B (cases to which section 10C applies);
  - (b) in section 10C(1) the words “to which this section applies (a “relevant gas pipe-line”)”; and



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- (c) in section 10C(2) to (11), the word “relevant” wherever occurring.
- (4) In section 66(1) of that Act (interpretation)—
  - (a) for the definition of “gas pipe-line” substitute—

““gas pipe-line” means a pipe-line used to convey gas to premises, or to a pipe-line system operated by a gas transporter (within the meaning of Part 1 of the Gas Act 1986), which—

    - (a) is a pipe-line in respect of which an exemption has been granted by or under that Act from the requirement for a gas transporter’s licence; and
    - (b) is not comprised in an upstream petroleum pipe-line;”
  - (b) after the definition of “gas” insert—

““gas interconnector” has the same meaning as in Part 1 of the Gas Act 1986;”
  - (c) in the definition of “owner”, for “10B” substitute “ 10C ”.
- (5) In the Petroleum Act 1998 (c. 17)—
  - (a) in section 17(1A) (exceptions to application of provisions for acquisition of rights to use pipelines), for the words from “and” onwards substitute “ or to a gas interconnector (within the meaning of Part 1 of the Gas Act 1986). ”; and
  - (b) sections 17A and 17B (special rules for interconnectors) shall cease to have effect.

## 152 Grant of gas interconnector licences to existing operators

- (1) This section applies where a person is participating in the operation of a gas interconnector at the time when the power of GEMA to grant licences under section 7ZA of the Gas Act 1986 (c. 44) comes into force.
- (2) The Secretary of State shall have power to grant a licence to that person under section 7ZA of the Gas Act 1986.
- (3) Sections 7B and 8 of the Gas Act 1986 (general provisions relating to licences and licence conditions) shall have effect in relation to the grant of licences by the Secretary of State by virtue of this section as if—
  - (a) references in those sections to GEMA included references to the Secretary of State;
  - (b) sections 7B(1), (2) and (2A) were omitted; and
  - (c) in section 8, the words “the Secretary of State, to” in subsection (5)(b) and subsection (6) were omitted.
- (4) Before granting a licence to a person by virtue of this section, the Secretary of State must consult—
  - (a) that person;
  - (b) GEMA; and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.

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- (6) In this section “participating in the operation of a gas interconnector” has the same meaning as in Part 1 of the Gas Act 1986.

**Commencement Information**

**I122** S. 152 in force at 1.12.2004 by S.I. 2004/2575, art. 2(2), Sch. 2

VALID FROM 14/08/2006

**153 Extraterritorial application of Gas Act 1986**

After section 64 of the Gas Act 1986 (c. 44) insert—

**“64A Extraterritorial operation of Act**

- (1) Where by virtue of this Act an act or omission taking place outside Great Britain constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (2) Provision made by or under this Act in relation to places outside Great Britain—
  - (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.”

**CHAPTER 3**

SPECIAL ADMINISTRATION REGIME FOR ENERGY LICENSEES

*Energy administration orders*

**154 Energy administration orders**

- (1) In this Chapter “energy administration order” means an order which—
  - (a) is made by the court in relation to a protected energy company; and
  - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) The person appointed in relation to a company for the purposes of an energy administration order is referred to in this Chapter as the energy administrator of the company.
- (3) The energy administrator of a company must manage its affairs, business and property, and exercise and perform all his powers and duties as such, so as to achieve the objective set out in section 155.

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- (4) In relation to an energy administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.
- (5) In this Chapter—
- “protected energy company” means a company which is the holder of a relevant licence; and
  - “relevant licence” means—
    - (a) a licence granted under section 6(1)(b) or (c) of the 1989 Act (transmission and distribution licences for electricity); or
    - (b) a licence granted under section 7 of the Gas Act 1986 (licensing of gas transporters).

#### Commencement Information

**I123** S. 154 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 155 Objective of an energy administration

- (1) The objective of an energy administration is to secure—
- (a) that the company’s system is and continues to be maintained and developed as an efficient and economical system; and
  - (b) that it becomes unnecessary, by one or both of the following means, for the energy administration order to remain in force for that purpose.
- (2) Those means are—
- (a) the rescue as a going concern of the company subject to the energy administration order; and
  - (b) transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern—
- (a) to another company, or
  - (b) as respects different parts of the undertaking of the company subject to the energy administration order, to two or more different companies,
- of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy administration.
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular—
- (a) a transfer of the undertaking of the company subject to the energy administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of an energy administration may be achieved by transfers falling within subsection (3) to the extent only that—

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- (a) the rescue as a going concern of the company subject to the energy administration order is not reasonably practicable or is not reasonably practicable without such transfers;
  - (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
  - (c) such transfers would produce a result for the company’s creditors as a whole that is better than the result that would be produced without them; or
  - (d) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company’s members as a whole that is better than the result that would be produced without them.
- (6) In this section “the company’s system”, in relation to an energy administration, means—
- (a) the system of electricity distribution or of electricity transmission, or
  - (b) the pipe-line system for the conveyance of gas,
- which the company subject to the energy administration order has been maintaining as the holder of a relevant licence.
- (7) In this section “efficient and economical”, in relation to a system for electricity distribution or electricity transmission, includes co-ordinated.

#### Commencement Information

**I124** S. 155 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 156 Applications for energy administration orders

- (1) An application for an energy administration order in relation to a company may be made only—
- (a) by the Secretary of State; or
  - (b) with the consent of the Secretary of State, by GEMA.
- (2) The applicant for an energy administration order in relation to a company must give notice of the application to—
- (a) every person who has appointed an administrative receiver of the company;
  - (b) every person who is or may be entitled to appoint an administrative receiver of the company;
  - (c) every person who is or may be entitled to make an appointment in relation to the company under paragraph 14 of Schedule B1 to the 1986 Act (appointment of administrators by holders of floating charges); and
  - (d) such other persons as may be prescribed by energy administration rules.
- (3) The notice must be given as soon as reasonably practicable after the making of the application.
- (4) In this section “administrative receiver” means—
- (a) an administrative receiver within the meaning given by section 251 of the 1986 Act for the purposes of Parts 1 to 7 of that Act; or
  - (b) a person whose functions in relation to a non-GB company—
    - (i) are equivalent to those of an administrative receiver; and

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- (ii) relate only to the affairs and business of the company so far as carried on in Great Britain and to its property in Great Britain.

**Commencement Information**

**I125** S. 156 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**157 Powers of court**

- (1) On hearing an application for an energy administration order, the court has the following powers—
- (a) it may make the order;
  - (b) it may dismiss the application;
  - (c) it may adjourn the hearing conditionally or unconditionally;
  - (d) it may make an interim order;
  - (e) it may treat the application as a winding-up petition and make any order the court could make under section 125 of the 1986 Act (power of court on hearing winding-up petition);
  - (f) it may make any other order which the court thinks appropriate.
- (2) The court may make an energy administration order in relation to a company only if it is satisfied—
- (a) that the company is unable to pay its debts;
  - (b) that it is likely to be unable to pay its debts; or
  - (c) that, on a petition by the Secretary of State under section 124A of the 1986 Act (petition for winding up on grounds of public interest), it would be just and equitable (disregarding the objective of the energy administration) to wind up the company in the public interest.
- (3) The court must not make an energy administration order in relation to a company on the ground set out in subsection (2)(c) unless the Secretary of State has certified to the court that the case is one in which he considers (disregarding the objective of the energy administration) that it would be appropriate for him to petition under section 124A of the 1986 Act.
- (4) The court has no power to make an energy administration order in relation to a company which—
- (a) is in administration under Schedule B1 to the 1986 Act; or
  - (b) has gone into liquidation (within the meaning of section 247(2) of that Act).
- (5) An energy administration order comes into force—
- (a) at the time appointed by the court; or
  - (b) if no time is so appointed, when the order is made.
- (6) An interim order under subsection (1)(d) may, in particular—
- (a) restrict the exercise of a power of the company or of its directors; or
  - (b) make provision conferring a discretion on a person qualified to act as an insolvency practitioner in relation to the company.

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- (7) Where the company in relation to which an application is made is a non-GB company, the reference in subsection (6)(a) to restricting the exercise of a power of the company or of its directors is a reference only to restricting the exercise of such a power—
- (a) within Great Britain; or
  - (b) in relation to the company's affairs or business so far as carried on in Great Britain, or to its property in Great Britain.
- (8) For the purposes of this section a company is unable to pay its debts if—
- (a) it is a company which is deemed to be so unable under section 123 of the 1986 Act (definition of inability to pay debts); or
  - (b) it is an unregistered company which is deemed, by virtue of any of sections 222 to 224 of that Act, to be so unable for the purposes of section 221 of that Act (winding-up of unregistered companies), or which would be so deemed if it were an unregistered company for the purposes of those sections.

#### Commencement Information

**I126** S. 157 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 158 Energy administrators

- (1) The energy administrator of a company—
  - (a) is an officer of the court; and
  - (b) in exercising and performing his powers and duties in relation to the company, is the company's agent.
- (2) The management by the energy administrator of a company of any affairs, business or property of the company must be carried out for the purpose of achieving the objective of the energy administration as quickly and as efficiently as is reasonably practicable.
- (3) The energy administrator of a company must exercise and perform his powers and duties in the manner which, so far as it is consistent with the objective of the energy administration to do so, best protects—
  - (a) the interests of the creditors of the company as a whole; and
  - (b) subject to those interests, the interests of the members of the company as a whole.
- (4) A person is not to be the energy administrator of a company unless he is a person qualified to act as an insolvency practitioner in relation to the company.
- (5) Where the court makes an appointment in a case in which two or more persons will be the energy administrator of a company after the appointment, the appointment must set out—
  - (a) which (if any) of the powers and duties of an energy administrator are to be exercisable or performed only by those persons acting jointly;
  - (b) the circumstances (if any) in which powers and duties of an energy administrator are to be exercisable, or may be performed, by one of the persons appointed to be the energy administrator, or by particular appointees, acting alone; and

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- (c) the circumstances (if any) in which things done in relation to one of the persons appointed to be the energy administrator, or in relation to particular appointees, are to be treated as done in relation to all of them.

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**Commencement Information**

**I127** S. 158 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**159 Conduct of administration, transfer schemes etc.**

- (1) Schedule 20 (which applies the provisions of Schedule B1 to the 1986 Act about ordinary administration orders and certain other enactments to energy administration orders) has effect.
- (2) Schedule 21 (which makes provision for transfer schemes to achieve the objective of an energy administration) has effect.
- (3) The power to make rules conferred by section 411 of the 1986 Act (company insolvency rules) shall apply for the purpose of giving effect to this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act and, accordingly, as if references in that section to those Parts included references to this Chapter.

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**Commencement Information**

**I128** S. 159 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Restrictions on other insolvency procedures*

**160 Restrictions on winding-up orders**

- (1) This section applies where a petition for the winding-up of a protected energy company is presented by a person other than the Secretary of State.
- (2) The court is not to exercise its powers on a winding-up petition unless—
- (a) notice of the petition has been served both on the Secretary of State and on GEMA; and
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (3) If an application for an energy administration order in relation to the company is made to the court in accordance with section 156(1) before a winding-up order is made on the petition, the court may exercise its powers under section 157, instead of exercising its powers on a winding-up petition.
- (4) References in this section to the court's powers on a winding-up petition are references to—
- (a) its powers under section 125 of the 1986 Act (other than its power of adjournment); and
  - (b) its powers under section 135 of that Act.

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#### Commencement Information

**I129** S. 160 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 161 Restrictions on voluntary winding up

- (1) A protected energy company has no power to pass a resolution for voluntary winding up without the permission of the court.
- (2) Such permission may be granted only on an application made by the company.
- (3) The court is not to grant permission on such an application unless—
  - (a) notice of the application has been served both on the Secretary of State and on GEMA; and
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (4) If an application for an energy administration order in relation to the company is made to the court in accordance with section 156(1) after an application for permission under this section has been made and before it is granted, the court may exercise its powers under section 157, instead of granting permission.
- (5) In this section “a resolution for voluntary winding up” has the same meaning as in the 1986 Act.

#### Commencement Information

**I130** S. 161 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 162 Restrictions on making of ordinary administration orders

- (1) This section applies where an ordinary administration application is made in relation to a protected energy company by a person other than the Secretary of State.
- (2) The court must dismiss the application if—
  - (a) an energy administration order is in force in relation to the company; or
  - (b) an energy administration order has been made in relation to the company but is not yet in force.
- (3) Where subsection (2) does not apply, the court, on hearing the application, must not exercise its powers under paragraph 13 of Schedule B1 to the 1986 Act (other than its power of adjournment) unless—
  - (a) notice of the application has been served both on the Secretary of State and on GEMA;
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served; and
  - (c) there is no application for an energy administration order that is outstanding.
- (4) Paragraph 44 of Schedule B1 to the 1986 Act (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for an energy administration order.



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- (5) Upon the making of an energy administration order in relation to a protected energy company, the court must dismiss any ordinary administration application made in relation to that company which is outstanding.
- (6) In this section “ordinary administration application” means an application in accordance with paragraph 12 of Schedule B1 to the 1986 Act.

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**Commencement Information**

**I131** S. 162 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### **163 Restrictions on administrator appointments by creditors etc.**

- (1) No step is to be taken by any person to make an appointment in relation to a company under paragraph 14 or 22 of Schedule B1 to the 1986 Act (powers of holder of floating charge and of the company itself and of its directors to appoint administrators) if—
  - (a) an energy administration order is in force in relation to the company;
  - (b) an energy administration order has been made in relation to the company but is not yet in force; or
  - (c) an application for such an order is outstanding.
- (2) In the case of a protected energy company to which subsection (1) does not apply, an appointment in relation to that company under paragraph 14 or 22 of Schedule B1 to the 1986 Act takes effect only if each of the conditions mentioned in subsection (3) is met.
- (3) Those conditions are—
  - (a) that a copy of every document in relation to the appointment that is filed or lodged with the court in accordance with paragraph 18 or 29 of Schedule B1 to the 1986 Act (documents to be filed or lodged for appointment of administrator) has been served both on the Secretary of State and on GEMA;
  - (b) that a period of fourteen days has elapsed since the service of the last of those copies to be served;
  - (c) that there is no outstanding application to the court for an energy administration order in relation to the company in question; and
  - (d) that the making of an application for such an order has not resulted in the making of an energy administration order which is in force or is still to come into force.
- (4) Paragraph 44 of Schedule B1 to the 1986 Act (interim moratorium) does not prevent, or require the permission of the court for, the making of an application for an energy administration order at any time before the appointment takes effect.

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**Commencement Information**

**I132** S. 163 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Status: Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.*

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## 164 Restrictions on enforcement of security

- (1) No step to enforce a security over property of a protected energy company is to be taken by any person, unless—
  - (a) notice of his intention to do so has been served both on the Secretary of State and on GEMA; and
  - (b) a period of at least fourteen days has elapsed since the service of the last of those notices to be served.
- (2) In the case of a protected energy company which is a non-GB company, the reference in subsection (1) to the property of the company is a reference only to its property in Great Britain.

### Commencement Information

**I133** S. 164 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## *Financial support for companies in administration*

## 165 Grants and loans

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may make grants or loans to the company of such amounts as it appears to him appropriate to pay or lend for achieving the objective of the energy administration.
- (3) A grant or loan under this section may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (4) The terms on which a grant may be made under this section include, in particular, terms requiring the whole or a part of the grant to be repaid to the Secretary of State if there is a contravention of the other terms on which the grant is made.
- (5) The terms on which a loan may be made under this section include, in particular, terms requiring—
  - (a) the loan to be repaid at such times and by such methods, and
  - (b) interest to be paid on the loan at such rates and at such times, as the Secretary of State may from time to time direct.
- (6) The consent of the Treasury is required—
  - (a) for the making of a grant or loan under this section; and
  - (b) for the giving by the Secretary of State of a direction under subsection (5).
- (7) The Secretary of State must pay sums received by him by virtue of this section into the Consolidated Fund.

### Commencement Information

**I134** S. 165 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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## 166 Indemnities

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may agree to indemnify persons in respect of one or both of the following—
  - (a) liabilities incurred in connection with the exercise and performance by the energy administrator of his powers and duties; and
  - (b) loss or damage sustained in that connection.
- (3) The agreement may be made in whatever manner, and on whatever terms, the Secretary of State considers appropriate.
- (4) If sums are paid by the Secretary of State in consequence of an indemnity agreed to under this section, the company must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (5) Payments to the Secretary of State under subsection (4) must be made at such times and in such manner as he may determine.
- (6) Subsection (4) does not apply in the case of a sum paid by the Secretary of State for indemnifying a person in respect of a liability to the company in relation to which the energy administration order was made.
- (7) The consent of the Treasury is required—
  - (a) for the doing of anything by the Secretary of State under subsection (2);
  - (b) for the giving by him of any direction under subsection (4); and
  - (c) for the making of a determination under subsection (5).
- (8) The power of the Secretary of State to agree to indemnify persons—
  - (a) is confined to a power to agree to indemnify persons in respect of liabilities, loss and damage incurred or sustained by them as relevant persons; but
  - (b) includes power to agree to indemnify persons (whether or not they are identified or identifiable at the time of the agreement) who subsequently become relevant persons.
- (9) A person is a relevant person for the purposes of this section if he is—
  - (a) the energy administrator;
  - (b) an employee of the energy administrator;
  - (c) a member or employee of a firm of which the energy administrator is a member;
  - (d) a member or employee of a firm of which the energy administrator is an employee;
  - (e) a member of a firm of which the energy administrator was an employee or member at a time when the order was in force;
  - (f) a body corporate which is the employer of the energy administrator;
  - (g) an officer, employee or member of such a body corporate.
- (10) For the purposes of subsection (9)—

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- (a) the references to the energy administrator are to be construed, where two or more persons are appointed to act as the energy administrator, as references to any one or more of them; and
  - (b) the references to a firm of which a person was a member or employee at a particular time include references to a firm which holds itself out to be the successor of a firm of which he was a member or employee at that time.
- (11) The Secretary of State must pay sums received by him by virtue of subsection (4) into the Consolidated Fund.

#### Commencement Information

**I135** S. 166 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 167 Guarantees where energy administration order is made

- (1) This section applies where an energy administration order has been made in relation to a company.
- (2) The Secretary of State may guarantee—
  - (a) the repayment of any sum borrowed by the company while the energy administration order is in force;
  - (b) the payment of interest on such a sum; and
  - (c) the discharge of any other financial obligation of the company in connection with the borrowing of such a sum.
- (3) The Secretary of State may give a guarantee under this section in such manner, and on such terms, as he thinks fit.
- (4) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (5) If sums are paid out by the Secretary of State under a guarantee given under this section, the company must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (6) Payments to the Secretary of State under subsection (5) must be made at such times, and in such manner, as he may from time to time direct.
- (7) Where a sum has been paid out by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before Parliament—
  - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (8) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (7) unless—
  - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (5); and

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- (b) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (9) The consent of the Treasury is required—
  - (a) for the giving of a guarantee under this section; and
  - (b) for the giving by the Secretary of State of a direction under subsection (5) or (6).
- (10) The Secretary of State must pay sums received by him by virtue of subsection (5) into the Consolidated Fund.

#### Commencement Information

**I136** S. 167 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### *Licence modifications relating to energy administration*

### **168 Modifications of particular or standard conditions**

- (1) Where the Secretary of State considers it appropriate to do so in connection with the provision made by this Chapter, he may make—
  - (a) modifications of the conditions of a gas or electricity licence held by a particular person;
  - (b) modifications of the standard conditions of such licences of any type.
- (2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (5) The Secretary of State must publish every modification made by him under this section.
- (6) The publication must be in such manner as the Secretary of State considers appropriate.
- (7) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act or Part 1 of the Gas Act 1986 (c. 44).
- (8) Where the Secretary of State makes modifications under subsection (1)(b) of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.

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- (9) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (10) In section 81(2) of the Utilities Act 2000 (c. 27) (standard conditions of licences under Part 1 of the Gas Act), for “such modifications of the conditions made under Part I of the 1986 Act” substitute “any modifications made under Part 1 of the 1986 Act or under the Energy Act 2004”.
- (11) In this section “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) or section 4 of the 1989 Act (prohibition on unlicensed activities).

#### Commencement Information

**I137** S. 168 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 169 Licence conditions to secure funding of energy administration

- (1) The modifications that may be made under section 168 include, in particular, modifications imposing conditions requiring the holder of the licence—
- (a) so to modify the charges imposed by him for anything done by him in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined for the purpose of—
    - (i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of an energy administration; or
    - (ii) enabling those persons to secure that those amounts are so applied.
- (2) Those modifications may include modifications imposing on the licence holder an obligation to apply amounts paid to him in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.
- (3) For the purposes of this section—
- (a) there is a shortfall in the property available for meeting the costs of an energy administration if, in a case where a company is or has been subject to an energy administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and
  - (b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.
- (4) In this section “relevant debt”, in relation to a case in which a company is or has been subject to an energy administration order, means an obligation—
- (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company;
  - (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company;

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- (c) to repay the whole or a part of a grant made to that company under section 165;
- (d) to repay a loan made to the company under that section, or to pay interest on such a loan;
- (e) to make a payment under section 166(4); or
- (f) to make a payment under section 167(5).

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**Commencement Information**

**I138** S. 169 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Supplemental provision of Chapter 3 of Part 3*

**170 Modification of Chapter 3 of Part 3 under Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 (c. 40) mentioned in subsection (2) includes power to make such consequential modifications of this Chapter as he considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
  - (a) sections 248 and 277 (amendments consequential on that Act); and
  - (b) section 254 (power to apply insolvency law to foreign companies).

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**Commencement Information**

**I139** S. 170 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**171 Interpretation of Chapter 3 of Part 3**

- (1) In this Chapter—
  - “the 1986 Act” means the Insolvency Act 1986 (c. 45);
  - “business”, “member”, “property” and “security” have the same meanings as in the 1986 Act;
  - “company” means—
    - (a) a company formed and registered under the Companies Act 1985 (c. 6);
    - (b) an existing company; or
    - (c) an unregistered company;
  - “court”—
    - (a) in relation to a company other than a Northern Irish joint stock company, means the court having jurisdiction to wind up the company; and
    - (b) in relation to a Northern Irish joint stock company, means the court that would have jurisdiction to wind it up if it were an unregistered company within the meaning of Part 5 of the 1986 Act;
  - “energy administration order” has the meaning given by section 154(1);
  - “energy administration rules” means rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act;
  - “energy administrator” has the meaning given by section 154(2) and is to be construed in accordance with subsection (2) of this section;

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- “non-GB company” means an unregistered company incorporated outside Great Britain;
- “objective of the energy administration” is to be construed in accordance with section 155;
- “protected energy company” has the meaning given by section 154(5);
- “relevant licence” has the meaning given by section 154(5);
- “unregistered company” means—
- (a) an unregistered company within the meaning of Part 5 of the 1986 Act; or
  - (b) a Northern Irish joint stock company.
- (2) In this Chapter references to the energy administrator of a company—
- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the 1986 Act, as applied by Part 1 of Schedule 20 to this Act, to be the energy administrator of that company; and
  - (b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under section 158(5).
- (3) References in this Chapter to a person qualified to act as an insolvency practitioner in relation to a company are to be construed in accordance with Part 13 of the 1986 Act (insolvency practitioners and their qualifications); but as if references in that Part to a company included references to a Northern Irish joint stock company.
- (4) For the purposes of this Chapter an application made to the court is outstanding if it—
- (a) has not yet been granted or dismissed; and
  - (b) has not been withdrawn.
- (5) For the purposes of subsection (4) an application is not to be taken as having been dismissed if an appeal against the dismissal of the application, or a subsequent appeal, is pending.
- (6) An appeal shall be treated as pending for the purposes of subsection (5) if—
- (a) such an appeal has been brought and has been neither determined nor withdrawn;
  - (b) an application for permission to appeal has been made but has not been determined or withdrawn; or
  - (c) no such appeal has been brought and the period for bringing an appeal is still running.
- (7) References in this Chapter to Schedule B1 to the 1986 Act, or to a provision of that Schedule (except the references in subsection (2) of this section), are references to that Schedule or that provision without the modifications made by Part 1 of Schedule 20 to this Act.
- (8) In this section—
- “existing company” has the same meaning as in the Companies Act 1985 (c. 6) (see section 735(1) of that Act);
- “Northern Irish joint stock company” means a company registered in Northern Ireland under the Joint Stock Companies Acts (as defined in section 735(3) of the Companies Act 1985).



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#### Commencement Information

**1140** S. 171 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## CHAPTER 4

### FURTHER PROVISIONS ABOUT REGULATION

#### *Security of supply*

#### **172 Annual report on security of energy supplies**

- (1) The Secretary of State must, in 2005 and in every subsequent calendar year—
  - (a) publish a report dealing, as regards both the short term and the long term, with the availability of electricity and gas for meeting the reasonable demands of consumers in Great Britain; and
  - (b) lay that report before Parliament.
- (2) The report must include, in particular, overall assessments, as regards both the short term and the long term, of each of the following—
  - (a) generating capacity in Great Britain and its offshore waters so far as it will be utilised for generating electricity for introduction into transmission systems in Great Britain;
  - (b) the availability of capacity in those systems and in distribution systems in Great Britain for transmitting and distributing electricity for supply to consumers in Great Britain;
  - (c) the availability of capacity in infrastructure in Great Britain for use in connection with the introduction of gas into licensed pipe-line systems in Great Britain; and
  - (d) the availability of capacity in those systems for conveying gas to consumers in Great Britain.
- (3) The report must be prepared jointly by the Secretary of State and GEMA.
- (4) In this section—
  - “consumers” includes both existing and future consumers;
  - “distributing”, “distribution system”, “transmission system” and “transmitting” have the same meanings as in Part 1 of the 1989 Act;
  - “gas” and “gas transporter” have the same meanings as in Part 1 of the Gas Act 1986 (c. 44);
  - “infrastructure” includes pipe-line systems, terminals and other facilities but does not include licensed pipe-line systems;
  - “licensed pipe-line system” means a pipe-line system that is operated by a gas transporter for the conveyance of gas to any premises or another pipe-line system as authorised by his licence under section 7 of that Act;
  - “offshore waters” means, in relation to Great Britain—
    - (a) so much of the territorial sea of the United Kingdom as is adjacent to Great Britain; and

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- (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of this Act).

**Commencement Information**

**I141** S. 172 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Appeals from GEMA decisions*

**173 Appeals to the Competition Commission**

- (1) An appeal shall lie to the Competition Commission from a decision by GEMA to which this section applies.
- (2) This section applies to a decision by GEMA if—
  - (a) it is a decision relating to a document by reference to which provision is made by a condition of a gas or electricity licence;
  - (b) that document is designated for the purposes of this section by an order made by the Secretary of State;
  - (c) the decision consists in the giving or refusal of a consent by virtue of which the document has effect, or would have had effect, for the purposes of the licence with modifications or as reissued; and
  - (d) the decision is not of a description of decisions for the time being excluded from the right of appeal under this section by an order made by the Secretary of State.
- (3) An appeal against a decision may be brought under this section only by—
  - (a) a person whose interests are materially affected by it; or
  - (b) a body or association whose functions are or include representing persons in respect of interests of theirs that are so affected.
- (4) The permission of the Competition Commission is required for the bringing of an appeal under this section.
- (5) The Competition Commission may refuse permission only on one of the following grounds—
  - (a) that the appeal is brought for reasons that are trivial or vexatious;
  - (b) that the appeal has no reasonable prospect of success.
- (6) Before making an order under this section, the Secretary of State must consult—
  - (a) GEMA; and
  - (b) such other persons as he considers appropriate.
- (7) An order excluding decisions from the right of appeal under this section may provide—
  - (a) for the exclusion to apply only in such cases as may be determined in accordance with the order; and
  - (b) for a determination in accordance with the order to be made by such persons, in accordance with such procedures, and by reference to such matters and the opinions of such persons (including GEMA), as may be provided for in the order.

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- (8) An order made by the Secretary of State under this section is subject to the negative resolution procedure.
- (9) In this section—
  - “consent” includes an approval or direction;
  - “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) or section 4 of the 1989 Act (prohibition on unlicensed activities).

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**Commencement Information**

**I142** S. 173 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 174 Procedure on appeals

- (1) The functions of the Competition Commission with respect to appeals under section 173 of this Act are not to be regarded as comprised in its general functions for the purposes of Part 2 of Schedule 7 to the Competition Act 1998 (c. 41) (manner in which general functions are to be carried out).
- (2) Instead, Schedule 22 (procedure on appeals) has effect.

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**Commencement Information**

**I143** S. 174 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 175 Determination of appeals

- (1) This section applies to every appeal brought under section 173 of this Act.
- (2) In determining the appeal the Competition Commission must have regard, to the same extent as is required of GEMA, to the matters to which GEMA must have regard—
  - (a) in the carrying out of its principal objectives under section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (principal objectives and general duties);
  - (b) in the performance of its duties under those sections; and
  - (c) in the performance of its duties under sections 4AB and 4A of that Act of 1986 and sections 3B and 3C of the 1989 Act (environmental and health and safety considerations).
- (3) In determining the appeal the Competition Commission—
  - (a) may have regard to any matter to which GEMA was not able to have regard in the case of the decision appealed against; but
  - (b) must not, in the exercise of that power, have regard to any matter to which GEMA would not have been entitled to have regard in that case had it had the opportunity of doing so.
- (4) The Competition Commission may allow the appeal only if it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

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- (a) that GEMA failed properly to have regard to the matters mentioned in subsection (2);
  - (b) that GEMA failed properly to have regard to the purposes for which the relevant condition has effect;
  - (c) that GEMA failed to give the appropriate weight to one or more of those matters or purposes;
  - (d) that the decision was based, wholly or partly, on an error of fact;
  - (e) that the decision was wrong in law.
- (5) Where the Competition Commission does not allow the appeal, it must confirm the decision appealed against.
- (6) Where it allows the appeal, it must do one or more of the following—
- (a) quash the decision appealed against;
  - (b) remit the matter to GEMA for reconsideration and determination in accordance with the directions given by the Competition Commission;
  - (c) where it quashes the refusal of a consent, give directions to GEMA, and to such other persons as it considers appropriate, for securing that the relevant condition has effect as if the consent had been given.
- (7) A person shall not be directed under subsection (6) to do anything that he would not have power to do apart from the direction.
- (8) A person to whom a direction is given under subsection (6) must comply with it; and such a direction given to a person other than GEMA shall be enforceable as if it were an order of the High Court or (in Scotland) of the Court of Session.
- (9) The decision of the Competition Commission on the appeal—
- (a) must be contained in an order made by the Commission;
  - (b) must set out the reasons for the decision;
  - (c) takes effect at the time specified in the order or determined in accordance with provision set out in that order;
  - (d) must be notified by the Commission to the persons who (within the meaning of Schedule 22) were parties to the appeal; and
  - (e) must be published by the Commission in such manner as it considers appropriate for bringing it to the attention of other persons likely to be affected by it.
- (10) The Competition Commission may exclude from what it publishes under subsection (9)(e) any information which it is satisfied is—
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
  - (b) information relating to the private affairs of an individual the disclosure of which would, or might, in its opinion, significantly harm his interests.
- (11) In this section—
- “consent” includes an approval or direction; and
  - “the relevant condition”, in relation to a decision, means the licence condition the provisions of which have effect by reference to the document to which the decision relates.

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**Commencement Information**

**I144** S. 175 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 176 Specialist members of Competition Commission

The Competition Commission's functions with respect to appeals under section 173 of this Act shall be treated as included in—

- (a) the functions for the purposes of which members of the Competition Commission are appointed under subsection (1) of section 104 of the Utilities Act 2000 (c. 27) (specialist members); and
- (b) the functions for the purposes of which the members appointed under that subsection before the commencement of this section were appointed.

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**Commencement Information**

**I145** S. 176 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 01/11/2005

### *Funding of appeals and references*

## 177 Modifications of standard conditions for funding appeals and references

- (1) Where the Secretary of State considers it appropriate to do so—
  - (a) in connection with the provision made by sections 173 to 175 and Schedule 22, or
  - (b) in relation to references to the Competition Commission under section 24 of the Gas Act 1986 (c. 44) or section 12 of the 1989 Act (modification references),he may make licence modifications falling within subsection (2).
- (2) Those licence modifications are—
  - (a) modifications of so much of the standard conditions of gas or electricity licences of any type as relates to licence charges; and
  - (b) such incidental, consequential or transitional modifications in connection with modifications falling within paragraph (a) as he thinks fit.
- (3) Where the standard conditions of gas or electricity licences contain provision authorising the imposition of licence charges in respect of costs incurred by the Competition Commission in connection with a reference mentioned in subsection (1) (b)—
  - (a) the Competition Commission shall have power, on such a reference, to give directions to GEMA about the manner in which the Competition Commission's costs in connection with that reference are to be recovered by means of such charges; and
  - (b) GEMA must comply with any such directions.

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- (4) Before making a modification under this section that applies to licences of any type, the Secretary of State must consult—
  - (a) the holders of the licences; and
  - (b) such other persons as he considers appropriate.
- (5) Subsection (4) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (6) The Secretary of State must publish every modification made by him under this section.
- (7) The publication must be in such manner as the Secretary of State considers appropriate.
- (8) Where the Secretary of State makes modifications under this section of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (9) The Secretary of State’s powers under this section are exercisable only during the three months beginning with the commencement of this section.
- (10) In this section—
 

“gas or electricity licence” has the same meaning as in section 173; and  
 “licence charges” means payments which—

  - (a) under the conditions of a gas or electricity licence, are required to be paid on the grant or during the currency of the licence by the licence holder; and
  - (b) are payments of amounts determined by or under the licence.

*Best practice*

**178 Duty to have regard to best regulatory practice**

In each of section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (principal objective and general duties), after subsection (5) insert—

- “(5A) In carrying out their respective functions under this Part in accordance with the preceding provisions of this section the Secretary of State and the Authority must each have regard to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
  - (b) any other principles appearing to him or, as the case may be, it to represent the best regulatory practice.”

**Commencement Information**

**I146** S. 178 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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VALID FROM 01/04/2006

### *Meaning of electricity supply and high voltage lines*

#### **179 Meaning of electricity supply**

- (1) For the definition of “supply” in section 4(4) of the 1989 Act, substitute—
- ““supply”, in relation to electricity, means its supply to premises in cases where—
- (a) it is conveyed to the premises wholly or partly by means of a distribution system, or
  - (b) (without being so conveyed) it is supplied to the premises from a substation to which it has been conveyed by means of a transmission system,
- but does not include its supply to premises occupied by a licence holder for the purpose of carrying on activities which he is authorised by his licence to carry on;”.
- (2) In each of the provisions specified in subsection (3) (which all refer to electricity conveyed by distribution systems), after “distribution systems” insert “ or transmission systems ”.
- (3) Those provisions are—
- (a) section 3A(1), (5)(a) and (7) of the 1989 Act (principal objectives and general duties applying to electricity regulation);
  - (b) section 46A(1) of that Act (investigations by the Consumer Council);
  - (c) section 48(1) of that Act (publication of information and advice);
  - (d) section 4AA(4)(a) of the Gas Act 1986 (principal objectives and general duties applying to gas regulation); and
  - (e) section 17(1) of the Utilities Act 2000 (c. 27) (functions of the Consumer Council).
- (4) An order under section 198 for bringing into force provisions of this section may contain any such transitional provision in connection with bringing those provisions into force as the Secretary of State thinks appropriate.
- (5) The transitional provision that may be included in an order under subsection (4) includes provision which has effect by reference to determinations made in accordance with that provision by a person specified in the order.

VALID FROM 29/07/2010

#### **180 Meaning of “high voltage line”**

- (1) In subsection (1) of section 64 of the 1989 Act (interpretation of Part 1), for the definitions of “high voltage line” and “low voltage line” substitute—
- ““high voltage line” means an electric line which—

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| <p style="text-align: center;">(a) if it is in Scotland or is a relevant offshore line (as defined in subsection (1A)), is of a nominal voltage of 132 kilovolts or more; and</p> <p style="text-align: center;">(b) in any other case, is of a nominal voltage of more than 132 kilovolts,</p> <p style="text-align: center;">and “low voltage line” shall be construed accordingly;”.</p> <p>(2) After that subsection insert—</p> <p style="padding-left: 20px;">“(1A) An electric line is a relevant offshore line for the purposes of the definition in subsection (1) of “high voltage line” if—</p> <p style="padding-left: 40px;">(a) it is in an area of the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964; and</p> <p style="padding-left: 40px;">(b) it is used—</p> <p style="padding-left: 80px;">(i) to convey electricity to a place in Scotland; or</p> <p style="padding-left: 80px;">(ii) to convey, to any other place, electricity generated by a generating station that is situated in an area mentioned in paragraph (a).”</p> |
|---|

### *Metering*

## 181 Prepayment meters

- (1) In Schedule 2B to the Gas Act 1986 (c. 44) (which sets out the gas code), for paragraph 6A substitute—

- “6A (1) A pre-payment meter installed by an authorised supplier through which a consumer takes his supply of gas shall not be used to recover a sum unless—
- (a) the sum is owed to an authorised supplier in respect of the supply of gas to the premises on which the meter is installed or in respect of the provision of the meter; or
- (b) the recovery of the sum in that manner is permitted by both—
- (i) regulations made by the Authority; and
- (ii) an agreement falling within sub-paragraph (2) below between the consumer and the person to whom the sum is owed.
- (2) An agreement falls within this sub-paragraph if—
- (a) the person to whom the sum is owed is a person who is authorised by regulations made by the Authority to enter into agreements falling within this sub-paragraph;
- (b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and
- (c) the agreement complies with the requirements specified for the purposes of this sub-paragraph by regulations made by the Authority.



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- (3) The sums that regulations under this paragraph may permit the recovery of through a pre-payment meter include—
    - (a) sums owed to a person other than an authorised supplier;
    - (b) sums owed in respect of premises other than the premises on which the meter is installed;
    - (c) sums owed in respect of matters other than the supply of gas.
  - (4) Before making regulations under this paragraph the Authority must consult—
    - (a) the Council;
    - (b) all authorised suppliers;
    - (c) such other persons as the Authority considers appropriate.
  - (5) The approval of the Secretary of State is required for the making of regulations under this paragraph.”
- (2) In paragraph 12 of Schedule 7 to the 1989 Act (use of pre-payment meters), for sub-paragraph (2) substitute—
- “(2) A pre-payment meter installed by an authorised supplier through which a customer of such a supplier takes his supply of electricity shall not be used to recover a sum unless—
- (a) the sum is owed to an authorised supplier in respect of the supply of electricity to the premises on which the meter is installed or in respect of the provision of the meter; or
  - (b) the recovery of the sum in that manner is permitted by both—
    - (i) regulations; and
    - (ii) an agreement falling within sub-paragraph (3) below between the customer and the person to whom the sum is owed.
- (3) An agreement falls within this sub-paragraph if—
- (a) the person to whom the sum is owed is a person who is authorised by regulations to enter into agreements falling within this sub-paragraph;
  - (b) the agreement permits that person to use the meter in question to recover such sums as may be specified in or determined under the agreement; and
  - (c) the agreement complies with the requirements specified for the purposes of this sub-paragraph by regulations.
- (4) The sums that regulations under this paragraph may permit the recovery of through a pre-payment meter include—
- (a) sums owed to a person other than an authorised supplier;
  - (b) sums owed in respect of premises other than the premises on which the meter is installed;
  - (c) sums owed in respect of matters other than the supply of electricity.
- (5) Before making regulations under this paragraph the Authority must consult—
- (a) the Council;

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- (b) all authorised suppliers;
- (c) such other persons as the Authority considers appropriate.”

#### Commencement Information

I147 S. 181 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 06/04/2007

### *Inquiries under ss. 36 and 37 of the 1989 Act*

#### 182 Additional inspectors

- (1) In Schedule 8 to the 1989 Act (procedure for consents under sections 36 and 37 relating to the installation of generating stations and electric lines), after paragraph 5 insert—

#### “Additional inspectors

- 5A (1) This paragraph applies in the case of—
- (a) a public inquiry in England and Wales by virtue of paragraph 2(2) or 3(2); or
  - (b) a public inquiry in England and Wales which is a combination under section 62 of this Act into one inquiry—
    - (i) of two or more such inquiries; or
    - (ii) of one or more such inquiries and one or more other inquiries.
- (2) At any time after appointing a person to hold the inquiry (“the lead inspector”), the Secretary of State may direct him—
- (a) to consider such matters relating to the conduct of the inquiry as are specified in the direction; and
  - (b) to make recommendations to the Secretary of State about those matters.
- (3) After considering the recommendations of the lead inspector, the Secretary of State may—
- (a) appoint for the purposes of the inquiry such number of additional inspectors as he thinks appropriate; and
  - (b) direct that each additional inspector must consider such of the matters to which the inquiry relates as are allocated to him by the lead inspector.
- (4) An additional inspector must—
- (a) comply with every direction as to procedural matters given to him by the lead inspector; and
  - (b) report to the lead inspector on every matter allocated to him.
- (5) It is to be for the lead inspector to report to the Secretary of State on the consideration of both—

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- (a) the matters which he considered himself; and
  - (b) the matters the consideration of which was allocated to additional inspectors.
- (6) The power of the Secretary of State to give directions to the lead inspector may be exercised on one or more different occasions after the appointment of the lead inspector.
- (7) Accordingly—
- (a) the recommendations that may be made by the lead inspector following such a direction include, in particular, a recommendation for varying the number of additional inspectors; and
  - (b) the power of the Secretary of State to appoint an additional inspector includes power to revoke such an appointment.
- (8) A direction by any person under this paragraph may be varied or revoked by a subsequent direction by that person.”
- (2) This section does not extend to Scotland.

*Confidential information*

**183 Exclusion of confidential information from registers**

- (1) In section 36 of the Gas Act 1986 (c. 44) (register to be kept by GEMA), after subsection (2) insert—

“(2A) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

- (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
- (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority’s opinion, seriously and prejudicially affect the interests of that body.”

- (2) In subsection (2) of that section, after “Subject to” insert “ subsection (2A) and to ”.

- (3) For section 49(3) of 1989 Act (matters needing to be excluded so far as practicable from register to be kept by GEMA) substitute—

“(3) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—

- (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and

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- (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority's opinion, seriously and prejudicially affect the interests of that body.”

**Commencement Information**

**I148** S. 183 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Areas with high distribution or transmission costs*

**184 Assistance for areas with high distribution costs**

- (1) If it appears to the Secretary of State—
- (a) that the costs of distributing electricity within a particular area of Great Britain are significantly higher (when calculated on a per customer basis) than in other areas of Great Britain, and
  - (b) that within that area there are at least 100,000 premises that are connected to the same distribution system,
- he may make an order under this section.
- (2) An order under this section is one that establishes a scheme which—
- (a) requires authorised transmitters to make a payment each year to relevant distributors distributing electricity in that area of Great Britain of such amount as may be determined in accordance with provision contained in the scheme;
  - (b) requires the charges imposed by the authorised transmitters on authorised suppliers to be adjusted in accordance with the scheme for the purpose of enabling the transmitters to make that payment; and
  - (c) requires relevant distributors in receipt of a payment under the order to secure, in accordance with the order, that the benefit of the payment is passed to the authorised suppliers supplying electricity in the area of Great Britain in question.
- (3) An order under this section establishing a scheme in relation to the distribution of electricity within a particular area must specify the area.
- (4) For the purpose of facilitating the implementation of a scheme for which an order under this section provides, such an order may make such modifications as the Secretary of State considers appropriate of the conditions of the licences of authorised suppliers, of authorised transmitters and of authorised distributors.
- (5) For the purpose of carrying out the functions conferred on him by or under this section the Secretary of State may require—
- (a) an authorised supplier,
  - (b) an authorised distributor, or
  - (c) an authorised transmitter,
- to supply him, in a specified form and within a specified time, with information of a specified description.
- (6) No person may be required under this section to supply information he could not be compelled to give in evidence in civil proceedings in the High Court or the Court of Session.

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- (7) Before making an order under this section, the Secretary of State must consult such persons as he considers appropriate.
- (8) Subsection (7) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (9) An order under this section is subject to the negative resolution procedure.
- (10) Where a scheme established under this section in relation to the distribution of electricity within a particular area is in force, no scheme shall be established under this section in relation to the distribution of electricity outside that area.
- (11) Where a scheme is established under this section, it shall be the duty of the Secretary of State to carry out a review of that scheme—
  - (a) three years after its establishment; and
  - (b) thereafter at three yearly intervals.
- (12) Part 1 of the 1989 Act shall have effect as if every requirement or other duty imposed on a licence holder under this section were a relevant requirement within the meaning of that Part (see section 25(8) of that Act).
- (13) In this section—
  - “authorised distributor” and “authorised supplier” have the same meanings as in Part 1 of the 1989 Act;
  - “authorised transmitter” means a person authorised by a licence under section 6(1)(b) of that Act to participate in the transmission of electricity;
  - “distributing”, “distribution” and “distribution system” have the same meanings as in Part 1 of that Act;
  - “licence” means a licence for the purposes of section 4 of that Act;
  - “licence holder” has the same meaning as in Part 1 of that Act;
  - “premises” has the same meaning as in Part 1 of that Act;
  - “relevant distributor” means an authorised distributor who distributes electricity by means of a distribution system to which at least 100,000 premises are connected.

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**Commencement Information**

**I149** S. 184 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **185 Adjustment of transmission charges**

- (1) The Secretary of State may make an order under this section if it appears to him—
  - (a) that a particular area of Great Britain is suitable as a location for the generation of electricity from renewable sources;
  - (b) that, as a result, that area represents an area of high potential for the development of the generation of electricity from such sources; and
  - (c) that that development is likely to be deterred, or otherwise hindered in a material respect, by the level of charges that would (apart from the order) be imposed by authorised transmitters on persons generating electricity in that area from renewable sources.

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- (2) An order under this section is one that establishes a scheme which—
  - (a) limits the amounts of charges that authorised transmitters may impose on persons so generating electricity in that area to amounts determined in accordance with provision contained in the scheme; and
  - (b) requires the charges imposed by the authorised transmitters on authorised suppliers to be adjusted in accordance with the scheme for the purpose of making good shortfalls resulting from that limitation.
- (3) An order under this section establishing a scheme in relation to the generation of electricity from renewable sources in a particular area must specify the area.
- (4) For the purpose of facilitating the implementation of a scheme an order under this section may make such modifications as the Secretary of State considers appropriate of the conditions of the licences of authorised transmitters and of authorised suppliers.
- (5) For the purpose of carrying out the functions conferred on him by or under this section the Secretary of State may require—
  - (a) an authorised supplier,
  - (b) an authorised distributor, or
  - (c) an authorised transmitter,
 to supply him, in a specified form and within a specified time, with information of a specified description.
- (6) No person may be required under subsection (5) to supply information he could not be compelled to give in evidence in civil proceedings in the High Court or the Court of Session.
- (7) Before making an order under this section the Secretary of State must—
  - (a) publish a draft of any scheme proposed to be established by the order;
  - (b) publish an assessment of the costs likely to be incurred by different persons in consequence of the order; and
  - (c) consult authorised suppliers and such other persons likely to be affected by the order as he considers appropriate.
- (8) An assessment published under subsection (7)(b) must set out, in particular, the Secretary of State’s assessment of the likely effect of the order on charges for electricity in Great Britain.
- (9) Subsection (7) may be satisfied by publications and consultation taking place wholly or partly before the commencement of this section.
- (10) Where a scheme in relation to the generation of electricity from renewable sources within a particular area is in force, no scheme shall be established in relation to the generation of electricity from renewable sources outside that area.
- (11) A scheme shall not be applied in relation to a time more than ten years after the commencement of this section.
- (12) A scheme—
  - (a) shall not be applied for a period of more than five years; but
  - (b) subject to subsection (11), may be renewed at any time by a further order under this section for a period of no more than five years from the coming into force of the further order.

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- (13) Part 1 of the 1989 Act shall have effect as if every requirement or other duty imposed on a licence holder under this section were a relevant requirement within the meaning of that Part (see section 25(8) of that Act).
- (14) In this section—
- “authorised distributor” and “authorised supplier” have the same meanings as in Part 1 of the 1989 Act;
  - “authorised transmitter” means a person authorised by a licence under section 6(1)(b) of that Act to participate in the transmission of electricity;
  - “licence” means a licence for the purposes of section 4 of that Act;
  - “licence holder” has the same meaning as in Part 1 of that Act;
  - “renewable sources” means sources of energy in relation to which the following condition is satisfied, namely, that the production of evidence in respect of electricity generated from those sources is capable of satisfying a renewables obligation imposed by an order under section 32 of that Act (obligation in respect of electricity generated from renewable sources);
  - “scheme” means a scheme established by an order under this section.
- (15) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

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**Commencement Information**

**I150** S. 185 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## **186 Restrictions on disclosure of information**

In section 105 of the Utilities Act 2000 (c. 27) (general restrictions on disclosure of information)—

- (a) in subsection (1)(a) for “or Part I of the 1989 Act” substitute “, Part 1 of the 1989 Act or section 184(5) or 185(5) of the Energy Act 2004 ”; and
- (b) in subsection (3)(a) after “1989 Act” insert “, section 184 or 185 of the Energy Act 2004 ”.

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**Commencement Information**

**I151** S. 186 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### *Payments into Scottish Consolidated Fund*

## **187 Payments of sums raised by fossil fuel levy**

- (1) If the Scottish Ministers so direct, the person prescribed under section 33(1)(b) of the 1989 Act (collection of fossil fuel levy) must pay an amount into the Scottish Consolidated Fund out of money that has been paid under section 33(5A) of that Act.
- (2) The Scottish Ministers shall, in making budget proposals to the Scottish Parliament, include provision that the required amount for the financial year to which the proposals relate be used for the purpose of promoting the use of energy from renewable sources.

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(3) In subsection (2)—

“budget proposals” means proposals made, in relation to each Bill for a Budget Act, for the use of resources;

“the required amount” means an amount of money equal to the total of the amounts paid into the Scottish Consolidated Fund under subsection (1) in the financial year in question; and

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel.

(4) In subsection (3), “fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (and “natural gas” and “petroleum products” have the same meanings as in the Energy Act 1976 (c. 76)).

(5) The Scottish Ministers' duty under subsection (2) is without prejudice to any power or duty of theirs apart from this section to spend money for the purpose mentioned in that subsection.

(6) In this section references to section 33 of the 1989 Act are references to that section as it has effect in Scotland.

**Commencement Information**

**I152** S. 187 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**PART 4**

MISCELLANEOUS AND SUPPLEMENTAL

*Imposition of charges*

**188 Power to impose charges to fund energy functions**

(1) The Secretary of State may by regulations make provision requiring the payment to him of charges in respect of any of the following—

- (a) services or facilities provided or made available by him in the carrying out of his relevant energy functions;
- (b) the consideration or supervision by him, for purposes connected with the carrying out of any of those functions, of any matter;
- (c) the issue by him, in the carrying out of those functions, of a licence;
- (d) the doing of anything else which is done by him—
  - (i) in the carrying out of any of those functions; or
  - (ii) for purposes which are incidental to, or otherwise connected with, the carrying out of any of those functions.

(2) The matters in respect of which charges may be imposed under this section include—

- (a) the performance of a duty imposed on the Secretary of State; and



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- (b) things done in relation to, or to activities carried on in, the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).
- (3) The persons who may be made liable for charges imposed by regulations under this section are—
  - (a) any of the persons to whom, or on whose application, the service or facility in question is provided or made available;
  - (b) any of the persons on whose application the matter in question is considered, or to whom that matter relates;
  - (c) any of the persons whose activities are supervised;
  - (d) any of the persons to whom, or on whose application, the licence in question is issued;
  - (e) any of the persons on whose application the other thing is done.
- (4) In exercising his powers under this section to fix the amount of the charge to be paid by a person of a particular description, the Secretary of State may fix any amount that appears to him to be appropriate having regard to the costs that the Secretary of State is likely to incur in the carrying out—
  - (a) in relation to persons of that description, or
  - (b) in a manner that benefits persons of that description,of the relevant energy functions in respect of which the charge is imposed.
- (5) The provision that may be made by regulations under this section includes—
  - (a) provision specifying the times at which charges imposed under such regulations become due;
  - (b) provision specifying the manner in which they are to be paid; and
  - (c) provision for charges that must be paid periodically in respect of any matter.
- (6) Regulations under this section are subject to the negative resolution procedure.
- (7) The references in this section to the Secretary of State's relevant energy functions are references to the powers and duties of the Secretary of State by or under any of the following—
  - (a) the Pipe-lines Act 1962 (c. 58);
  - (b) so much of the Prevention of Oil Pollution Act 1971 (c. 60) as has effect in connection with anything specified in subsection (8);
  - (c) the Energy Act 1976 (c. 76);
  - (d) so much of Part 2 of the Food and Environment Protection Act 1985 (c. 48) as has effect in connection with anything specified in subsection (8);
  - (e) the Gas Act 1986 (c. 44);
  - (f) the 1989 Act;
  - (g) the Gas Act 1995 (c. 45);
  - (h) the Petroleum Act 1998 (c. 17);
  - (i) so much of the Pollution Prevention and Control Act 1999 (c. 24) as has effect in connection with anything specified in subsection (8);
  - (j) Chapters 2 and 3 of Part 2 of this Act;
  - (k) Chapters 2 to 4 of Part 3 of this Act;
  - (l) so much of any Community instrument as has effect in connection with anything specified in subsection (8).

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- (8) The matters mentioned in subsection (7) are—
- (a) the carrying out of exploration for petroleum;
  - (b) the winning or production of petroleum;
  - (c) the generation, transmission, distribution or supply of electricity;
  - (d) the conveyance, supply, storage or processing of gas;
  - (e) pipelines for the conveyance of petroleum that are situated in Great Britain;
  - (f) offshore installations and submarine pipelines;
  - (g) Renewable Energy Zones and renewable energy installations;
  - (h) the protection of the environment from activities carried on in connection with anything mentioned in the preceding paragraphs.
- (9) In this section—
- “application” includes a requirement, and cognate expressions are to be construed accordingly;
- “gas” has the same meaning as in the Gas Act 1986 (c. 44);
- “issue”, in relation to a licence, includes grant and serve, and also refuse, modify, revoke and renew, and cognate expressions are to be construed accordingly;
- “licence” includes an authorisation, consent, approval, exemption, certificate or notice;
- “offshore installation” has the same meaning as in Part 4 of the Petroleum Act 1998 (c. 17);
- “petroleum” has the same meaning as in Part 1 of that Act;
- “pipeline” means a pipeline within the meaning of Part 3 of that Act or a pipe-line within the meaning of the Pipe-lines Act 1962 (c. 58);
- “Renewable Energy Zone” and “renewable energy installation” have the same meanings as in Chapter 2 of Part 2 of this Act;
- “supervision”, in relation to activities, includes the carrying out of an inspection of any premises or thing used or apparently used in connection with those activities.
- (10) The power to make regulations under this section—
- (a) is in addition to every other power to impose charges in connection with the carrying out by the Secretary of State of his relevant energy functions; and
  - (b) is to be disregarded in construing those other powers.
- (11) The Secretary of State must pay sums received by him by virtue of regulations under this section into the Consolidated Fund.

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**Commencement Information**

**I153** S. 188 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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*International agreements relating to pipelines and offshore installations*

**189 Power to modify Petroleum Act 1998**

- (1) Her Majesty may by Order in Council make any modifications of the Petroleum Act 1998 (c. 17) that Her Majesty considers appropriate for the purpose of securing that effect is given to an international agreement to which this section applies.
- (2) This section applies to an international agreement (whether entered into before or after the passing of this Act) which relates in whole or in part to the construction, operation, use, decommissioning or abandonment of a pipeline or offshore installation.
- (3) The power under this section to modify the Petroleum Act 1998 includes—
  - (a) power to provide for provision made by or under that Act to have effect (with or without modifications) in relation to a foreign area;
  - (b) power to provide for provisions of that Act having effect (with or without modifications) in relation to a foreign area, so far as they apply to individuals, to apply to them whether or not they are British citizens;
  - (c) power to provide for provisions of that Act having effect (with or without modifications) in relation to a foreign area, so far as they apply to bodies corporate, to apply to them whether or not they are incorporated under the law of a part of the United Kingdom; and
  - (d) power to provide for modifications of that Act to come into force before the coming into force of the international agreement to which they relate.
- (4) An Order in Council under this section may—
  - (a) modify powers under the Petroleum Act 1998 to make subordinate legislation;
  - (b) make provision for a reference in a modification made by the Order to a specified document to operate as a reference to that document as revised or re-issued from time to time; and
  - (c) provide for the delegation of powers exercisable by virtue of modifications made by the Order.
- (5) The power to make an Order in Council containing provision authorised by this section is subject to the affirmative resolution procedure.
- (6) In this section—

“construction” and “pipeline” have the same meanings as in Part 3 of the Petroleum Act 1998;

“foreign area” means an area which is not within any of the following—

  - (a) the United Kingdom;
  - (b) the territorial sea adjacent to the United Kingdom; or
  - (c) an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29);

“international agreement” means—

  - (a) any international treaty, convention or protocol to which the United Kingdom is a party; or
  - (b) any other agreement between the United Kingdom and another country or territory;

“offshore installation” has the same meaning as in Part 4 of the Petroleum Act 1998 (c. 17).

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**Commencement Information**

**I154** S. 189 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Supplementary provision relating to functions of Secretary of State and GEMA*

**190 Application of general duties to Part 3 functions etc.**

- (1) Sections 4AA to 4B of the Gas Act 1986 (c. 44) (principal objectives and general duties) apply to the carrying out as respects—
- (a) activities required to be authorised by gas licences,
  - (b) such licences and the conditions of such licences, or
  - (c) companies holding such licences,
- of functions conferred on the Secretary of State or GEMA by or under Chapters 2 to 4 of Part 3 of this Act as they apply in relation to the carrying out of functions conferred on him, or on it, by or under Part 1 of that Act.
- (2) Sections 3A to 3D of the 1989 Act (principal objectives and general duties) apply to the carrying out as respects—
- (a) activities required to be authorised by electricity licences,
  - (b) such licences and the conditions of such licences, or
  - (c) companies holding such licences,
- of functions conferred on the Secretary of State or GEMA by or under section 90 or 91 or Part 3 of this Act (other than section 179(4)) as they apply in relation to the carrying out of functions conferred on him, or on it, by or under Part 1 of that Act.
- (3) In section 3A(2)(b) of the 1989 Act (duty to have regard to ability of licence holders to finance obligations under Part 1 or the Utilities Act 2000), for “or the Utilities Act 2000” substitute “, the Utilities Act 2000 or Part 2 or 3 of the Energy Act 2004 ”.
- (4) In this section—
- “electricity licence” means a licence for the purposes of section 4 of the 1989 Act (prohibition on unlicensed electricity activities); and
- “gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed gas activities).

**Commencement Information**

**I155** S. 190 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I156** S. 190 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

**191 Supplementary provision about licence condition powers**

- (1) This section applies to—
- (a) the Secretary of State’s powers under Chapters 2 to 4 of Part 3 of this Act with respect to the conditions of gas licences; and
  - (b) his powers under sections 90 and 91 and Part 3 of this Act with respect to the conditions of electricity licences;

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and this section is to be disregarded in determining the generality of those or any other powers conferred on the Secretary of State by this Act or otherwise.

- (2) Conditions included in a gas licence, or in an electricity licence, by virtue of a power to which this section applies need not relate to the activities authorised by the licence.
- (3) Conditions included in a gas licence by virtue of a power to which this section applies may do any of the things authorised by section 7B(4A) or (5) of the Gas Act 1986 (which apply to GEMA's power with respect to licence conditions under section 7B(4)(a)).
- (4) Conditions included in an electricity licence by virtue of a power to which this section applies may do any of the things authorised by section 7(2) to (4) of the 1989 Act (which apply to GEMA's power with respect to licence conditions under section 7(1)(a)).
- (5) In this section—
  - “electricity licence” means a licence for the purposes of section 4 of the 1989 Act (prohibition on unlicensed electricity activities); and
  - “gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (c. 44) (prohibition on unlicensed gas activities).

#### Commencement Information

**I157** S. 191 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I158** S. 191 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

### Supplemental

#### 192 Powers exercisable by statutory instrument

- (1) Every power conferred by this Act on the Secretary of State or the Treasury to make an order or regulations is a power exercisable by statutory instrument.
- (2) Where—
  - (a) this Act provides for an Order in Council, order or regulations to be subject to the negative resolution procedure, and
  - (b) a draft of the Order in Council, order or regulations has not been required, in accordance with subsection (3) or any other enactment, to be laid before Parliament and approved by a resolution of each House, or by a resolution of the House of Commons,the statutory instrument containing the Order in Council, order or regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Where this Act specifies that the power to make any provision by Order in Council or other order is subject to the affirmative resolution procedure, no order under this Act containing that provision (with or without other provision) shall be made unless a draft of the Order in Council or other order has been—
  - (a) laid before Parliament; and
  - (b) approved by a resolution of each House.

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- (4) Subject to subsection (5), every power under this Act to make an Order in Council and every power conferred by this Act on the Secretary of State or the Treasury to make an order or regulations includes power—
- (a) to make different provision for different cases (including different provision in respect of different areas);
  - (b) to make provision subject to such exemptions and exceptions as the person exercising the power thinks fit; and
  - (c) to make such incidental, supplemental, consequential and transitional provision as that person thinks fit.
- (5) Subsection (4) does not apply to—
- (a) the Secretary of State’s power to make an order under section 39(3);
  - (b) the power to make an Order in Council under section 84(4); or
  - (c) so much of the Secretary of State’s power to make an order under section 198 as is exercisable otherwise than by virtue of section 179(4) and (5).

#### Commencement Information

**I159** S. 192 in force at 24.8.2004 for specified purposes by [S.I. 2004/2184](#), art. 2(1), [Sch. 1](#)

**I160** S. 192 in force at 5.10.2004 in so far as not already in force by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### 193 Service of notifications and other documents

- (1) This section applies where provision made (in whatever terms) by or under this Act (other than sections 129 to 131 or Chapter 3 of Part 3) authorises or requires—
- (a) a notification to be given to a person; or
  - (b) a document of any other description (including a copy of a document) to be sent to a person.
- (2) The notification or document may be given or sent to the person in question—
- (a) by delivering it to him;
  - (b) by leaving it at his proper address; or
  - (c) by sending it by post to him at that address.
- (3) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (4) The notification or document may be given or sent to a firm by being given or sent to—
- (a) a partner in the firm; or
  - (b) a person having the control or management of the partnership business.
- (5) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (6) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is—
- (a) in the case of a body corporate, the address of the registered or principal office of the body;

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- (b) in the case of a firm, or an unincorporated body or association, the address of the principal office of the firm, body or association;
  - (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of subsections (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
  - (d) in any other case, the last known address of the person in question.
- (7) In the case of—
- (a) a company registered outside the United Kingdom,
  - (b) a firm carrying on business outside the United Kingdom, or
  - (c) an unincorporated body or association with offices outside the United Kingdom,
- the references in subsection (6) to its principal office include references to its principal office within the United Kingdom (if any).
- (8) In this section “notification” includes notice; and references in this section to sending a document to a person include references to making an application to him.
- (9) This section has effect subject to section 194.

#### Commencement Information

**I161** S. 193 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I162** S. 193 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

## 194 Notifications and documents in electronic form

- (1) This section applies where—
- (a) section 193 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”); and
  - (b) the notification 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 nevertheless requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Act as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.
- (3) Where the recipient is the NDA—
- (a) it must have indicated its willingness to receive the notification or other document in a manner mentioned in subsection (1)(b);
  - (b) the transmission must be made in such manner, and satisfy such other conditions, as it may require; and
  - (c) the notification or other document must take such form as it may require.
- (4) Where the person making the transmission is the NDA, it may (subject to subsection (5)) determine—
- (a) the manner in which the transmission is made; and
  - (b) the form in which the notification or other document is transmitted.

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- (5) Where the recipient is a person other than the NDA—
- (a) the recipient, or
  - (b) the person on whose behalf the recipient receives the notification or other document,
- must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.
- (6) An indication to any person for the purposes of subsection (5)—
- (a) must be given to that person in such manner as he may require;
  - (b) may be a general indication or one that is limited to notifications or documents of a particular description;
  - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
  - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.
- (7) An indication, requirement or determination given, imposed or made by the NDA for the purposes of this section is to be given, imposed or made by being published in such manner as it considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it.
- (8) Subsection (8) of section 193 applies for the purposes of this section as it applies for the purposes of that section.

#### Commencement Information

**I163** S. 194 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I164** S. 194 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

### 195 Timing and location of things done electronically

- (1) The Secretary of State may, by order, make provision specifying, for the purposes of any enactment or subordinate legislation contained in or made under this Act, the manner of determining—
- (a) the times at which things done under that enactment or subordinate legislation by means of electronic communications networks are done; and
  - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings—
- (a) that something done by means of an electronic communications network satisfies the requirements of an enactment or subordinate legislation contained in or made under this Act for the doing of that thing; and
  - (b) the matters mentioned in subsection (1)(a) and (b).
- (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.



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(5) An order under this section is subject to the negative resolution procedure.

#### Commencement Information

**I165** S. 195 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I166** S. 195 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

## 196 General interpretation

(1) In this Act—

“the 1965 Act” means the Nuclear Installations Act 1965 (c. 57);

“the 1989 Act” means the Electricity Act 1989 (c. 29);

“the 1993 Act” means the Radioactive Substances Act 1993 (c. 12);

“affirmative resolution procedure” is to be construed in accordance with section 192(3);

“BNFL” means the Nuclear Fuels Company (within the meaning of the Atomic Energy Authority Act 1971 (c. 11));

“contravention” includes a failure to comply, and cognate expressions are to be construed accordingly;

“documents” includes accounts, drawings, written representations and records of any description;

“electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21);

“enactment” includes Acts of the Scottish Parliament and Northern Ireland legislation;

“financial year” means a period of twelve months ending with 31st March;

“GEMA” means the Gas and Electricity Markets Authority;

“modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;

“the NDA” means the Nuclear Decommissioning Authority established by section 1;

“negative resolution procedure” is to be construed in accordance with section 192(2);

“nuclear site licence” has the same meaning as in the 1965 Act;

“nuclear transfer scheme” means a scheme under section 38;

“pensions, allowances or gratuities” is to be construed in accordance with subsection (2);

“securities”, in relation to a body corporate, includes shares, debentures, debenture stock, bonds and other securities of the body corporate, whether or not constituting a charge on the assets of the body corporate;

“shares” includes stock;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30);

“subsidiary” and “wholly-owned subsidiary” have the meanings given by section 736 of the Companies Act 1985 (c. 6);

“the UKAEA” means the United Kingdom Atomic Energy Authority.

(2) In this Act—

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- (a) references to pensions, allowances or gratuities include references to any similar benefits provided on death or retirement; and
- (b) references to the payment of pensions, allowances or gratuities to or in respect of a person include references to the making of payments towards the provision of the payment of pensions, allowances or gratuities to or in respect of that person.

#### Commencement Information

**I167** S. 196 in force at 24.8.2004 for specified purposes by [S.I. 2004/2184](#), art. 2(1), **Sch. 1**

**I168** S. 196 in force at 5.10.2004 in so far as not already in force by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

### 197 Repeals etc.

- (1) In the Atomic Energy Authority Act 1971 (c. 11), the following provisions shall cease to have effect—
  - (a) section 4(1) (BNFL to make property etc. available to the UKAEA); and
  - (b) section 11(1) to (3) (provisions as to shares in BNFL and the Radiochemical Company).
- (2) In section 11(4) of that Act (subscription for shares by the Secretary of State), for “either of the companies” substitute “ the Nuclear Fuels Company ”.
- (3) In section 12(1) of that Act (loans to BNFL and the Radiochemical Company), for “either of the companies” and “the company to which the loan is made” substitute, respectively, “ the Nuclear Fuels Company ” and “ that Company ”.
- (4) In section 20 of that Act, subsection (4) (powers to exclude employees of BNFL and Amersham from the UKAEA pension scheme) shall cease to have effect.
- (5) In section 1(1) of the Nuclear Industry (Finance) Act 1977 (c. 7) (Government guarantees for BNFL and the Radiochemical Company), the words “or The Radiochemical Centre Limited (“T.R.C.L.”)” shall cease to have effect.
- (6) In subsection (1) of section 2 of that Act (financial limits)—
  - (a) for the words from “financial limits” to “B.N.F.L.,” substitute “ financial limit applicable to B.N.F.L. is ”;
  - (b) paragraph (b) and the word “and” immediately preceding it shall cease to have effect; and
  - (c) for “either company” substitute “ the company ”.
- (7) In subsection (2) of that section for “either of the two companies” substitute “ B.N.F.L. ”.
- (8) In section 11A(10) of the 1989 Act, in paragraph (b) of the definition of “relevant licence holder”, the words “(by virtue of anything done under section 33(2) of the Utilities Act 2000)” shall cease to have effect.
- (9) The enactments in Part 1 of Schedule 23 (which include some that are spent) are repealed to the extent shown in the second column of that Part of that Schedule.
- (10) Those repeals have effect subject to the provisions set out in Part 2 of that Schedule.

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#### Commencement Information

- I169** S. 197(1)-(7) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**
- I170** S. 197(8) in force at 1.9.2004 by [S.I. 2004/2184](#), art. 2(2), **Sch. 2**
- I171** S. 197(9) in force at 1.9.2004 for specified purposes by [S.I. 2004/2184](#), art. 2(2), **Sch. 2**
- I172** S. 197(9)(10) in force at 5.10.2004 for specified purposes by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**
- I173** S. 197(9) in force at 1.12.2004 for specified purposes by [S.I. 2004/2575](#), art. 2(2), **Sch. 2**

### 198 Short title, commencement and extent

- (1) This Act may be cited as the Energy Act 2004.
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (3) Subject to subsection (4) of this section, this Act extends to Northern Ireland.
- (4) The following provisions of this Act do not extend to Northern Ireland—
  - (a) Chapter 3 of Part 1 (with the exception of section 59 and paragraphs 1, 5, 6, 8, 10(1) and (2) and 11 of Schedule 14);
  - (b) so much of Part 2 as amends the 1989 Act;
  - (c) sections 82, 90, 91 and 100; and
  - (d) Part 3 (with the exception of section 151(5)).

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## SCHEDULES

### SCHEDULE 1

Section 2

#### THE NUCLEAR DECOMMISSIONING AUTHORITY

#### PART 1

#### MEMBERS AND STAFF OF NDA

##### *Tenure of office by non-executive members*

- 1 (1) Subject to what follows, the chairman and each of the other non-executive members is to hold and vacate office in accordance with the terms of his appointment.
- (2) Each appointment must state the period for which it is made.
- (3) That period must not exceed five years; but a person is eligible for re-appointment (on any number of occasions) from the end of a term of office.
- (4) A non-executive member is not eligible to hold office as chief executive or otherwise to be a member of the staff of the NDA.
- (5) A non-executive member may at any time resign his office as the chairman or as a member of the NDA (or both) by giving notice of his resignation to the Secretary of State.
- (6) If the Secretary of State is satisfied that sub-paragraph (7) applies to the chairman or another non-executive member, the Secretary of State may, by giving him notice to that effect, remove him from office.
- (7) This sub-paragraph applies to a person if—
- (a) he is an undischarged bankrupt or has had his estate sequestrated without being discharged;
  - (b) he is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order;
  - (c) he has made an arrangement with his creditors, or has entered into a trust deed for creditors, or has made a composition contract with his creditors;
  - (d) he has such a financial or other interest as is likely to affect prejudicially the carrying out by him of his functions as a member of the NDA;
  - (e) he is unfit for office by reason of misbehaviour; or
  - (f) he is otherwise incapable of carrying out, or unfit to carry out, the functions of his office.
- (8) Before exercising his power under sub-paragraph (6), the Secretary of State must consult the Scottish Ministers.
- (9) Oral notice is ineffective for the purposes of sub-paragraph (5) or (6).

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#### Commencement Information

I174 Sch. 1 para. 1 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Remuneration and pensions of non-executive members*

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

#### Commencement Information

I175 Sch. 1 para. 2 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Terms and conditions of executive members of the NDA*

- 3 (1) The chief executive is to hold office on such terms and conditions (including terms and conditions as to remuneration) as the non-executive members determine.
- (2) Each of the other executive members (if any) is to hold office as a member, on such terms and conditions (including terms and conditions as to remuneration) as the non-executive members may determine in his case.
- (3) The terms and conditions on which an executive member other than the chief executive becomes or remains an employee of the NDA, or (without being an employee) a member of its staff, are also to be determined by the non-executive members.
- (4) If the non-executive members so determine in the case of the chief executive or any of the other executive members, the NDA must—
- (a) pay such pensions, allowances or gratuities to or in respect of the chief executive and each of those other members, or
  - (b) provide and maintain for the chief executive and those other members such pension schemes (whether contributory or not),
- as the non-executive members may determine.

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- (5) If an executive member—
- (a) is a participant in a pension scheme applicable to his membership of the NDA, and
  - (b) ceases to be an executive member without ceasing to be a member of the NDA's staff,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if any service of his (after ceasing to be an executive member) as an employee of the NDA were service as an executive member.

#### Commencement Information

**I176** Sch. 1 para. 3 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Constitution of NDA for initial period*

- 4 (1) Until the end of the initial period the NDA is to consist of just those members who have been appointed.
- (2) As soon as practicable after his own appointment takes effect, the chairman must exercise the power to appoint a chief executive.
- (3) Appointments of members other than the chairman and chief executive may be made during the initial period only after the appointment of the chief executive has taken effect.
- (4) During the initial period the requirements of paragraph 9(1)—
- (a) do not apply to a decision to which the chairman is a party if it is made when the chairman is the only non-executive member; but
  - (b) are not to be capable of being satisfied in relation to a decision made at any other time unless at least two non-executive members are parties to the decision.
- (5) The chairman must ensure that proper records are kept of everything he does, while he is the only non-executive member, in the exercise or performance of powers or duties conferred or imposed on the non-executive members.
- (6) In this paragraph “the initial period” means the period which begins with the commencement of so much of this Act as provides for the establishment of the NDA and ends with whichever of the following first occurs—
- (a) the time when an appointment takes effect that brings the number of members of the NDA up to seven;
  - (b) the time specified as the end of the initial period in a notice given during that period by the Secretary of State to the NDA for the purposes of this paragraph.

#### Commencement Information

**I177** Sch. 1 para. 4 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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### *Staffing of the NDA*

- 5 (1) The NDA—
- (a) may appoint such employees, in addition to those who are its members, as it may determine; and
  - (b) may make such other arrangements for the staffing of the NDA as it thinks fit.
- (2) The employees of the NDA who are not its members are to be employed on such terms and conditions, including terms and conditions as to remuneration, as it determines.
- (3) The NDA may, in the case of any of its employees who are not its members—
- (a) pay to or in respect of those employees such pensions, allowances or gratuities, or
  - (b) provide and maintain for them such pension schemes (whether contributory or not),
- as it determines.
- (4) If an employee of the NDA—
- (a) is a participant in a pension scheme applicable to his employment, and
  - (b) becomes an executive member,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member were service as an employee of the NDA.

#### **Commencement Information**

**I178** Sch. 1 para. 5 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

### *UKAEA pensions for NDA staff*

- 6 A pension scheme maintained by the UKAEA under paragraph 7(2)(b) of Schedule 1 to the Atomic Energy Authority Act 1954 (c. 32) may apply to—
- (a) members of the NDA, and
  - (b) members of its staff,
- as it applies to persons to whom it applies apart from this paragraph.

#### **Commencement Information**

**I179** Sch. 1 para. 6 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

## **PART 2**

### **PROCEEDINGS OF NDA**

#### *Committees of the NDA and advisory committees*

- 7 (1) The NDA may make such arrangements as it thinks fit—

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- (a) for the carrying out of its functions by committees established by it; and
  - (b) for committees established by it to give it advice about matters relating to the carrying out of its functions.
- (2) The membership of every committee established by the NDA must include at least one person who is a member of the NDA.
- (3) Where the NDA—
- (a) establishes a committee for the purpose of giving it advice, and
  - (b) does not authorise it under paragraph 8 to do anything on the NDA’s behalf,
- the membership of the committee may include persons (including persons constituting a majority of the committee) who are neither members of the NDA nor members of its staff.
- (4) In other cases every member of the committee must be either—
- (a) a member of the NDA; or
  - (b) a member of its staff.
- (5) Where a person who is neither a member of the NDA nor a member of its staff is a member of a committee, the NDA may pay to that person such remuneration and expenses as it determines.

**Commencement Information**

**I180** Sch. 1 para. 7 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*Delegation of functions*

- 8 (1) Anything that is authorised or required by or under an enactment to be done by the NDA may be done on its behalf—
- (a) by a member of the NDA, or of its staff, who has been authorised by it for the purpose (whether generally or specifically); or
  - (b) by a committee established by the NDA which has been so authorised.
- (2) The NDA must not make arrangements for the final decision on any of the following to be made by a committee or by a member of the NDA or of its staff—
- (a) the NDA’s strategy under section 11 or any modification of that strategy;
  - (b) its annual plan under section 13 or any modification of that plan;
  - (c) the arrangements for regulating the proceedings of the NDA;
  - (d) the further delegation of anything delegated to a committee or to a member of the NDA or of its staff.

**Commencement Information**

**I181** Sch. 1 para. 8 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*Quorums*

- 9 (1) A decision of the NDA relating to a matter mentioned in sub-paragraph (2) is ineffective unless a majority of the members who—



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- (a) were present at the meeting at which the decision was made, or
  - (b) otherwise had an opportunity of participating in the decision-making process,
- consisted of non-executive members.
- (2) Those matters are—
- (a) the NDA's strategy under section 11 or any modification of that strategy;
  - (b) its annual plan under section 13 or any modification of that plan;
  - (c) the arrangements for regulating the proceedings of the NDA;
  - (d) the delegation of anything to a committee or to a member of the NDA or of its staff, or any further delegation.
- (3) A decision by the NDA for regulating its own proceedings may determine what, for the purposes of this paragraph, constitutes an opportunity of participating in the decision-making process.
- (4) A question for the purposes of this paragraph about whether a member—
- (a) was present at a meeting of the NDA, or
  - (b) satisfied the requirements that needed to be satisfied for him to be treated as having had an opportunity of participating in a decision,
- must be determined (if there are any) exclusively by reference to official minutes of the meeting or decision.
- (5) For this purpose the official minutes of a meeting or decision are those made in accordance with the arrangements made under paragraph 12.

**Commencement Information**

**I182** Sch. 1 para. 9 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*Proceedings of the NDA and of their committees etc.*

- 10 (1) The NDA may make such other arrangements as it thinks fit—
- (a) for regulating its own proceedings; and
  - (b) for regulating the proceedings of the committees it has established.
- (2) Arrangements under sub-paragraph (1) may include such arrangements (in addition to the provision made by paragraph 9) as the NDA thinks fit about quorums and the making of decisions by a majority.
- (3) The procedure for the carrying out of the separate functions which under this Act are conferred on the non-executive members must be in accordance with such arrangements as may be determined by a majority of the non-executive members.
- (4) The NDA must publish, in such manner as it considers appropriate, the arrangements made under this paragraph.

**Commencement Information**

**I183** Sch. 1 para. 10 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

**Status:** Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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### *Authentication of NDA's seal*

- 11 (1) Authentication of the application of the NDA's seal is to be by the signature of—
- (a) the chairman or another member of the NDA; or
  - (b) any other person authorised by it for the purpose (whether generally or specifically).
- (2) A document purporting to be—
- (a) duly executed under the seal of the NDA, or
  - (b) signed on behalf of the NDA,
- may be received in evidence and, except so far as the contrary is shown, is to be taken to be duly so executed or signed.
- (3) This paragraph does not extend to Scotland.

#### **Commencement Information**

**I184** Sch. 1 para. 11 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

### *Records of proceedings*

- 12 (1) The NDA must make arrangements for the keeping of proper records of each of the following—
- (a) its proceedings;
  - (b) proceedings of the committees established by it;
  - (c) proceedings at meetings of the non-executive members; and
  - (d) anything done by a member of the NDA or of its staff in reliance on a delegation under paragraph 8.
- (2) The references in paragraphs 8 and 9 to arrangements for regulating the proceedings of the NDA include references to arrangements made under this paragraph with respect to such proceedings.

#### **Commencement Information**

**I185** Sch. 1 para. 12 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

### *Validity of proceedings*

- 13 (1) The validity of proceedings of the NDA, of the non-executive members or of a committee established by the NDA shall not be affected by—
- (a) a vacancy in the membership of the NDA or of such a committee;
  - (b) a defect in the appointment of the chairman, of any other non-executive member, of the chief executive or of any other executive member;
  - (c) a failure of the Secretary of State to comply with the requirements of section 2(9); or
  - (d) a failure to comply with arrangements made under paragraph 10.
- (2) Nothing in sub-paragraph (1) validates—

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- (a) the proceedings of a meeting which would still be inquorate even if defects and failures mentioned within sub-paragraph (1)(b) or (c) had not occurred; or
- (b) a decision which (apart from this paragraph) is ineffective by virtue of paragraph 9.

**Commencement Information**

**I186** Sch. 1 para. 13 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

**PART 3**

SUPPLEMENTAL

*Public records*

- 14 In paragraph 3 of Schedule 1 to the Public Records Act 1958 (c. 51) (administrative and departmental records of certain bodies to be public records), in Part 2 of the Table, at the appropriate place, insert— “ Nuclear Decommissioning Authority. ”

**Commencement Information**

**I187** Sch. 1 para. 14 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*Parliamentary Commissioner Act 1967*

- 15 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments and authorities subject to investigation), at the appropriate place, insert— “ Nuclear Decommissioning Authority. ”

**Commencement Information**

**I188** Sch. 1 para. 15 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*Disqualification for House of Commons and Northern Ireland Assembly*

- 16 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified), at the appropriate place, insert— “ The Nuclear Decommissioning Authority. ”;

and a corresponding amendment shall be made in Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25).

**Commencement Information**

**I189** Sch. 1 para. 16 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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### *Scottish devolution*

- 17 The following provisions of the Scotland Act 1998 (c. 46) shall have effect as if the NDA were a cross-border public authority—
- (a) section 23(2)(b) (power of Scottish Parliament to require persons outside Scotland to attend and give evidence or produce documents);
  - (b) section 70(6) (Scottish Parliament not to require preparation of accounts by cross-border public authorities whose accounts are otherwise audited); and
  - (c) section 91(3)(d) (investigation of maladministration by cross-border public authorities in relation to Scottish matters).

#### **Commencement Information**

**I190** Sch. 1 para. 17 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

### *Freedom of information*

- 18 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public authorities for the purposes of that Act), at the appropriate place, insert— “ The Nuclear Decommissioning Authority. ”

#### **Commencement Information**

**I191** Sch. 1 para. 18 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

### *Interpretation of Schedule*

- 19 In this Schedule “chairman”, “chief executive”, “executive member” and “non-executive member” mean, respectively, chairman, chief executive, executive member and non-executive member of the NDA.

#### **Commencement Information**

**I192** Sch. 1 para. 19 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

VALID FROM 31/03/2005

## SCHEDULE 2

Section 11

### PROCEDURAL REQUIREMENTS APPLICABLE TO NDA’S STRATEGY

#### *Approval required for strategy*

- 1 Subject to paragraph 3(6), a strategy prepared or revised by the NDA has effect only if it is approved—
- (a) by the Secretary of State; and

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- (b) to the extent that it relates to responsibilities of the NDA falling within section 6(2), also by the Scottish Ministers.

#### *Initial strategy*

- 2 The NDA must—
- (a) prepare its first strategy, and
- (b) submit a draft of it for approval,
- before the end of the twelve months beginning with the commencement of section 11.

#### *Strategy reviews and revisions*

- 3 (1) The NDA must carry out and complete a review of its strategy before the end of each review period.
- (2) If, in consequence of such a review, the NDA decides that it is necessary to revise its strategy, it must submit the draft of its proposed revision for approval.
- (3) If, in consequence of such a review, the NDA decides that it is unnecessary to revise its strategy, it must submit its current strategy for the renewal of the strategy's approval.
- (4) The obligation, following a review, to submit—
- (a) the draft revision of the NDA's strategy prepared in consequence of the review, or
- (b) the strategy the approval of which is for renewal,
- is an obligation to submit it as soon as reasonably practicable after the completion of the review.
- (5) The NDA may revise its strategy otherwise than in consequence of a review.
- (6) A revision otherwise than in consequence of a review takes effect without approval except to the extent that it contains modifications of the NDA's strategy which—
- (a) are likely to require a significant increase over its previous estimate in the money required for giving effect to the strategy;
- (b) significantly alter the priorities of the NDA as respects different installations or sites; or
- (c) relate to the objectives of the NDA for an installation or site.
- (7) Accordingly, the NDA must submit for approval so much of every proposed revision which—
- (a) is made otherwise than in consequence of a review; but
- (b) involves modifications falling within sub-paragraph (6)(a) to (c).
- (8) The persons to whom a submission for approval, or for a renewal of approval, must be made are—
- (a) in a case where what is submitted contains anything relating to responsibilities of the NDA falling within section 6(2), the Secretary of State and the Scottish Ministers; and
- (b) in any other case, the Secretary of State.
- (9) In this paragraph “review period” means—

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- (a) the period of five years beginning with the end of the twelve month period mentioned in paragraph 2; or
- (b) a period of five years beginning with the day after the completion of a review under this paragraph.

*Consultation by NDA*

- 4 (1) Before—
- (a) preparing a strategy,
  - (b) revising a strategy in a manner requiring approval, or
  - (c) submitting a strategy to have the approval of the strategy renewed,
- the NDA must consult the persons listed in sub-paragraph (2).
- (2) Those persons are—
- (a) the Health and Safety Executive;
  - (b) the Environment Agency;
  - (c) the Scottish Environment Protection Agency;
  - (d) such persons with responsibilities in relation to nuclear security as have been nominated for the purposes of this sub-paragraph by the Secretary of State;
  - (e) every local authority whose area includes a designated installation, designated site or designated facility or a locality affected by activities at such an installation, site or facility;
  - (f) every person with control of such an installation, site or facility;
  - (g) the employees of every such person and the persons appearing to the NDA to represent them; and
  - (h) every body established—
    - (i) by the NDA, or
    - (ii) by a person with control of a designated installation, designated site or designated facility,
 for the purpose of consulting persons about activities carried on at, or in connection with, such an installation, site or facility.
- (3) In preparing, reviewing or revising its strategy the NDA must have regard to—
- (a) every representation made to it by or on behalf of a person mentioned in sub-paragraph (2); and
  - (b) the representations made to it by members of the public.
- (4) This paragraph does not apply to a revision made for the purpose only of giving effect to directions under paragraph 5(7).
- (5) In this paragraph references to a designated installation, designated site or designated facility include references to an installation, site or facility designated by a direction which is not yet in force.

*Approval of strategy*

- 5 (1) This paragraph applies where—
- (a) anything is submitted for approval under this Schedule; or

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- (b) the NDA's current strategy is submitted for the renewal of the strategy's approval.
- (2) The submission must be accompanied by a report by the NDA of the representations about the contents of its strategy, or of any revision of it, that it received in the course of the preparation of the strategy, or in connection with its proposal to revise it or to have the approval of the strategy renewed.
- (3) Before determining whether or not to approve anything relating to responsibilities mentioned in section 6(3), the Secretary of State must consult the Scottish Ministers.
- (4) The Secretary of State must also consult the Scottish Ministers before approving anything relating to proposals for the non-processing treatment, the storage or the disposal of hazardous materials if it appears to him that the proposals would have an effect (notwithstanding that they relate only to England and Wales)—
  - (a) on the management of hazardous materials located in Scotland; or
  - (b) on the use of a site in England and Wales for the non-processing treatment, the storage or the disposal of hazardous materials that could be brought to that site from Scotland.
- (5) If—
  - (a) the Secretary of State approves a strategy or revised strategy submitted to him under this Schedule, and
  - (b) the Scottish Ministers approve it so far as it relates to responsibilities of the NDA falling within section 6(2),it takes effect as the approved strategy of the NDA from the time of the giving of the approval.
- (6) If it is not so approved, the NDA must—
  - (a) modify what was submitted; and
  - (b) re-submit it for approval to the Secretary of State and (if the case so requires) to the Scottish Ministers.
- (7) In preparing a modified strategy or revision for re-submission, the NDA must comply with every direction given to it with respect to any of the following matters—
  - (a) the NDA's objectives for a particular installation or site or for installations or sites of a particular description;
  - (b) the NDA's strategy with respect to the operation of any particular installation or facility;
  - (c) the period over which decommissioning or cleaning-up work is to be carried out in the case of a particular installation or site or in the case of installations or sites of a particular description;
  - (d) the amounts to be defrayed by the NDA in a particular period in respect of expenditure on decommissioning or cleaning-up work in the case of a particular installation or site or in the case of installations or sites of a particular description.
- (8) The persons by whom directions may be given under sub-paragraph (7) are—
  - (a) in the case of directions given by virtue of paragraph (a) or (b) of that sub-paragraph in relation to responsibilities of the NDA falling within

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- section 6(2), the Secretary of State and the Scottish Ministers, acting jointly; and
- (b) in any other case, the Secretary of State.
- (9) Before giving a direction under sub-paragraph (7), the Secretary of State and the Scottish Ministers or (as the case may be) the Secretary of State must consult—
- (a) the NDA;
  - (b) the Health and Safety Executive;
  - (c) the Environment Agency;
  - (d) the Scottish Environment Protection Agency; and
  - (e) such persons with responsibilities in relation to nuclear security as have been nominated for the purposes of this sub-paragraph by the Secretary of State.
- (10) Nothing in this paragraph with respect to the giving of directions restricts—
- (a) the grounds on which, or
  - (b) the circumstances in which,
- the Secretary of State or the Scottish Ministers may refuse approval without giving a direction.
- (11) In this paragraph “non-processing treatment” has the same meaning as in section 6.

#### *Publication of strategy*

- 6 (1) The NDA must publish its approved strategy in the manner which, in its opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (2) Where it revises that strategy, it must so publish the revised strategy.
- (3) The Secretary of State must lay before Parliament a copy of anything that the NDA publishes in accordance with sub-paragraph (1) or (2), and the Scottish Ministers must lay before the Scottish Parliament a copy of anything that is so published.
- (4) Where the NDA publishes a strategy or revised strategy under this paragraph it must, in the same manner, publish a report on the representations it received about what the strategy or revision should contain.
- (5) The NDA must exclude from what it publishes under this paragraph anything that it has been notified by the Secretary of State is a matter the publication of which he considers to be against the interests of national security.
- (6) The NDA may also exclude from what it publishes under this paragraph—
- (a) anything relating to the private affairs of an individual the publication of which the NDA considers would seriously and prejudicially affect the interests of that individual; and
  - (b) anything of a commercial nature relating specifically to the affairs of a particular body of persons the publication of which the NDA considers would seriously and prejudicially affect the interests of that body.
- (7) In determining whether to exclude anything from publication under sub-paragraph (6) the NDA must have regard to whether the harm that would be caused by publication is likely to outweigh the benefits.



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## SCHEDULE 3

Section 13

### PROCEDURAL REQUIREMENTS APPLICABLE TO NDA'S ANNUAL PLANS

#### *Preparation and revision of plan*

- 1 (1) A plan prepared or revised by the NDA has effect only if it is approved—
- (a) by the Secretary of State; and
  - (b) to the extent that it relates to responsibilities of the NDA falling within section 6(2), also by the Scottish Ministers.
- (2) The NDA may revise its plan at any time before or during the year to which it relates.

#### **Commencement Information**

**I193** Sch. 3 para. 1 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

#### *Consultation by NDA*

- 2 (1) Before preparing or revising a plan the NDA must consult—
- (a) the Health and Safety Executive;
  - (b) the Environment Agency;
  - (c) the Scottish Environment Protection Agency;
  - (d) such persons with responsibilities in relation to nuclear security as have been nominated for the purposes of this sub-paragraph by the Secretary of State;
  - (e) every local authority whose area includes a designated installation, designated site or designated facility or a locality affected by activities at such an installation, site or facility;
  - (f) every person with control of such an installation, site or facility;
  - (g) the employees of every such person and the persons appearing to the NDA to represent them; and
  - (h) every body established—
    - (i) by the NDA, or
    - (ii) by a person with control of a designated installation, designated site or designated facility,for the purpose of consulting persons about activities carried on at, or in connection with, such an installation, site or facility.
- (2) In the case of a revision of a plan, the Secretary of State may allow the NDA to proceed without consulting one or more of the persons mentioned in sub-paragraph (1).
- (3) In preparing or revising a plan the NDA must have regard to—
- (a) every representation made to it by or on behalf of a person mentioned in sub-paragraph (1); and
  - (b) the representations made to it by members of the public.
- (4) In this paragraph references, in relation to the preparation or revision of a plan, to a designated installation, designated site or designated facility include references to an installation, site or facility designated by a direction which—
- (a) is not yet in force; but

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- (b) is to come into force during the year to which the plan relates.

#### Commencement Information

**I194** Sch. 3 para. 2 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

#### *Approval of annual plan*

- 3 (1) This paragraph applies where a draft of the NDA's plan for a financial year, or of a revision of such a plan, is submitted for approval—
- (a) to the Secretary of State; or
  - (b) to the Secretary of State and the Scottish Ministers.
- (2) The submission must be accompanied by a report by the NDA of the representations about the contents of its plan or revision that it received in the course of its preparation.
- (3) Before determining whether or not to approve anything relating to responsibilities mentioned in section 6(3), the Secretary of State must consult the Scottish Ministers.
- (4) The Secretary of State must also consult the Scottish Ministers before approving anything relating to proposals for the non-processing treatment, the storage or the disposal of hazardous materials if it appears to him that the proposals would have an effect (notwithstanding that they relate only to England and Wales)—
- (a) on the management of hazardous materials located in Scotland; or
  - (b) on the use of a site in England and Wales for the non-processing treatment, the storage or the disposal of hazardous materials that could be brought to that site from Scotland.
- (5) If—
- (a) the Secretary of State approves what has been submitted to him, and
  - (b) the Scottish Ministers approve it so far as it relates to responsibilities of the NDA falling within section 6(2),
- it takes effect, in relation to the financial year to which it relates, as an approved plan of the NDA.
- (6) If it is not so approved, the NDA must—
- (a) modify what was submitted; and
  - (b) re-submit it for approval to the Secretary of State and (if the case so requires) to the Scottish Ministers.
- (7) Where the NDA makes modifications of a plan for the purpose of resubmitting it, it must do so in accordance with any directions given to it—
- (a) in relation to any matter other than responsibilities of the NDA falling within section 6(2), by Secretary of State; or
  - (b) in relation to those responsibilities, by the Secretary of State and the Scottish Ministers, acting jointly.
- (8) Before giving a direction under sub-paragraph (7), the Secretary of State or (as the case may be) the Secretary of State and the Scottish Ministers must consult —
- (a) the NDA;
  - (b) the Health and Safety Executive;

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- (c) the Environment Agency;
- (d) the Scottish Environment Protection Agency; and
- (e) such persons with responsibilities in relation to nuclear security as have been nominated for the purposes of this sub-paragraph by the Secretary of State.

(9) In this paragraph “non-processing treatment” has the same meaning as in section 6.

**Commencement Information**

**I195** Sch. 3 para. 3 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

*Publication of plan*

- 4
- (1) The NDA must publish its plan for a financial year in the manner which, in its opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
  - (2) Where it revises that plan, it must so publish the revised plan.
  - (3) The Secretary of State must lay before Parliament a copy of anything that the NDA publishes in accordance with sub-paragraph (1) or (2), and the Scottish Ministers must lay before the Scottish Parliament a copy of anything that is so published.
  - (4) Where the NDA publishes a plan or revised plan under this paragraph it must, in the same manner, publish a report on the representations it received about what the plan or revision should contain.
  - (5) The NDA must exclude from what it publishes under this paragraph anything that it has been notified by the Secretary of State is a matter the publication of which he considers to be against the interests of national security.
  - (6) The NDA may also exclude from what it publishes under this paragraph—
    - (a) anything relating to the private affairs of an individual the publication of which the NDA considers would seriously and prejudicially affect the interests of that individual; and
    - (b) anything of a commercial nature relating specifically to the affairs of a particular body of persons the publication of which the NDA considers would seriously and prejudicially affect the interests of that body.
  - (7) In determining whether to exclude anything from publication under sub-paragraph (6) the NDA must have regard to whether the harm that would be caused by publication is likely to outweigh the benefits.

**Commencement Information**

**I196** Sch. 3 para. 4 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

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## SCHEDULE 4

Section 27

### SUPPLEMENTAL TAXATION PROVISIONS FOR EXEMPT ACTIVITIES

#### *Exempt activities to be separate trade*

- 1 Exempt activities carried on—
- (a) by the NDA, or
  - (b) by a company while it is an NDA company,
- are to be treated for corporation tax purposes as a separate trade distinct from all other activities carried on by the NDA or (as the case may be) that company.

#### **Commencement Information**

**I197** Sch. 4 para. 1 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Accounting periods of companies carrying on exempt activities*

- 2 (1) An accounting period of the NDA or of an NDA company ends (if it would not otherwise do so)—
- (a) where it begins to carry on exempt activities, immediately before it begins to carry them on; and
  - (b) where it ceases to carry on such activities, immediately after it so ceases.
- (2) An accounting period of a company which—
- (a) becomes an NDA company, and
  - (b) is carrying on exempt activities immediately after becoming such a company, ends (if it would not otherwise do so) when it becomes an NDA company.
- (3) An accounting period of a company which—
- (a) ceases to be an NDA company, and
  - (b) is carrying on exempt activities immediately before ceasing to be such a company, ends (if it would not otherwise do so) when it ceases to be an NDA company.

#### **Commencement Information**

**I198** Sch. 4 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Charges on income in connection with exempt activities*

- 3 No charges on income incurred—
- (a) by the NDA, or
  - (b) by an NDA company,
- in connection with the carrying on of exempt activities are to be deductible from its total profits under section 338 of the Income and Corporation Taxes Act 1988 (c. 1) (deduction of charges on income).

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#### Commencement Information

**I199** Sch. 4 para. 3 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Finance leasing of plant and machinery*

- 4 (1) This paragraph applies where there is a finance lease in the case of which—
- the lessor is the NDA or an NDA company;
  - the lessee is the NDA or an NDA company;
  - the lessee is carrying on exempt activities; and
  - the machinery or plant to which the lease relates is used by the lessee for the purposes of those activities.
- (2) No allowance under Part 2 of the Capital Allowances Act 2001 (c. 2) (plant and machinery allowances) shall be available to the lessor in respect of qualifying expenditure on the provision of the plant or machinery for leasing under the lease.
- (3) Expressions used in this paragraph and in Chapter 17 of Part 2 of the Capital Allowances Act 2001 (anti-avoidance provisions relating to plant and machinery allowances) have the same meanings in this paragraph as in that Chapter.

#### Commencement Information

**I200** Sch. 4 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Mixed use of industrial buildings*

- 5 An identifiable part of a building or structure used for the purposes of exempt activities carried on by the NDA or an NDA company is to be treated for the purposes of Part 3 of the Capital Allowances Act 2001 (industrial buildings allowances) as used otherwise than as an industrial building.

#### Commencement Information

**I201** Sch. 4 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Residue of qualifying expenditure on industrial buildings*

- 6 (1) This paragraph applies where—
- the NDA disposes of the relevant interest in an industrial building; or
  - an NDA company carrying on exempt activities disposes of the relevant interest in an industrial building.
- (2) Section 313 and Chapter 8 of Part 3 of the Capital Allowances Act 2001 (c. 2) (meaning of “residue of qualifying expenditure” and writing off of qualifying expenditure) apply to determine the residue of expenditure in the hands of the person who acquires the relevant interest as if—
- exempt activities carried on by the NDA or the NDA company had not been exempt activities; and

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- (b) all writing down allowances, and balancing allowances and charges, had been made as could have been made but for those activities being exempt activities.
- (3) In this paragraph “relevant interest” and “industrial building” have the same meanings as in Part 3 of the Capital Allowances Act 2001.
- (4) References in this paragraph to the NDA or an NDA company disposing of a relevant interest in an industrial building include references to the transfer in accordance with a nuclear transfer scheme of such an interest—
  - (a) from the NDA or that company,
  - (b) to a person who is neither the NDA nor an NDA company.

**Commencement Information**

**I202** Sch. 4 para. 6 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

SCHEDULE 5

Section 38

SUPPLEMENTARY PROVISIONS ABOUT NUCLEAR TRANSFER SCHEMES

*Identification of property to which scheme applies*

- 1 A nuclear transfer scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—
- (a) by specifying or describing them in particular;
  - (b) by identifying them generally by reference to, or to a specified part of, an undertaking from which they are to be transferred; or
  - (c) by specifying the manner in which they are to be determined.

**Commencement Information**

**I203** Sch. 5 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Property, rights and liabilities that may be transferred*

- 2 (1) The property, rights and liabilities that may be transferred by a nuclear transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
  - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme and before it comes into force;
  - (c) rights and liabilities arising after it comes into force in respect of matters occurring before it comes into force;
  - (d) property situated anywhere in the United Kingdom or elsewhere;
  - (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom; and

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- (f) rights and liabilities under an enactment, Community instrument or subordinate legislation.
- (2) The transfers to which effect may be given by a nuclear transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—
  - (a) no such requirement to obtain a person’s consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (3).
- (3) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
- (4) Sub-paragraph (5) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a nuclear transfer scheme—
  - (a) to terminate, modify, acquire or claim an interest or right; or
  - (b) to treat an interest or right as modified or terminated.
- (5) That entitlement—
  - (a) shall not be enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme; and
  - (b) shall then be enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.
- (6) Sub-paragraphs (2) to (5) have effect where shares in a subsidiary of the transferor are transferred—
  - (a) as if the reference in sub-paragraph (3) to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and
  - (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (5) to the transfer of the interest or right included a reference to the transfer of the shares.

#### Commencement Information

**I204** Sch. 5 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Dividing and modifying transferor’s property, rights and liabilities*

- 3 (1) A nuclear transfer scheme may contain provision—
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property transferred in accordance with the scheme;
  - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property retained by a transferor;

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- (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
- (2) A nuclear transfer scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor’s undertaking which exist immediately before the coming into force of the scheme into a contract between different transferees or between a transferee and a transferor.
  - (3) A nuclear transfer scheme may contain provision—
    - (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee or by or against both the transferee and the transferor; and
    - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
  - (4) A nuclear transfer scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
  - (5) In sub-paragraph (4) “third party”, in relation to a nuclear transfer scheme, means a person other than the transferor or the transferee.
  - (6) Paragraph 2(2) and (3) applies to the creation of interests and rights in accordance with a nuclear transfer scheme as it applies to the transfer of interests and rights.

#### Commencement Information

**I205** Sch. 5 para. 3 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Obligation to effect transfers etc. under a nuclear transfer scheme*

- 4 (1) A nuclear transfer scheme may contain provision for imposing on a transferee or transferor an obligation—
  - (a) to enter into such agreements with another person on whom a corresponding obligation is, or could be or has been, imposed by virtue of this paragraph (whether in the same or a different scheme), or
  - (b) to execute such instruments in favour of any such person, as may be specified or described in the scheme.
- (2) Subject to sub-paragraphs (3) and (4) of this paragraph, paragraph 2 does not enable—
  - (a) an agreement or instrument entered into or executed in accordance with an obligation imposed by a nuclear transfer scheme, or
  - (b) anything done under such an agreement or instrument, to give effect to a transfer, or to create an interest or right, which could not have been made or created by or under that agreement or instrument apart from that paragraph.
- (3) A nuclear transfer scheme may provide for—



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- (a) transfers made by or under an agreement or instrument entered into or executed in accordance with an obligation imposed in a nuclear transfer scheme, or
  - (b) interests or rights created by or under such an agreement or instrument,
- to include, to the extent specified in the scheme, a transfer, interest or right that may be made or created by virtue of paragraph 2(2).
- (4) A nuclear transfer scheme may provide for paragraph 2(4) and (5) to apply to interests or rights affected by—
- (a) the provisions of an agreement or instrument which is to be entered into or executed in accordance with the scheme; or
  - (b) a proposal for such an agreement or for the execution of such an instrument.
- (5) Where paragraph 2(4) and (5) does apply to interests or rights so affected, it shall apply as if references to the nuclear transfer scheme included references to the agreement or instrument in question.
- (6) An obligation imposed on a person by virtue of sub-paragraph (1) shall be enforceable by the relevant person in civil proceedings—
- (a) for an injunction;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.
- (7) The relevant person for the purposes of sub-paragraph (6) is the person with, or in favour of whom, the agreement or instrument is to be entered into or executed.

#### Commencement Information

**I206** Sch. 5 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Effect of nuclear transfer schemes*

- 5 (1) In relation to each provision of a nuclear transfer scheme for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—
- (a) this Act shall have effect so as, without further assurance, to vest the property or interests, or the rights or liabilities, in the transferee at the time at which the scheme comes into force; and
  - (b) the provisions of that scheme in relation to that property or those interests, or in relation to those rights or liabilities, shall have effect from that time.
- (2) Sub-paragraph (1) is subject to so much of a nuclear transfer scheme as provides for—
- (a) the transfer of property, rights or liabilities which are to be transferred in accordance with the scheme, or
  - (b) the creation of interests, rights and liabilities which are to be created in accordance with the scheme,
- to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 4(1).
- (3) In its application to Scotland, sub-paragraph (1) has effect with the omission of the words “without further assurance”.

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### Commencement Information

I207 Sch. 5 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *Supplementary provisions of schemes*

- 6 (1) A nuclear transfer scheme may make incidental, supplemental, consequential and transitional provision in connection with the transfers to be made in accordance with the scheme.
- (2) Such provision may include different provision for different cases or different purposes.
- (3) In particular, a nuclear transfer scheme may make provision, in relation to transfers in accordance with the scheme—
- (a) for the transferee to be treated as the same person in law as the transferor;
  - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;
  - (c) for references in an agreement, instrument or other document to the transferor or to an employee or office holder with the transferor to have effect, so far as may be necessary for the purposes of or in connection with any of the transfers, with such modifications as are specified in the scheme; and
  - (d) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (4) Sub-paragraph (3)(c) does not apply to references in an enactment or in subordinate legislation.
- (5) A nuclear transfer scheme may make provision for disputes as to the effect of the scheme—
- (a) between different transferees, or
  - (b) between a transferee and a transferor,
- to be referred to such arbitration as may be specified in or determined under the scheme.
- (6) Where a person is entitled, in consequence of a nuclear transfer scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property—
- (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it; and
  - (b) section 64 of the Law of Property Act 1925 (c. 20) (production and safe custody of documents) shall have effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention.
- (7) Where a person is entitled, in consequence of a nuclear transfer scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, subsections (1) and (2) of section 16

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of the Land Registration (Scotland) Act 1979 (c. 33) (omission of certain clauses in deeds) shall have effect in relation to the transfer—

- (a) as if the transfer had been effected by deed; and
- (b) as if the words “unless specially qualified” were omitted from each of those subsections.

- (8) In this paragraph references to a transfer in accordance with a nuclear transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

**Commencement Information**

**I208** Sch. 5 para. 6 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Proof of title by certificate*

- 7 A certificate issued by the Secretary of State to the effect that any property, right or liability vested at a particular time in accordance with a nuclear transfer scheme in a person specified in the certificate shall be conclusive evidence of the matters specified in the certificate.

**Commencement Information**

**I209** Sch. 5 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Duties in relation to foreign property*

- 8 (1) Where there is a transfer in accordance with a nuclear transfer scheme of—
- (a) foreign property, or
  - (b) a foreign right or liability,
- the transferor and the transferee must take all requisite steps to secure that the vesting of the foreign property, right or liability in the transferee by this Act is effective under the relevant foreign law.
- (2) Until the vesting of the foreign property, right or liability in the transferee in accordance with the scheme is effective under the relevant foreign law, the transferor must—
- (a) hold the property or right for the benefit of the transferee; or
  - (b) discharge the liability on behalf of the transferee.
- (3) Nothing in sub-paragraph (1) or (2) prejudices the effect under the law of a part of the United Kingdom of the vesting of any foreign property, right or liability in the transferee in accordance with a nuclear transfer scheme.
- (4) Where—
- (a) any foreign property, right or liability is acquired or incurred by the transferor in respect of any other property, right or liability, and
  - (b) by virtue of this paragraph, the transferor holds the other property or right for the benefit of another person or is required to discharge the liability on behalf of another person,

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the property, right or liability acquired or incurred shall immediately become the property, right or liability of that other person.

- (5) The provisions of sub-paragraphs (1) to (4) shall have effect in relation to foreign property, rights or liabilities transferred to a person under sub-paragraph (4) as they have effect in the case of property, rights and liabilities transferred in accordance with a nuclear transfer scheme.
- (6) Where the transferor of foreign property, or of a foreign right or liability, is the NDA or the UKAEA—
  - (a) the transferor shall have all such powers as it or they may require for the performance of obligations imposed on it or them under this paragraph; but
  - (b) the transferee must, so far as practicable, act on behalf of the transferor in performing the obligations imposed on the transferor by this paragraph.
- (7) References in this paragraph to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.
- (8) Expenses incurred by a transferor under this paragraph shall be met by the transferee.
- (9) An obligation imposed under this paragraph in relation to property, rights or liabilities shall be enforceable as if contained in a contract between the transferor and the transferee.

#### Commencement Information

**I210** Sch. 5 para. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Modification of scheme by agreement*

- 9 (1) This paragraph applies in the case of a nuclear transfer scheme where a transferee agrees in writing—
  - (a) with the transferor,
  - (b) with another transferee under that scheme, or
  - (c) with a transferor or transferee under another nuclear transfer scheme,
 that provision falling within sub-paragraph (2) be made for the purpose of modifying the effect of the scheme or (as the case may be) the effect of either or both of the schemes.
- (2) That provision is provision that—
  - (a) property, rights or liabilities transferred in accordance with the scheme or either of them, and
  - (b) property, rights or liabilities acquired or incurred since the transfer in respect of the transferred property, rights or liabilities,
 be transferred from one party to the agreement to the other as from a date appointed by the agreement.
- (3) If—

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- (a) the agreement is entered into within the period of three years after the coming into force of any transfer made in accordance with either of the schemes to a party to the agreement, and
  - (b) the Secretary of State has given his approval to the transfer for which the agreement provides, and to its terms and conditions,

the transfer for which the agreement provides shall take effect on the date appointed by the agreement as if it were a transfer in accordance with a nuclear transfer scheme.
- (4) Subject to the approval of the Secretary of State and to sub-paragraph (5), the provisions that may be contained in a modification agreement include any provision in relation to a transfer for which it provides as is capable of being contained in a nuclear transfer scheme in relation to a transfer for which the scheme provides.
- (5) Nothing in a modification agreement is to provide for interests, rights or liabilities to be created, as opposed to transferred, except as between persons who are parties to the agreement.
- (6) Before—
  - (a) refusing his approval for the purposes of this paragraph, or
  - (b) giving his approval for those purposes in a case where the NDA is not a party to the proposed agreement,

the Secretary of State must consult the NDA.
- (7) The consent of the Treasury is required for the giving of an approval by the Secretary of State for the purposes of this paragraph.
- (8) In this paragraph references to a transfer in accordance with a nuclear transfer scheme include references to the creation of an interest, right or liability in accordance with such a scheme.

#### Commencement Information

**I211** Sch. 5 para. 9 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *The Transfer of Undertakings (Protection of Employment) Regulations 1981*

- 10 (1) The 1981 regulations apply to a transfer of an undertaking or part of an undertaking—
- (a) in accordance with a nuclear transfer scheme, or
  - (b) in accordance with a modification agreement,
- as if (in so far as that would not otherwise be the case) the references in those regulations to the transferor were references to the person in whom that undertaking or part was vested immediately before the coming into force of the transfer.
- (2) It shall be the duty of the Secretary of State, before—
- (a) making a nuclear transfer scheme, or
  - (b) approving a modification agreement,
- to give such notice of his proposals to such persons as he considers appropriate for enabling the provisions of the 1981 regulations applicable to a transfer in accordance with the scheme or agreement to be complied with by the transferor.
- (3) In sub-paragraph (2) “the transferor”, in relation to a transfer, means the person who is the transferor in relation to that transfer for the purposes of the 1981 regulations.

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(4) In this paragraph—

“the 1981 regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794);

“undertaking” has the same meaning as in the 1981 regulations.

#### Commencement Information

**I212** Sch. 5 para. 10 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### Compensation for third parties

11 (1) Where—

- (a) an entitlement of a third party to an interest or right would, apart from a provision of a nuclear transfer scheme or paragraph 2(4) and (5), arise in respect of the transfer or creation in accordance with a nuclear transfer scheme of any property, rights or liabilities,
- (b) the provisions of that scheme or of paragraph 2(4) and (5) have the effect of preventing the third party’s entitlement to that interest or right from arising in respect of anything for which the scheme provides, and
- (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party shall be entitled to such compensation as may be just in respect of the extinguishment of his entitlement.

(2) Where, in consequence of provisions included in a nuclear transfer scheme, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (3), the third party shall be entitled to such compensation as may be just in respect of—

- (a) any diminution in the value of his interests or rights, or
- (b) any increase in the burden of his liabilities,

which is attributable to that modification.

(3) Those modifications are modifications by virtue of which—

- (a) an interest of the third party in property is transformed into, or replaced by, an interest in only part of that property;
- (b) an interest of the third party in property is transformed into, or replaced by, separate interests in different parts of that property;
- (c) a right of the third party against the transferor is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against the transferor; or
- (d) a liability of the third party to the transferor is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the transferor.

(4) A liability to pay compensation under this paragraph shall fall on such persons mentioned in sub-paragraphs (5) and (6) as—

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- (a) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (1);
  - (b) have interests in the whole or any part of the property affected by the modification in question;
  - (c) are subject to the rights of the person to be compensated which are affected by that modification; or
  - (d) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification.
- (5) Those persons are—
- (a) a Minister of the Crown;
  - (b) the NDA;
  - (c) the UKAEA;
  - (d) a publicly owned company which is a transferor or a transferee for the purposes of the provisions of the scheme giving rise to the compensation;
  - (e) a person who consented to the provisions of the scheme giving rise to the compensation.
- (6) Where in the case of a recovery scheme the transferor is not a publicly owned company, those persons also include—
- (a) the relevant contractor; and
  - (b) the transferor.
- (7) A liability to pay compensation under this paragraph must be apportioned between the persons liable to pay it in such manner as may be appropriate having regard to the extent of—
- (a) the benefit they respectively obtain from the extinguishment; or
  - (b) the interests, rights or liabilities in respect of which they are liable to pay compensation.
- (8) Where compensation is paid by any person in connection with provisions of a recovery scheme, the person paying the compensation may, if and to the extent that the Secretary of State so directs, recover the amount paid from—
- (a) the relevant contractor; and
  - (b) the transferor.
- (9) A dispute as to—
- (a) whether any compensation is to be paid under this paragraph,
  - (b) the person to or by whom it is to be paid, or
  - (c) the amount to be paid by any person,
- shall be referred to and determined by the person mentioned in sub-paragraph (10).
- (10) That person is—
- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, an arbitrator appointed by the Lord Chancellor; and
  - (b) where the claimant requires the matter to be determined in Scotland, an arbiter appointed by the Lord President of the Court of Session.
- (11) In the preceding provisions of this paragraph “third party”, in relation to a nuclear transfer scheme, means a person other than the transferor or the transferee.

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- (12) This paragraph shall have effect in relation to—
- (a) the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed in a nuclear transfer scheme, and
  - (b) the provisions of a modification agreement relating to property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme,
- as it has effect in relation to the scheme but as if, in the case of a modification agreement, everyone who is not a party to the agreement were a third party.

**Commencement Information**

**I213** Sch. 5 para. 11 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Compensation for transferor in case of a recovery scheme*

- 12 (1) If the Secretary of State is satisfied in the case of a recovery scheme that it is just to do so he may—
- (a) pay compensation to the transferor in respect of property or rights of which he is deprived in accordance with the scheme; or
  - (b) direct the NDA to pay such compensation.
- (2) No compensation shall be payable under this paragraph to the relevant contractor.
- (3) Where compensation is paid under this paragraph and the Secretary of State so directs, so much of the compensation as may be specified in the direction may be recovered by him or (as the case may be) by the NDA from the relevant contractor.
- (4) The amount of any compensation under this paragraph shall be determined by the Secretary of State.
- (5) A dispute as to—
- (a) whether any compensation is to be paid under this paragraph,
  - (b) the person to or by whom it is to be paid, or
  - (c) the amount to be paid by any person,
- shall be referred to and determined by the person mentioned in sub-paragraph (6).
- (6) That person is—
- (a) where the claimant requires the matter to be determined in England and Wales or in Northern Ireland, an arbitrator appointed by the Lord Chancellor; and
  - (b) where the claimant requires the matter to be determined in Scotland, an arbiter appointed by the Lord President of the Court of Session.
- (7) This paragraph shall have effect in relation to—
- (a) the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed in a recovery scheme, and
  - (b) the provisions of a modification agreement relating to property, rights and liabilities transferred or created in accordance with a recovery scheme,
- as it has effect in relation to the scheme.



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#### Commencement Information

**I214** Sch. 5 para. 12 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### Interpretation

13 (1) In this Schedule—

“modification agreement” means an agreement for a transfer that is to have effect in accordance with paragraph 9(3);

“recovery scheme” means so much of a nuclear transfer scheme as contains provision for or in connection with a transfer authorised by section 41;

“relevant contractor”, in relation to a recovery scheme, means the person who (within the meaning of that section) is the contractor in relation to the contract by reference to the breach of which, or the expiry or other termination of which, that scheme was made;

“transferee”—

(a) in relation to a nuclear transfer scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and

(b) in relation to particular property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created;

“transferor”—

(a) in relation to a nuclear transfer scheme, means a person from whom property, rights or liabilities are transferred in accordance with the scheme; and

(b) in relation to particular property, rights or liabilities transferred or created in accordance with a nuclear transfer scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created.

(2) References in this Schedule to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right’s arising include references to its becoming exercisable.

#### Commencement Information

**I215** Sch. 5 para. 13 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**Status:** Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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## SCHEDULE 6

Section 39

## STRUCTURE ETC. OF TRANSFEREE COMPANIES

*Application and interpretation of Schedule*

- 1 (1) This Schedule applies where—
- (a) property, rights and liabilities are transferred to a company (“the transferee company”) in accordance with provisions of a nuclear transfer scheme authorised by section 39; and
  - (b) that company is publicly owned when the transfer takes effect.
- (2) In this Schedule—
- “the Authorities” means the NDA and the UKAEA;
- “the relevant scheme”, in relation to the transferee company, means—
- (a) the nuclear transfer scheme containing the provisions authorised by section 39 in accordance with which property, rights and liabilities are vested in that company; and
  - (b) any modification agreement (within the meaning of Schedule 5) relating to that scheme;
- “transferee company” is to be construed in accordance with sub-paragraph (1);
- “transferor”, in relation to the transferee company, means the person or body from whom property, rights or liabilities are transferred to the transferee company in accordance with the relevant scheme.
- (3) In this paragraph “company” has the same meaning as in the Companies Act 1985 (c. 6).

**Commencement Information**

**I216** Sch. 6 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Initial Government holding in the transferee company*

- 2 (1) As a consequence of the vesting, in accordance with the relevant scheme, of property, rights and liabilities in the transferee company, that company must issue to—
- (a) the Treasury, or
  - (b) a Minister of the Crown,
- such securities of the company as the Secretary of State may from time to time direct.
- (2) In a case where the transferee company is a wholly-owned subsidiary of one of the Authorities, that company must, as a consequence of the vesting in that company of property, rights and liabilities, issue to the Authority in question such securities of the company as the Authority may from time to time direct.
- (3) A direction under sub-paragraph (1) or (2) may be given to a company only at a time when the company is publicly owned.
- (4) Securities issued in accordance with a direction under this paragraph—
- (a) shall be of such nominal value as the Secretary of State may direct;

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- (b) shall be issued as fully paid; and
  - (c) shall be treated for the purposes of the Companies Act 1985 as if they had been paid up by virtue of the payment to the company of their nominal value in cash.
- (5) The consent of the Treasury is required for—
- (a) the exercise by the Secretary of State or either of the Authorities of a power conferred by the preceding provisions of this paragraph; or
  - (b) the disposal by a Minister of the Crown, or by either of the Authorities, of securities issued to him or to that Authority in accordance with this paragraph.
- (6) The consent of the Secretary of State is required for the giving of a direction by either of the Authorities under sub-paragraph (2).

**Commencement Information**

**I217** Sch. 6 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Government investment in securities of transferee company*

- 3
- (1) The Treasury or a Minister of the Crown may use money provided by Parliament for the acquisition of—
- (a) securities of the transferee company; or
  - (b) rights to subscribe for such securities.
- (2) The consent of the Treasury is required for—
- (a) an acquisition by a Minister of the Crown under sub-paragraph (1); or
  - (b) a disposal by a Minister of the Crown of securities or rights acquired by virtue of this paragraph.

**Commencement Information**

**I218** Sch. 6 para. 3 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Exercise of functions through nominees*

- 4
- (1) The Treasury, a Minister of the Crown or either of the Authorities may appoint a person to act as a nominee of the Treasury, of that Minister or of that Authority—
- (a) in the case of the Treasury or such a Minister, for the purposes of paragraph 2 or 3; and
  - (b) in the case of one of the Authorities, for the purposes of paragraph 2.
- (2) The consent of the Treasury is required for the appointment of a nominee by a Minister of the Crown.
- (3) The issue of securities under paragraph 2 to a nominee of the Treasury or of a Minister of the Crown must be in accordance with such directions (if any) as are given from time to time—
- (a) by the Treasury; or
  - (b) with the consent of the Treasury, by the Minister.

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- (4) The acquisition of securities or rights under paragraph 3 by a nominee of the Treasury or of a Minister of the Crown must be in accordance with such directions (if any) as are given from time to time—
- (a) by the Treasury; or
  - (b) with the consent of the Treasury, by a Minister of the Crown.
- (5) A person who by virtue of paragraph 2 or 3 and this paragraph holds securities or rights as a nominee of the Treasury or of a Minister of the Crown must hold them and deal with them—
- (a) on such terms, and
  - (b) in such manner,
- as the Treasury or, with the consent of the Treasury, the Secretary of State may direct.

#### Commencement Information

**I219** Sch. 6 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Payment of dividends etc. into Consolidated Fund*

- 5 Dividends or other sums received by the Treasury or a Minister of the Crown in right of, or on the disposal of, securities or rights acquired by virtue of this Schedule must be paid into the Consolidated Fund.

#### Commencement Information

**I220** Sch. 6 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Distributable reserves of transferee companies*

- 6 (1) This paragraph applies where statutory accounts of the transferee company prepared as at a particular time would show the company as having net assets in excess of the aggregate of—
- (a) its called-up share capital; and
  - (b) the amount, apart from the property, rights and liabilities to which the company has become entitled or subject in accordance with the relevant scheme, of its undistributable reserves.
- (2) For the purposes of—
- (a) section 263 of the Companies Act 1985 (c. 6) (profits available for distribution), and
  - (b) the preparation of statutory accounts of the company,
- that excess shall be treated, except so far as the Secretary of State may otherwise direct, as representing an excess of the company's accumulated realised profits over its accumulated realised losses.
- (3) For the purposes of section 264 of the Companies Act 1985 (restriction on distribution of assets), so much of the excess as is the subject of a direction under sub-paragraph (2), shall be treated as comprised in the company's undistributable reserves (subject to any modification of the direction by a subsequent direction under sub-paragraph (4)).

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- (4) The Secretary of State may give a direction for treatment as profits in relation to an amount equal to the whole or a part of an amount falling to be treated as mentioned in sub-paragraph (3).
- (5) A direction for treatment as profits is one that provides that, on the realisation (whether before or after the company in question ceases to be publicly owned) of such profits and losses as may be specified or described in the direction, so much of the amount in relation to which the direction is given as may be determined in accordance with it—
  - (a) is to cease to be treated as mentioned in sub-paragraph (3); and
  - (b) is to be treated as comprised in the company’s accumulated realised profits.
- (6) The Secretary of State must not give a direction under any provision of this paragraph at any time after the transferee company has ceased to be publicly owned.
- (7) The consent of the Treasury is required for the giving of a direction under this paragraph.
- (8) In this paragraph—
  - “accounting reference period” has the meaning given by section 224 of the Companies Act 1985;
  - “called-up share capital” has the meaning given by section 737 of that Act;
  - “net assets” has the meaning given by section 264(2) of that Act;
  - “statutory accounts”, in relation to a company, means accounts of the company prepared in respect of a period in accordance with the requirements of that Act, or with those requirements applied with such modifications as are necessary where that period is not an accounting reference period;
  - “undistributable reserves” has the meaning given by section 264(3) of that Act.

#### Commencement Information

**I221** Sch. 6 para. 6 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### *Dividends*

- 7 (1) This paragraph applies where a distribution is proposed to be declared—
  - (a) during an accounting reference period of the transferee company which includes a transfer date; or
  - (b) before any accounts are laid or filed in respect of such a period.
- (2) Sections 270 to 276 of the Companies Act 1985 (c. 6) (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—
  - (a) references in section 270 to the company’s accounts and to accounts relevant under that section, and
  - (b) references in section 273 to initial accounts,included references to such accounts as, on the assumptions stated in sub-paragraph (3), would have been prepared under section 226 of that Act in respect of the relevant year (“the relevant accounts”).

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- (3) Those assumptions are—
- (a) that the relevant year was a financial year of the transferee company;
  - (b) that the vesting of property, rights and liabilities in accordance with the relevant scheme was effected immediately after the beginning of that year;
  - (c) that so much of the relevant scheme as contains provision by or under which there is a determination of the value of an asset to which the company becomes entitled in accordance with the scheme has effect for determining the value of that asset for the purposes of the accounts in question;
  - (d) that so much of the relevant scheme as contains provision by or under which there is a determination of the amount of a liability to which the company becomes subject in accordance with the scheme has effect for determining the amount of that liability for the purposes of the accounts in question;
  - (e) that securities of the transferee company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
  - (f) such other assumptions as may appear to the directors of the transferee company to be necessary or expedient for the purposes of this paragraph.
- (4) The relevant accounts shall not be regarded as statutory accounts for the purposes of paragraph 8 of Schedule 7.
- (5) In this paragraph—
- “accounting reference period” has the meaning given by section 224 of the Companies Act 1985;
- “complete financial year” means a financial year ending with 31st March;
- “distribution” has the same meaning as in Part 8 of the Companies Act 1985;
- “the relevant year”, in relation to a transfer date, means the last complete financial year ending before that date;
- “a transfer date”, in relation to the transferee company, means the date of the coming into force of the relevant scheme.

#### Commencement Information

I222 Sch. 6 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Saving for inherent powers of Ministers*

- 8 Nothing in this Schedule is to be construed as prejudicing the ability of a Minister of the Crown or the Treasury, apart from the powers conferred on him or them by or under this Act or any other enactment—
- (a) to acquire or dispose of securities of a company other than the transferee company; or
  - (b) to act through nominees for the purpose.

#### Commencement Information

I223 Sch. 6 para. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## SCHEDULE 7

Section 45

### FINANCES AND ACCOUNTS OF TRANSFEREE COMPANIES

#### *Interpretation of Schedule*

- 1 (1) In this Schedule—
- “designated BNFL company” means a company designated for the purposes of this Schedule by an order made by the Secretary of State;
  - “transferee company” means a body corporate which is—
    - (a) a body corporate to which a transfer has been made in accordance with a nuclear transfer scheme; but
    - (b) not a subsidiary of the UKAEA;
  - “transferor”, in relation to a transfer scheme, means the person from whom property, rights and liabilities are transferred to a transferee company in accordance with the scheme.
- (2) The Secretary of State may designate a company for the purposes of this Schedule as a designated BNFL company only if, without being a subsidiary of the UKAEA, it is a publicly controlled company to which—
- (a) securities of BNFL or of a designated BNFL company,
  - (b) property, rights or liabilities of BNFL or of a designated BNFL company, or
  - (c) property, rights or liabilities of a wholly-owned subsidiary of BNFL or of a designated BNFL company,
- were transferred (whether in accordance with a nuclear transfer scheme or otherwise) at a time when both the person from whom they were transferred and the company to which they were transferred were publicly controlled.
- (3) For the purposes of this Schedule a body corporate is wholly-owned by the Crown if it is a company limited by shares each of which is held on behalf of the Crown.
- (4) A share in a company is held on behalf of the Crown if, and only if, it is held by—
- (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) another company which is wholly-owned by the Crown; or
  - (d) a nominee of a person falling within paragraphs (a) to (c).
- (5) An order designating a company for the purposes of this Schedule must be laid before Parliament.
- (6) References in this Schedule to a nuclear transfer scheme include references to any modification agreement (within the meaning of Schedule 5) relating to that scheme.
- (7) In this paragraph “company” has the same meaning as in the Companies Act 1985 (c. 6).

#### **Commencement Information**

**I224** Sch. 7 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**Status:** Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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### *Government lending to transferee companies*

- 2 (1) Subject to paragraphs 5 and 6, the Secretary of State may, with the approval of the Treasury, make loans of such amounts as he thinks fit to—
- (a) a designated BNFL company which is publicly controlled; or
  - (b) a publicly controlled transferee company which is not a designated BNFL company.
- (2) Loans which the Secretary of State makes under this paragraph must be repaid to him at such times and by such methods as he may direct from time to time.
- (3) Interest on such loans must be paid to the Secretary of State at such rates and at such times as he may so direct.
- (4) The approval of the Treasury is required for a direction under sub-paragraph (2) or (3).
- (5) The Secretary of State must pay sums received by him by virtue of this paragraph into the Consolidated Fund.

#### **Commencement Information**

**I225** Sch. 7 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *Guarantees for designated BNFL companies*

- 3 Section 1 of the Nuclear Industry (Finance) Act 1977 (c. 7) (Government guarantees for BNFL) shall have effect as if the references to BNFL included references to any designated BNFL company that is publicly controlled at the time when the guarantee is given.

#### **Commencement Information**

**I226** Sch. 7 para. 3 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *Government guarantees for loans of undesignated publicly controlled transferee companies*

- 4 (1) Subject to paragraph 6, the Secretary of State may guarantee—
- (a) the repayment of the principal of any sum borrowed otherwise than from him by a transferee company which is not a designated BNFL company but is publicly controlled at the time of the giving of the guarantee,
  - (b) the payment of interest on such a sum, and
  - (c) the discharge of any other financial obligation of such a transferee company in connection with the borrowing of such a sum.
- (2) The Secretary of State may give a guarantee under this paragraph in such manner, and on such terms, as he thinks fit.
- (3) As soon as practicable after giving a guarantee under this paragraph, the Secretary of State must lay a statement of the guarantee before Parliament.



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- (4) If sums are paid out by the Secretary of State under a guarantee given under this paragraph, the company whose obligations are fulfilled by the payment must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this sub-paragraph.
- (5) Payments to the Secretary of State under sub-paragraph (4) must be made at such times, and in such manner, as he may from time to time direct.
- (6) Where a sum has been paid out by the Secretary of State under a guarantee given under this paragraph, he must lay a statement relating to that sum before Parliament—
  - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (7) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of sub-paragraph (6) unless—
  - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under sub-paragraph (4); and
  - (b) the company in question is not at any time during that year subject to a liability to pay interest on amounts that became due under that sub-paragraph in respect of that sum.
- (8) The consent of the Treasury is required—
  - (a) for the giving of a guarantee under this paragraph; and
  - (b) for the giving of a direction under sub-paragraph (4) or (5).
- (9) The Secretary of State must pay sums received by him by virtue of sub-paragraph (4) into the Consolidated Fund.

#### Commencement Information

I227 Sch. 7 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Financial limits of BNFL and publicly controlled companies that are designated*

- 5 (1) Section 2 of the Nuclear Industry (Finance) Act 1977 (c. 7) (financial limits for BNFL) shall have effect—
  - (a) as if the limit specified in subsection (1) of that section applied to BNFL and the designated BNFL companies, taken together, as it previously applied just to BNFL; and
  - (b) as if the amounts specified in sub-paragraph (2) were included, in the case of the application of subsection (1) of that section to BNFL and those companies, in the amounts specified in subsection (2) of that section.
- (2) The amounts treated as included in the amounts specified in section 2(2) of that Act of 1977 are—

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- (a) the total paid after the passing of this Act by the Secretary of State or the Treasury for securities issued, otherwise than in pursuance of paragraph 2 of Schedule 6 to this Act, by a designated BNFL company which is publicly controlled both before and after the acquisition of those securities by the Secretary of State or the Treasury;
  - (b) the total amount outstanding in respect of the principal of loans made by virtue of paragraph 2 of this Schedule to a designated BNFL company;
  - (c) every sum for which the Secretary of State is liable in fulfilment of so much of a guarantee given under section 1(1) of that Act as relates to the principal of any loan to a company which is a designated BNFL company;
  - (d) every sum to which the Secretary of State may become so liable in default of payment by such a company;
  - (e) so much of every sum which the Secretary of State has paid in fulfilment of guarantees given for such a company under section 1(1) of that Act as has not been repaid under section 1(4) of that Act.
- (3) Section 2(3) of that Act of 1977 (limit of £400 million on certain other guarantees for BNFL) shall have effect as if references to BNFL included references to a designated BNFL company that was publicly controlled when the guarantee was given.
- (4) The Secretary of State may by order—
- (a) increase the limit for the time being specified in section 2(1) of that Act of 1977; or
  - (b) provide for the apportionment of that limit between the different companies in relation to which it applies and for its operation as apportioned.
- (5) An order apportioning the limit between different companies may provide for the amount apportioned to a particular company to be nil.
- (6) No order is to be made containing provision increasing that limit unless a draft of the order has been—
- (a) laid before Parliament; and
  - (b) approved by a resolution of the House of Commons.
- (7) An order under this paragraph providing for the apportionment of that limit between different companies to which it applies must be laid before Parliament.

#### Commencement Information

**I228** Sch. 7 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Financial limits for publicly controlled transferees that are not designated*

- 6 (1) The aggregate amount outstanding by way of principal in respect of the amounts specified in sub-paragraph (2) must not exceed £100 million.
- (2) Those amounts are—
- (a) money borrowed by BNFL or by the UKAEA the liability to pay which falls, by virtue of one or more nuclear transfer schemes, on a company which at the time when the scheme came into force was publicly controlled but was neither a designated BNFL company nor a subsidiary of the UKAEA;

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- (b) money borrowed by a transferee company which at the time of the borrowing was publicly controlled but not a designated BNFL company;
  - (c) borrowed money for the repayment of which a publicly controlled transferee company which is not a designated BNFL company is a guarantor or a surety; and
  - (d) sums paid by the Secretary of State in fulfilment of guarantees given under paragraph 4 in respect of borrowing by a transferee company which at the time of the giving of the guarantee was publicly controlled but was not a designated BNFL company.
- (3) Borrowing by a wholly-owned subsidiary of a company (“the holding company”) which would not otherwise be taken into account for the purposes of this paragraph shall be taken into account as if it were borrowing by the holding company; but borrowing—
- (a) between a company and any of its wholly-owned subsidiaries, or
  - (b) between two such subsidiaries,
- shall not be taken into account.
- (4) Nothing in this paragraph—
- (a) restricts the amount that may be borrowed by a company that has ceased to be publicly controlled; or
  - (b) requires amounts in respect of the liabilities of such a company to repay borrowing to be taken into account for the purposes of this paragraph, except in so far as they are liabilities to repay the Secretary of State.
- (5) The Secretary of State may by order—
- (a) increase the limit for the time being specified in sub-paragraph (1); or
  - (b) provide for the apportionment of that limit between the different companies in relation to which it applies and for its application as apportioned.
- (6) An order apportioning the limit between different companies may provide for the amount apportioned to a particular company to be nil.
- (7) No order is to be made containing provision increasing that limit unless a draft of the order has been—
- (a) laid before Parliament; and
  - (b) approved by a resolution of the House of Commons.
- (8) An order under this paragraph providing for the apportionment of that limit between different companies to which it applies must be laid before Parliament.

#### Commencement Information

**I229** Sch. 7 para. 6 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Temporary restrictions on borrowing of transferee companies*

- 7 (1) This paragraph applies if the articles of association of a transferee company confer on a Minister of the Crown powers exercisable with the consent of the Treasury for, or in connection with, restricting the sums of money that may be borrowed or raised during any period by some or all of the members of the group to which that company belongs.

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- (2) Those powers shall be exercisable in the national interest notwithstanding any rule of law or the provisions of any enactment.
- (3) For the purposes of this paragraph, an alteration of the articles of association of the company shall be disregarded if the alteration—
  - (a) has the effect of conferring or extending any power mentioned in sub-paragraph (1); and
  - (b) is made at a time when the company is not publicly owned.
- (4) In this paragraph “group”, in relation to a company, means the following companies, taken together—
  - (a) that company;
  - (b) all of its subsidiaries;
  - (c) every company of which that company is a subsidiary; and
  - (d) every company not mentioned in the preceding paragraphs which is a subsidiary of a company falling within paragraph (c).

#### Commencement Information

**I230** Sch. 7 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Statutory accounts of transferee companies*

- 8 (1) This paragraph has effect for the purposes of the statutory accounts of each of the following—
- (a) a transferee company;
  - (b) a subsidiary of the UKAEA to which a transfer has been made in accordance with a nuclear transfer scheme;
  - (c) a company that is the transferor in relation to a transfer in accordance with such a scheme to a company falling within paragraph (a) or (b).
- (2) The vesting in the company mentioned in sub-paragraph (1)(a) or (b) of property, rights and liabilities in accordance with the nuclear transfer scheme shall be taken to have been effected immediately after the end of the last accounting year of the transferor.
- (3) Where a nuclear transfer scheme—
- (a) specifies the value of an asset or the amount of a liability transferred in accordance with the scheme, or
  - (b) provides for the determination of that value or amount,
- the value or amount shall be taken to be the value or amount specified in or determined in accordance with the provisions of the scheme.
- (4) In this paragraph—
- “accounting year”, in relation to a body corporate, means the period for which its annual accounts are prepared;
  - “last accounting year”, in relation to a nuclear transfer scheme, means the last complete accounting year ending before the scheme comes into force; and

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“statutory accounts”, in relation to a company, means accounts of that company prepared for the purposes of a provision of the Companies Act 1985 (c. 6), including group accounts.

**Commencement Information**

**I231** Sch. 7 para. 8 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Accounts of Crown owned transferee companies to be laid before Parliament*

- 9 As soon as practicable after the holding of a general meeting of a transferee company which, at the time of the meeting, is wholly-owned by the Crown, a Minister of the Crown must lay before Parliament a copy of—
- (a) all accounts which, in accordance with a requirement of the Companies Act 1985, are laid before the company at that meeting, and
  - (b) all documents which are annexed or attached to those accounts.

**Commencement Information**

**I232** Sch. 7 para. 9 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

SCHEDULE 8

Section 46

PENSIONS

**PART 1**

PRELIMINARY

*Interpretation*

- 1 (1) In this Schedule—
- “BNFL company” means BNFL or a subsidiary of BNFL;
  - “the designated date” means such date as the Secretary of State may by order designate for the purposes of this Schedule;
  - “NDA pension scheme” means a pension scheme maintained by or on behalf of the NDA under or by virtue of section 8(1)(a) or (b);
  - “non-nuclear pension scheme” means a pension scheme that is not a nuclear pension scheme;
  - “nuclear pension scheme” means—
    - (a) a UKAEA pension scheme;
    - (b) an NDA pension scheme;
    - (c) a pension scheme maintained by or on behalf of a nuclear company which is wholly-owned by the Crown; or
    - (d) a pension scheme designated for the purposes of this Schedule by an order made by the Secretary of State;

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“pension scheme authority”, in relation to a nuclear pension scheme, means, according to whether the scheme falls within paragraph (a), (b), (c) or (d) of the preceding definition—

- (a) the UKAEA;
- (b) the NDA;
- (c) the nuclear company in question; or
- (d) the person specified in the order designating the scheme;

“private sector employer” means a person who is not a relevant public sector employer;

“public sector employee” means a person who is—

- (a) an employee of the UKAEA;
- (b) an employee of a subsidiary of the UKAEA; or
- (c) an employee of, or a director or other officer of, a BNFL company that is publicly controlled;

“relevant public sector employer” means any of the following—

- (a) the UKAEA;
- (b) the NDA;
- (c) the Civil Nuclear Police Authority;
- (d) a publicly controlled company;

“transfer arrangements” means arrangements for the transfer of any of the following otherwise than in accordance with a nuclear transfer scheme—

- (a) securities of, or voting rights in, a company; or
- (b) a business, or a part of a business;

“UKAEA pension scheme” means a pension scheme maintained by the UKAEA under paragraph 7(2)(b) of Schedule 1 to the Atomic Energy Authority Act 1954 (c. 32).

- (2) References in this Schedule to the modification of a pension scheme include references to the modification of any one or more of the following—
  - (a) the trust deed of the scheme, if there is one;
  - (b) rules of the scheme; or
  - (c) any other instrument relating to the constitution, management or operation of the scheme.
- (3) For the purposes of this Schedule a body corporate is wholly-owned by the Crown if it is a company limited by shares and that company is one in which—
  - (a) a person specified in sub-paragraph (4) holds all the shares; or
  - (b) two or more persons so specified, taken together, hold all the shares.
- (4) Those persons are—
  - (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) another company which is wholly-owned by the Crown; or
  - (d) a nominee of a person falling within paragraphs (a) to (c).
- (5) A reference in this Schedule to a nuclear transfer scheme includes a reference to a modification agreement (within the meaning of Schedule 5).
- (6) References in this Schedule to a person being eligible to become a participant in a pension scheme if he fulfils a condition—

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- (a) do not include references to his being eligible to become a participant in a scheme if a different person becomes his employer or if his employer becomes the subsidiary of a particular body corporate; but
  - (b) do include references, in the case of a person whose participation in the scheme is temporarily suspended (whether by reason of a secondment or loan of his service or otherwise), to fulfilment of the conditions that would bring the suspension to an end.
- (7) In this paragraph “company” has the same meaning as in the Companies Act 1985 (c. 6).

#### Commencement Information

**I233** Sch. 8 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## PART 2

### EXTENSIONS OF CERTAIN PENSION SCHEMES

- 2 (1) The NDA may, by direction, make such modifications of a relevant pension scheme as it considers appropriate for purposes connected with extending the groups of persons who may participate in the scheme to—
- (a) employees of a qualifying employer;
  - (b) directors or other officers of a qualifying employer who are not employees of the employer.
- (2) The NDA may also, by direction, make such further modifications of a relevant pension scheme that has been modified by a direction under sub-paragraph (1) as it considers appropriate for purposes connected with conferring functions in relation to the scheme’s operation or management on the NDA.
- (3) For the purposes of this paragraph a person is a qualifying employer in relation to a relevant pension scheme if—
- (a) a transfer is made in accordance with a nuclear transfer scheme; and
  - (b) in consequence of that transfer persons falling within sub-paragraph (4) become employees, or directors or other officers, of that person.
- (4) A person falls within this sub-paragraph if immediately before the transfer in question takes effect, he—
- (a) is a participant in the relevant pension scheme in question;
  - (b) is eligible to become such a participant; or
  - (c) would be eligible to become such a participant had he attained an age, or fulfilled a condition, specified in that scheme.
- (5) Where employees, or directors or other officers, of a qualifying employer participate in a pension scheme by virtue of a direction under this paragraph, the employer must pay to the trustee of the scheme in respect of that participation—
- (a) such amounts as may be determined in accordance with the rules of the scheme; or
  - (b) such higher amounts as may be determined by the Secretary of State.

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- (6) The modifications of a pension scheme that may be made under this paragraph include modifications that make supplemental, consequential or transitional provision.
- (7) The modifications of a pension scheme that may be made under this paragraph do not include modifications that would, to any extent, deprive a member of the scheme of pension rights that accrued to him under the scheme before the coming into force of the modification.
- (8) Before making a modification of a pension scheme under this paragraph the NDA must consult—
- (a) the trustee of the scheme; and
  - (b) such persons as appear to the NDA to represent the employees, or directors or other officers, likely to be affected by the modification.
- (9) The consent of the Secretary of State is required for the giving of a direction under this paragraph.
- (10) In this paragraph “relevant pension scheme” means—
- (a) a nuclear pension scheme maintained by or on behalf of a nuclear company which is wholly-owned by the Crown;
  - (b) a nuclear pension scheme designated as a relevant pension scheme for the purposes of this paragraph by an order made by the Secretary of State.

**Commencement Information**

**I234** Sch. 8 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**PART 3**

PUBLIC SECTOR TRANSFERS OF UKAEA PENSION SCHEME MEMBERS

*Transfers of employment for NDA purposes*

- 3 For the purposes of this Part of this Schedule a transfer of a person’s employment is made for NDA purposes if his employment immediately after the transfer takes effect is—
- (a) employment with the NDA or a subsidiary of the NDA; or
  - (b) other employment the duties of which consist wholly or mainly of duties relating to matters connected with the carrying out by the NDA of its functions.

**Commencement Information**

**I235** Sch. 8 para. 3 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Application of UKAEA pension scheme*

- 4 (1) A person who—



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- (a) in accordance with a nuclear transfer scheme, or with any transfer arrangements, becomes an employee of a relevant public sector employer, and
  - (b) immediately before the transfer of his employment takes effect, is a participant in a UKAEA pension scheme,is not to cease to be a participant in that pension scheme by reason only that he has ceased to be employed by the transferor.
- (2) A person falling within sub-paragraph (1)(a) but not within sub-paragraph (1)(b) who, immediately before the transfer of his employment takes effect—
  - (a) is eligible to become a participant in a UKAEA pension scheme, or
  - (b) would be eligible to become such a participant had he attained an age, or fulfilled a condition, specified in the pension scheme,is not precluded from being, or becoming, eligible to participate in that pension scheme by reason only that he has ceased to be employed by the transferor.
- (3) Sub-paragraphs (1) and (2) do not apply in relation to the transfer of a person's employment unless—
  - (a) the transfer is made for NDA purposes; or
  - (b) the transfer is a transfer to the Civil Nuclear Police Authority.
- (4) Sub-paragraphs (1) and (2) do not apply in relation to the transfer of a person's employment that takes effect on or after the designated date unless—
  - (a) that person has satisfied the qualification requirement throughout the period beginning immediately before that date and ending immediately before the transfer takes effect; or
  - (b) the transfer is a transfer to the Civil Nuclear Police Authority.
- (5) The qualification requirement is satisfied by a person for the purposes of sub-paragraph (4) at any time when—
  - (a) he is a participant in a UKAEA pension scheme;
  - (b) he is eligible to become such a participant; or
  - (c) he would be eligible to become such a participant had he attained an age, or fulfilled a condition, specified in the pension scheme;and it is immaterial for the purposes of that sub-paragraph that the requirement is satisfied at different times in the period in question by reference to different paragraphs of this sub-paragraph.
- (6) A UKAEA pension scheme may apply to persons who are—
  - (a) persons to whom it would not otherwise apply, and
  - (b) entitled to participate in that pension scheme by virtue of sub-paragraph (1) or (2),as it applies to persons to whom it applies apart from this paragraph.
- (7) A UKAEA pension scheme may also apply to persons who (without being persons to whom it would apply apart from this sub-paragraph) are employees of a publicly controlled company in a case in which—
  - (a) that company is a company to which employees have been transferred in accordance with a nuclear transfer scheme or with transfer arrangements;
  - (b) those transfers, if they were made in accordance with transfer arrangements, were made for NDA purposes;

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- (c) the employees transferred were or included employees who, immediately after the transfer, were entitled by virtue of sub-paragraph (1) or (2) to participate in a UKAEA pension scheme or to an actual or potential eligibility to participate; and
  - (d) the employees to whom the scheme is applied do not include persons who were employees of the company immediately before the occasion or (as the case may be) first occasion on which a transfer of the employment of a person so entitled was made in accordance with a nuclear transfer scheme or transfer arrangements.
- (8) A person is not entitled to participate in a UKAEA pension scheme by virtue of any of sub-paragraphs (1) to (7) at any time after he has ceased to be able to remain, or to become, a participant in that scheme as a consequence of having agreed to become a participant in—
- (a) a pension scheme maintained by the relevant public sector employer to whom his employment was transferred; or
  - (b) a pension scheme maintained by another person in which he is able to become a participant by reference to his employment with that employer.
- (9) If a relevant public sector employer to which the employment of any person is transferred in accordance with a nuclear transfer scheme or with transfer arrangements—
- (a) is a publicly controlled company at the time when the employment is transferred, but
  - (b) subsequently ceases to be a publicly controlled company,
- then, from the time when it so ceases, no person employed by that company shall be entitled, by virtue of that employment, to participate in a UKAEA pension scheme or to be or to become eligible to participate in such a scheme.
- (10) In this paragraph “transferor”, in relation to a transfer of employment, means the person by whom the transferred employee was employed immediately before the transfer takes effect.

#### Commencement Information

**I236** Sch. 8 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Modification of UKAEA pension scheme*

- 5 (1) The Secretary of State may direct the UKAEA to make such modifications of a UKAEA pension scheme for the purpose of giving effect to paragraph 4 as may be specified in the direction.
- (2) He may also direct the UKAEA to make such modifications as may be so specified for either or both of the following purposes—
- (a) applying provisions of a UKAEA pension scheme that apply to employees of a publicly controlled company to the case of a person falling within sub-paragraph (3) who becomes a director or other officer of that company; and
  - (b) modifying those provisions in their application to such a case.
- (3) A person falls within this sub-paragraph if, immediately before becoming a director or other officer of the company in question, he—

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- (a) is a participant in a UKAEA pension scheme;
- (b) is eligible to become such a participant; or
- (c) would be eligible to be such a participant had he attained an age, or fulfilled a condition, specified in such a scheme.

#### Commencement Information

**I237** Sch. 8 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Transfer of funds from UKAEA pension scheme*

- 6
- (1) The Secretary of State may direct the UKAEA to make such modifications of a UKAEA pension scheme as may be specified in the direction for the purpose of requiring or enabling the transfer of funds and liabilities arising under the scheme in a case falling within sub-paragraph (2).
  - (2) That case is where a person ceases to be a participant in the scheme in consequence of—
    - (a) a transfer of his employment in accordance with a nuclear transfer scheme or transfer arrangements; or
    - (b) a transfer, in accordance with such a scheme or such arrangements, of securities of, or voting rights in, a company by which he is employed or a company of which such a company is a subsidiary.
  - (3) A direction by the Secretary of State under this paragraph may prescribe—
    - (a) the method of determining what is to be transferred; and
    - (b) the assumptions to be used in making that determination.

#### Commencement Information

**I238** Sch. 8 para. 6 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Exercise of powers of Secretary of State*

- 7
- (1) A direction under paragraph 5 or 6 may require the UKAEA to make such supplemental, consequential and transitional provision modifying a UKAEA pension scheme as the Secretary of State considers appropriate.
  - (2) Before giving a direction under paragraph 5 or 6, the Secretary of State must consult—
    - (a) the UKAEA;
    - (b) the Treasury; and
    - (c) such persons as appear to him to represent the employees, or directors or other officers, likely to be affected by the direction.
  - (3) The power to give a direction under paragraph 5 affecting persons who become employees, or directors or other officers, of a publicly controlled company is not exercisable after the company has ceased to be a publicly controlled company.
  - (4) The provisions of paragraphs 5 and 6—

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- (a) are in addition to the powers of the Secretary of State to give directions to the UKAEA under paragraph 13 of this Schedule, paragraph 7 of Schedule 10 to this Act or section 3 of the Atomic Energy Authority Act 1954 (c. 32); and
- (b) are to be disregarded in construing those powers.

#### Commencement Information

**I239** Sch. 8 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Payments to UKAEA by relevant public sector employer*

- 8 Where employees, or directors or other officers, of a relevant public sector employer to whom employees are transferred in accordance with a nuclear transfer scheme or transfer arrangements participate in a UKAEA pension scheme by virtue of paragraph 4 or 5, the employer must pay to the UKAEA such amounts in respect of that participation as are—
- (a) agreed between the relevant public sector employer and the UKAEA; or
  - (b) in the absence of such agreement, determined in relation to that employer by the Secretary of State.

#### Commencement Information

**I240** Sch. 8 para. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## PART 4

### OTHER TRANSFERS

#### *Persons entitled to pension protection under paragraphs 10 and 11*

- 9 (1) For the purposes of this Part of this Schedule a person is entitled to pension protection in relation to a nuclear transfer scheme or any transfer arrangements if—
- (a) sub-paragraph (2) applies to him; and
  - (b) he is a person falling within sub-paragraph (5).
- (2) This sub-paragraph applies to a person if—
- (a) in accordance with the scheme or arrangements, a transfer mentioned in sub-paragraph (3) occurs; and
  - (b) immediately after the time at which that transfer takes effect, the person's employment is for NDA purposes.
- (3) The transfers referred to in sub-paragraph (2) are—
- (a) a transfer of the person's employment to the UKAEA, the NDA, a publicly controlled company or a private sector employer;
  - (b) where his employment is not so transferred, a transfer of securities of, or voting rights in, a company by which he is employed or a company of which such a company is a subsidiary.

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- (4) For the purposes of sub-paragraph (2) a person's employment is for NDA purposes if it is—
- (a) employment with the NDA or a subsidiary of the NDA; or
  - (b) other employment the duties of which consist wholly or mainly of duties relating to matters connected with the carrying out by the NDA of its functions.
- (5) A person falls within this sub-paragraph if—
- (a) he is a person to whom sub-paragraph (7) applies immediately before the relevant time;
  - (b) he is (in a case where the relevant time is on or after the designated date) a person to whom that sub-paragraph has applied throughout the period beginning immediately before the designated date and ending immediately before the relevant time;
  - (c) he satisfies the employment condition at the relevant time; and
  - (d) in consequence of the transfer scheme or transfer arrangements—
    - (i) he is precluded from being, or becoming, eligible to participate in the nuclear pension scheme by reference to which that sub-paragraph applies to him immediately before the relevant time; or
    - (ii) his employer is entitled to do something the effect of which will be so to preclude him.
- (6) For the purposes of sub-paragraph (5) it is immaterial that the condition in paragraph (b) of that sub-paragraph is satisfied at different times in the period by reference to different schemes or different paragraphs of sub-paragraph (7) or both.
- (7) This sub-paragraph applies to a person if—
- (a) he is a participant in a nuclear pension scheme;
  - (b) he is eligible to become such a participant; or
  - (c) he would be eligible to become such a participant had he attained an age, or fulfilled a condition, specified in the pension scheme.
- (8) For the purposes of sub-paragraph (5) the employment condition is satisfied by a person at the relevant time if, and only if, his employment throughout the relevant period has been for NDA purposes (within the meaning of sub-paragraph (4)).
- (9) For the purposes of sub-paragraph (8) the relevant period in the case of a person to whom sub-paragraph (2) applies is whichever is the shorter of—
- (a) the period of six months ending with the relevant time; and
  - (b) the period up to the relevant time since the last occasion prior to the present case on which sub-paragraph (2) applied to him.
- (10) For the purpose of a person being entitled to pension protection in relation to a nuclear transfer scheme or any transfer arrangements on the first occasion on which sub-paragraph (2) applies to him, this paragraph shall have effect with the omission of sub-paragraph (5)(c).
- (11) A person is not entitled to pension protection in relation to a nuclear transfer scheme or any transfer arrangements—
- (a) at a time before the designated date unless he is a public sector employee immediately before that time; or

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- (b) at a time on or after the designated date unless he was a public sector employee at the time immediately before that date.
- (12) In this paragraph “the relevant time”, in relation to a person to whom sub-paragraph (2) applies, means—
- (a) the time when, in accordance with the scheme or arrangements, the transfer of his employment to the UKAEA, the NDA, a publicly controlled company or a private sector employer takes effect; or
  - (b) in relation to a person whose employment is not so transferred, the time when, in accordance with the scheme or arrangements, the transfer of securities of, or voting rights in, the company by which he is employed or the company of which it is a subsidiary takes effect.

#### Commencement Information

**I241** Sch. 8 para. 9 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Protection on transfer in accordance with a nuclear transfer scheme*

- 10 (1) Before the coming into force of a nuclear transfer scheme in relation to which persons are entitled to pension protection the Secretary of State must consult—
- (a) the appropriate pension scheme authority;
  - (b) the Treasury; and
  - (c) such persons as appear to him to represent the persons who will be entitled to pension protection in relation to the scheme.
- (2) Before the coming into force of such a transfer scheme, the Secretary of State must satisfy himself that every person entitled to pension protection in relation to the scheme will be entitled, by virtue of the employment that he will hold after the relevant time—
- (a) to exercise an option of becoming a participant in an appropriate pension scheme; or
  - (b) in the case of a person to whom paragraph 9(7)(c) will apply immediately before the relevant time, to exercise such an option on or before attaining the age or fulfilling the condition in question.
- (3) The Secretary of State’s duty under sub-paragraph (2) is owed to every person who is entitled to pension protection in relation to the transfer scheme.
- (4) In the case of a person to whom paragraph 9(5)(d)(ii) applies, the references in sub-paragraph (2) to a person being entitled to exercise an option are to be construed as references to a person being entitled to exercise an option if his employer exercises the entitlement mentioned in paragraph 9(5)(d)(ii).
- (5) For the purposes of sub-paragraph (2), a pension scheme is an appropriate pension scheme in relation to a person if the Secretary of State is satisfied that—
- (a) taking into account the other benefits (if any) that are conferred on or made available to that person as a result of the employment that he will hold after the relevant time, and
  - (b) taking the benefits that are available under the provisions of that pension scheme as a whole,

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the benefits that are available under those provisions are no less favourable than the benefits available under the provisions (taken as a whole) of the nuclear pension scheme in respect of which he is entitled to protection under this Part of this Schedule.

(6) In sub-paragraph (5) the reference to the scheme in respect of which a person is entitled to protection under this Part of this Schedule is a reference to—

- (a) in the case of a person who has not previously been owed a duty under either sub-paragraph (2) or paragraph 11(3), the scheme by reference to which paragraph 9(7) will apply to him immediately before the relevant time; and
- (b) in other cases, the scheme by reference to which paragraph 9(7) applied to him immediately before the time that was the relevant time in relation to him on the first occasion on which he was owed such a duty;

and the reference, in relation to such a person, to the provisions of that scheme is a reference to its provisions as in force immediately before the time specified in sub-paragraph (7).

(7) That time is—

- (a) in a case falling within sub-paragraph (6)(a), the relevant time; or
- (b) in a case falling within sub-paragraph (6)(b), the relevant time in relation to the person on the first occasion on which he was owed a duty under either sub-paragraph (2) or paragraph 11(3).

(8) Where a person—

- (a) is a participant in a non-nuclear pension scheme by virtue of the exercise of an option in a case in which the Secretary of State discharged his duty to that person under sub-paragraph (2) by reference to that option, or
- (b) is or will become entitled to exercise an option to become a participant in such a pension scheme in a case in which the Secretary of State discharged his duty to that person under sub-paragraph (2) by reference to that entitlement,

this Part of this Schedule shall have effect in relation to that person as if that scheme were a nuclear pension scheme.

(9) Sub-paragraph (8) does not apply in relation to a person to whom paragraph 9(5)(d)(ii) applied when the Secretary of State discharged his duty to that person under sub-paragraph (2) unless the person's employer exercises the entitlement mentioned in paragraph 9(5)(d)(ii).

(10) In this paragraph “relevant time” has the same meaning as in paragraph 9.

#### Commencement Information

1242 Sch. 8 para. 10 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Protection on a transfer in accordance with transfer arrangements*

11 (1) It shall be the duty of the NDA to secure that provision is made for ensuring that consultation with the persons specified in sub-paragraph (2) takes place before any transfer arrangements in relation to which persons are entitled to pension protection take effect.

(2) Those persons are—

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- (a) the NDA itself;
  - (b) the Secretary of State;
  - (c) the Treasury;
  - (d) persons appearing to the NDA to represent persons who will be entitled to pension protection in relation to the arrangements.
- (3) Before such transfer arrangements take effect, the NDA must satisfy itself that every person entitled to pension protection in relation to the arrangements will be entitled, by virtue of the employment that he will hold after the relevant time—
- (a) to exercise an option of becoming a participant in an appropriate pension scheme; or
  - (b) in the case of a person to whom paragraph 9(7)(c) will apply immediately before the relevant time, to exercise such an option on or before attaining the age or fulfilling the condition in question.
- (4) The NDA's duty under sub-paragraph (3) is owed to every person who is entitled to pension protection in relation to the transfer arrangements.
- (5) In the case of a person to whom paragraph 9(5)(d)(ii) applies, the references in sub-paragraph (3) to a person being entitled to exercise an option are to be construed as references to a person being entitled to exercise an option if his employer exercises the entitlement mentioned in paragraph 9(5)(d)(ii).
- (6) For the purposes of sub-paragraph (3), a pension scheme is an appropriate pension scheme in relation to a person if the NDA is satisfied that—
- (a) taking into account the other benefits (if any) that are conferred on or made available to him as a result of the employment that he will hold after the relevant time, and
  - (b) taking the benefits that are available under the provisions of that pension scheme as a whole,
- the benefits that are available under those provisions are no less favourable than the benefits available under the provisions (taken as a whole) of the nuclear pension scheme in respect of which he is entitled to protection under this Part of this Schedule.
- (7) In sub-paragraph (6) the reference to the scheme in respect of which a person is entitled to protection under this Part of this Schedule is a reference to—
- (a) in the case of a person who has not previously been owed a duty under either sub-paragraph (3) or paragraph 10(2), the scheme by reference to which paragraph 9(7) will apply to him immediately before the relevant time; and
  - (b) in other cases, the scheme by reference to which paragraph 9(7) applied to him immediately before the time that was the relevant time in relation to him on the first occasion on which he was owed such a duty;
- and the reference, in relation to such a person, to the provisions of that scheme is a reference to its provisions as in force immediately before the time specified in sub-paragraph (8).
- (8) That time is—
- (a) in a case falling within sub-paragraph (7)(a), the relevant time; or
  - (b) in a case falling within sub-paragraph (7)(b), the relevant time in relation to the person on the first occasion on which he was owed a duty under either sub-paragraph (3) or paragraph 10(2).
- (9) Where a person—



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- (a) is a participant in a non-nuclear pension scheme by virtue of the exercise of an option in a case in which the NDA discharged its duty to that person under sub-paragraph (3) by reference to that option, or
  - (b) is or will become entitled to exercise an option to become a participant in such a pension scheme in a case in which the NDA discharged its duty to that person under sub-paragraph (3) by reference to that entitlement,
- this Part of this Schedule shall have effect in relation to that person as if that scheme were a nuclear pension scheme.
- (10) Sub-paragraph (9) does not apply in relation to a person to whom paragraph 9(5)(d) (ii) applied when the NDA discharged its duty to that person under sub-paragraph (3) unless the person’s employer exercises the entitlement mentioned in paragraph 9(5) (d)(ii).
- (11) In this paragraph “relevant time” has the same meaning as in paragraph 9.

**Commencement Information**

**I243** Sch. 8 para. 11 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Modification of NDA schemes*

- 12 (1) The Secretary of State shall have power by direction to make such modifications of an NDA pension scheme as he considers appropriate for the purpose of securing—
- (a) in relation to any proposed transfer, or
  - (b) in relation to transfers that he considers may occur,
- that the scheme will be an appropriate pension scheme for the purposes of paragraph 10 or 11.
- (2) The NDA shall also have power by direction to make such modifications of an NDA pension scheme as it considers appropriate for the purpose of securing—
- (a) in relation to any proposed transfer, or
  - (b) in relation to transfers that it considers may occur,
- that the scheme will be an appropriate pension scheme for the purposes of paragraph 10 or 11.
- (3) Before making a modification under this paragraph the Secretary of State must consult—
- (a) the NDA; and
  - (b) such persons as appear to him to represent the employees likely to be affected by the modification.
- (4) Before making a modification under this paragraph the NDA must—
- (a) consult such persons as appear to it to represent the employees likely to be affected by the modification; and
  - (b) obtain the consent of the Secretary of State to the modification.

**Commencement Information**

**I244** Sch. 8 para. 12 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Status:* Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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## PART 5

### UKAEA PENSIONS FOR EMPLOYEES OF DESIGNATED BNFL COMPANIES

- 13 (1) A UKAEA pension scheme may apply to employees of a designated BNFL company which is publicly controlled as it applies to persons to whom it applies apart from this paragraph.
- (2) The Secretary of State may, by direction, require the UKAEA to make such modifications of a UKAEA pension scheme as the Secretary of State considers appropriate in respect of the participation in such a scheme of employees of a designated BNFL company which is publicly controlled.
- (3) The Secretary of State may also, by direction, require the UKAEA to make such modifications of a UKAEA pension scheme as the Secretary of State considers appropriate for applying the provisions of such a scheme to persons—
- (a) who are directors, or other officers, of a designated BNFL company which is publicly controlled; and
  - (b) who are not employees of that company.
- (4) A direction under this paragraph may require the UKAEA to make such supplemental, consequential and transitional provision modifying a UKAEA pension scheme as the Secretary of State considers appropriate.
- (5) Before giving a direction under this paragraph, the Secretary of State must consult—
- (a) the UKAEA;
  - (b) the designated BNFL company in question;
  - (c) the Treasury; and
  - (d) such persons as appear to him to represent the employees, or directors or other officers, likely to be affected by the direction.
- (6) The power of the Secretary of State to give directions under this paragraph—
- (a) is in addition to the powers of the Secretary of State to give directions to the UKAEA under paragraphs 5 and 6 of this Schedule or section 3 of the Atomic Energy Authority Act 1954 (c. 32); and
  - (b) is to be disregarded in construing those powers.
- (7) A designated BNFL company must pay such amounts to the UKAEA in respect of the participation in a pension scheme by virtue of this paragraph of employees of the company, or of any of its directors or other officers, as are—
- (a) agreed between the company and the UKAEA; or
  - (b) in the absence of such agreement, determined by the Secretary of State.
- (8) In this paragraph “designated BNFL company” has the same meaning as in Schedule 7.

#### Commencement Information

**I245** Sch. 8 para. 13 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## SCHEDULE 9

Section 47

### TAXATION PROVISIONS RELATING TO NUCLEAR TRANSFER SCHEMES

#### PART 1

##### TRANSFERS TO THE NDA OR A SUBSIDIARY OF THE NDA

###### *Trading losses: transfer of company carrying on exempt activities*

- 1 (1) This paragraph applies for the purposes of corporation tax where—
- (a) in consequence of a section 39 scheme, a company which is not an NDA company becomes an NDA company falling within section 27(4)(a); and
  - (b) the company carried on exempt activities before the coming into force of the scheme.
- (2) Trading losses attributable to the exempt activities carried on by the company before the coming into force of the scheme shall be treated, in relation to accounting periods beginning at or after that time, as extinguished.
- (3) For the purpose of determining the extent to which trading losses incurred by a company are attributable to exempt activities, such apportionments of receipts, expenses, assets and liabilities shall be made as may be just.

#### **Commencement Information**

**I246** Sch. 9 para. 1 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

###### *Trading losses: transfer of undertaking carrying on exempt activities*

- 2 (1) This paragraph applies for the purposes of corporation tax where—
- (a) a company (“the transferor company”) which is not an NDA company is carrying on a trade which consists in or includes exempt activities; and
  - (b) in consequence of a section 39 scheme—
    - (i) the transferor company ceases to carry on that trade or a part of it which consists in or includes such activities; and
    - (ii) the NDA or an NDA company begins to carry on that trade or that part of it.
- (2) Trading losses attributable to so much of the trade or part of a trade as consists in exempt activities carried on by the transferor company before the time when the NDA or the NDA company begins to carry on the trade or that part of it shall be treated, in relation to accounting periods ending after that time, as extinguished.
- (3) Subsections (3), (4A), (7) to (9) and (11) of section 343 of the Taxes Act (company reconstruction without change of ownership) shall apply in relation to an unextinguished loss sustained by the transferor company in carrying on the trade or the part of it in question as if—
- (a) the case were a case falling within subsection (1) of that section;
  - (b) the transferor company were the predecessor; and
  - (c) the NDA or the NDA company in question were the successor.

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#### Commencement Information

**I247** Sch. 9 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable gains: assets to be treated as disposed without a gain or a loss*

- 3
- (1) This paragraph applies for the purposes of the 1992 Act where there is a transfer of an asset to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme.
  - (2) The asset shall be treated as disposed of to the NDA or (as the case may be) to its subsidiary for a consideration of such amount as would secure that, on the disposal, neither a gain nor a loss accrues to the transferor.
  - (3) This paragraph has effect subject to paragraph 4.
  - (4) This paragraph does not apply in relation to a transfer to the NDA or to a subsidiary of the NDA in accordance with a nuclear transfer scheme of securities of a company, in consequence of which that company ceases to be a relevant site licensee.
  - (5) In this paragraph “relevant site licensee” has the same meaning as in subsection (4) of section 27 (see subsection (5)).

#### Commencement Information

**I248** Sch. 9 para. 3 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable gains: assets treated as acquired at nil cost*

- 4
- (1) This paragraph applies for the purposes of the 1992 Act where the NDA or a subsidiary of the NDA disposes of an asset which—
    - (a) was acquired by the NDA or that subsidiary in accordance with a section 39 scheme or a section 40 scheme; and
    - (b) is not an asset which, immediately before its transfer to the NDA or that subsidiary, was comprised in the Nuclear Liabilities Investment Portfolio.
  - (2) No amount shall be allowable as a deduction under section 38(1)(a) or (b) of the 1992 Act (acquisition and enhancement costs) in the computation of the gain accruing on the disposal.
  - (3) Accordingly, in a case where the disposal is one which under any enactment is treated as a disposal on which neither a gain nor a loss accrues to the NDA or its subsidiary, the consideration for the disposal shall be treated as equal to the amount allowable as a deduction from that consideration under section 38(1)(c) of the 1992 Act (incidental costs of disposal).
  - (4) This paragraph does not apply in the case of a disposal which under paragraph 29 is to be treated as a disposal on which neither a gain nor a loss accrues to the NDA or a subsidiary of the NDA.

#### Commencement Information

**I249** Sch. 9 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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*Chargeable gains: degrouping charges*

- 5 (1) This paragraph applies if a company (“the degrouped company”)—
- (a) acquired an asset from another company at a time when both were members of the same group of companies (“the old group”); and
  - (b) ceases, by virtue of a transfer to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme, to be a member of the old group.
- (2) Section 179 of the 1992 Act (company ceasing to be member of group) is not to treat the degrouped company as having by virtue of the transfer sold and immediately reacquired the asset.
- (3) Where sub-paragraph (2) has applied to an asset, section 179 of the 1992 Act is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (“the new group”) as if—
- (a) the degrouped company, and
  - (b) the company from which it acquired the asset,
- had been members of the new group at the time of acquisition.
- (4) Expressions used in this paragraph and in section 179 of the 1992 Act have the same meanings in this paragraph as in that section.

**Commencement Information**

**I250** Sch. 9 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable gains: disposal of debts*

- 6 (1) This paragraph applies if—
- (a) a debt owed to any person is transferred to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme; and
  - (b) the transferor would (apart from this paragraph) be the original creditor in relation to that debt for the purposes of section 251 of the 1992 Act (disposal of debts).
- (2) The 1992 Act is to have effect as if the NDA or (as the case may be) its subsidiary (and not the transferor) were the original creditor for those purposes.

**Commencement Information**

**I251** Sch. 9 para. 6 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Capital allowances: transfer of whole trade*

- 7 (1) This paragraph applies where—
- (a) a company (“the transferor company”) which is not a subsidiary of the NDA is carrying on a trade; and
  - (b) in consequence of a section 39 scheme, the transferor company ceases to carry on that trade and the NDA or a subsidiary of the NDA begins to carry it on.

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- (2) For the purposes of the allowances and charges provided for by the 2001 Act, the trade is not to be treated as permanently discontinued, nor a new trade as set up; but sub-paragraphs (3) and (4) of this paragraph are to apply.
- (3) There are to be made to or on the NDA or (as the case may be) its subsidiary, in accordance with the 2001 Act, all such allowances and charges as would, if the transferor company had continued to carry on the trade, have fallen to be made to or on that company.
- (4) The amounts of those allowances and charges are to be computed as if—
- (a) the NDA or its subsidiary had been carrying on the trade since the transferor company began to do so; and
  - (b) everything done to or by the transferor company had been done to or by the NDA or that subsidiary;
- but so that transfers in accordance with the section 39 scheme, so far as they relate to assets in use for the purposes of the trade, shall not be treated as giving rise to an allowance or charge.

#### Commencement Information

**I252** Sch. 9 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Capital allowances: transfer of part of a trade*

- 8 (1) Where—
- (a) a company (“the transferor company”) which is not a subsidiary of the NDA is carrying on a trade, and
  - (b) in consequence of a section 39 scheme, the transferor company ceases to carry on that trade and the NDA or a subsidiary of the NDA begins to carry on activities of the trade as part of a trade carried on by the NDA or that subsidiary,
- then that part of the trade carried on by the NDA or its subsidiary shall be treated for the purposes of paragraph 7 as a separate trade.
- (2) Where—
- (a) a company (“the transferor company”) which is not a subsidiary of the NDA is carrying on a trade, and
  - (b) in consequence of a section 39 scheme, the transferor company ceases to carry on a part of that trade and the NDA or a subsidiary of the NDA begins to carry on activities of that part of that trade,
- then the transferor company shall be treated for the purposes of paragraph 7 and sub-paragraph (1) of this paragraph as having carried on that part of its trade as a separate trade.
- (3) Where activities fall to be treated for the purposes of this paragraph as a separate trade, such apportionments of receipts, expenses, assets and liabilities shall be made for the purposes of the 2001 Act as may be just.

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#### Commencement Information

**I253** Sch. 9 para. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Capital allowances: transfer of plant or machinery*

- 9 (1) This paragraph applies where—
- (a) there is a transfer of property to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme;
  - (b) the property is plant or machinery; and
  - (c) paragraph 7 does not apply in relation to the transfer of the plant or machinery.
- (2) For the purposes of Part 2 of the 2001 Act (capital allowances for plant and machinery), the NDA or its subsidiary is to be treated—
- (a) as having incurred capital expenditure on the provision of the plant or machinery at the time of the transfer; and
  - (b) as having owned the plant or machinery as a result of having incurred that expenditure.
- (3) The amount of that expenditure is to be treated as being the book value of the plant or machinery.
- (4) For the purposes of the application of section 61 of that Act in relation to the transferor the disposal value of the plant or machinery is to be treated as being the book value of the plant or machinery.
- (5) The references in this paragraph to the book value of the plant or machinery are references to the amount which, in accordance with generally accepted accounting practice (within the meaning of the Tax Acts)—
- (a) was recognised as its value in the accounts of the transferor at the time of the transfer; or
  - (b) should have been so recognised at that time.
- (6) Expressions used in this paragraph and in Part 2 of the 2001 Act have the same meanings in this paragraph as in that Part.

#### Commencement Information

**I254** Sch. 9 para. 9 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Capital allowances: transfer not to be transaction between connected persons*

- 10 For the purposes of Part 2 of the 2001 Act references in that Part to a transaction (however described) between connected persons (within the meaning of section 839 of the Taxes Act) are not to include references to a transfer of anything in accordance with a section 39 scheme to the NDA or a subsidiary of the NDA.

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**Commencement Information**

**I255** Sch. 9 para. 10 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Continuity in relation to loan relationships*

- 11 (1) This paragraph applies if, in consequence of a section 39 scheme, the NDA or a subsidiary of the NDA replaces a person as a party to a loan relationship.
- (2) Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) is to have effect in relation to the time when the transfer takes effect and any later time as if—
- (a) the NDA or its subsidiary had been a party to the loan relationship at the time when the transferor became a party to it and at all times since that time; and
  - (b) the loan relationship to which the NDA or its subsidiary is a party after the time when the transfer takes effect is the same loan relationship as that to which, by virtue of paragraph (a), it is treated as having been a party before that time.
- (3) Expressions used in this paragraph and in Chapter 2 of Part 4 of the Finance Act 1996 have the same meanings in this paragraph as in that Chapter.

**Commencement Information**

**I256** Sch. 9 para. 11 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Continuity in relation to derivative contracts*

- 12 (1) This paragraph applies if, in consequence of a section 39 scheme, the NDA or a subsidiary of the NDA replaces a person as a party to a derivative contract.
- (2) Schedule 26 to the Finance Act 2002 (c. 23) is to have effect in relation to the time when the transfer takes effect and any later time as if—
- (a) the NDA or its subsidiary had been a party to the derivative contract at the time when the transferor became a party to it and at all times since that time; and
  - (b) the derivative contract to which the NDA or its subsidiary is a party after the time when the transfer takes effect is the same derivative contract as that to which, by virtue of paragraph (a), it is treated as having been a party before that time.
- (3) Expressions used in this paragraph and in Schedule 26 to the Finance Act 2002 have the same meanings in this paragraph as in that Schedule.

**Commencement Information**

**I257** Sch. 9 para. 12 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Continuity in relation to transfer of intangible assets*

- 13 (1) Where—



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- (a) property is transferred in accordance with a section 39 scheme to the NDA or a subsidiary of the NDA, and
  - (b) the property transferred includes a chargeable intangible asset of the transferor,
- the transfer of that asset is to be treated for the purposes of Schedule 29 to the Finance Act 2002 as a tax neutral transfer.
- (2) Where, in the case of a transfer in accordance with a section 39 scheme of any property to the NDA or a subsidiary of the NDA—
- (a) the property transferred includes an asset which is not a chargeable intangible asset of the transferor, but
  - (b) that asset falls to be treated after the transfer as a chargeable intangible asset of the NDA or its subsidiary,
- that asset shall be treated as acquired by the NDA or its subsidiary for an amount equal to the amount of the consideration determined for the purposes of paragraph 3(2) of this Schedule.
- (3) Expressions used in this paragraph and in Schedule 29 to the Finance Act 2002 have the same meanings in this paragraph as in that Schedule.

**Commencement Information**

**I258** Sch. 9 para. 13 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable intangible assets: degrouping charges*

- 14 (1) This paragraph applies if a company (“the degrouped company”)—
- (a) acquired an intangible fixed asset from another company at a time when both were members of the same group of companies (“the old group”); and
  - (b) ceases by virtue of a transfer to the NDA or a subsidiary of the NDA in accordance with a section 39 scheme to be a member of the old group.
- (2) Paragraph 58 of Schedule 29 to the Finance Act 2002 (company ceasing to be member of group) is not to treat the degrouped company as having, by virtue of the transfer, sold and immediately reacquired the asset.
- (3) Where sub-paragraph (2) has applied to an asset, paragraph 58 of Schedule 29 to the Finance Act 2002 (c. 23) is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (“the new group”) as if—
- (a) the degrouped company, and
  - (b) the company from which it acquired the asset,
- had been members of the new group at the time of acquisition.
- (4) Expressions used in this paragraph and in paragraph 58 of Schedule 29 to the Finance Act 2002 have the same meanings in this paragraph as in that paragraph.

**Commencement Information**

**I259** Sch. 9 para. 14 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**Status:** Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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*Computation of profits and losses in respect of transfer of trade*

- 15 (1) This paragraph applies where, in consequence of a section 39 scheme—
- (a) a BNFL company ceases to carry on a trade or a part of a trade; and
  - (b) an NDA group member begins to carry on the trade or that part of it.
- (2) For the purpose of computing, in relation to the time when the scheme comes into force and subsequent times, the relevant trading profits or losses of the BNFL company and the NDA group member—
- (a) the trade or part is to be treated as having been a separate trade at the time of its commencement and as having been carried on by the NDA group member at all times since its commencement as a separate trade; and
  - (b) the trade carried on by the NDA group member after the time when the section 39 scheme comes into force is to be treated as the same trade as that which it is treated, by virtue of paragraph (a), as having carried on as a separate trade before that time.
- (3) This paragraph is subject to paragraph 11.
- (4) In this paragraph—
- “BNFL company” means BNFL or a subsidiary of BNFL;
  - “NDA group member” means the NDA or a subsidiary of the NDA;
  - “relevant trading profits and losses” means profits or losses under Case I of Schedule D in respect of the trade or part of a trade in question.

**Commencement Information**

**I260** Sch. 9 para. 15 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**PART 2**

TRANSFERS RELATING TO BNFL OR THE UKAEA ETC.

*Application of Part 2 of Schedule*

- 16 (1) This Part of this Schedule applies to a transfer if—
- (a) it is a transfer in accordance with a section 39 scheme of securities of a BNFL company or of property, rights or liabilities of a BNFL company; and
  - (b) the transferee is a publicly owned company which is not a subsidiary of the NDA.
- (2) This Part of this Schedule also applies to a transfer if it is a transfer in accordance with a section 39 scheme to a transferee falling within sub-paragraph (3) of—
- (a) property, rights or liabilities of the UKAEA;
  - (b) securities of a wholly-owned subsidiary of the UKAEA; or
  - (c) property, rights or liabilities of such a subsidiary.
- (3) The transferee falls within this sub-paragraph if it is—
- (a) a publicly owned company which is not a subsidiary of the NDA; or
  - (b) the UKAEA.

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- (4) In this paragraph “BNFL company” means BNFL or a wholly-owned subsidiary of BNFL.

**Commencement Information**

**I261** Sch. 9 para. 16 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Application of rules for reorganisations under same ownership*

- 17 Where the conditions set out in subsection (1) of section 343 of the Taxes Act (company reconstructions without a change of ownership) are satisfied in relation to a transfer to which this Part of this Schedule applies, that section shall have effect in relation to the transfer with the omission of subsection (4) (which restricts the losses that may be carried forward to the excess of relevant liabilities over relevant assets).

**Commencement Information**

**I262** Sch. 9 para. 17 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable gains: assets to be treated as disposed without a gain or a loss*

- 18 (1) This paragraph applies for the purposes of the 1992 Act where an asset is transferred by a transfer to which this Part of this Schedule applies.
- (2) The asset shall be treated as disposed of to the transferee for a consideration of such amount as would secure that, on the disposal, neither a gain nor a loss accrues to the transferor.

**Commencement Information**

**I263** Sch. 9 para. 18 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable gains: degrouping charges*

- 19 (1) This paragraph applies if a company (“the degrouped company”)—
- (a) acquired an asset from another company at a time when both were members of the same group of companies (“the old group”); and
  - (b) ceases by virtue of a transfer to which this Part of this Schedule applies to be a member of the old group.
- (2) Section 179 of the 1992 Act (company ceasing to be member of group) is not to treat the degrouped company as having by virtue of the transfer sold and immediately reacquired the asset.
- (3) Where sub-paragraph (2) has applied to an asset, section 179 of the 1992 Act is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (“the new group”) as if—
- (a) the degrouped company, and
  - (b) the company from which it acquired the asset,

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had been members of the new group at the time of acquisition.

- (4) Expressions used in this paragraph and in section 179 of the 1992 Act have the same meanings in this paragraph as in that section.

**Commencement Information**

**I264** Sch. 9 para. 19 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable gains: disposal of debts*

- 20 (1) This paragraph applies if—
- (a) a debt owed to any person is transferred by a transfer to which this Part of this Schedule applies; and
  - (b) the transferor would (apart from this paragraph) be the original creditor in relation to that debt for the purposes of section 251 of the 1992 Act (disposal of debts).
- (2) The 1992 Act is to have effect as if the transferee (and not the transferor) were the original creditor for those purposes.

**Commencement Information**

**I265** Sch. 9 para. 20 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Capital allowances: transfer of plant or machinery*

- 21 (1) This paragraph applies where—
- (a) property transferred by a transfer to which this Part of this Schedule applies includes plant or machinery; and
  - (b) section 343 of the Taxes Act does not apply in relation to the transfer of the plant or machinery.
- (2) For the purposes of Part 2 of the 2001 Act (capital allowances for plant and machinery), the transferee is to be treated—
- (a) as having incurred capital expenditure on the provision of the plant or machinery at the time of the transfer; and
  - (b) as having owned the plant or machinery as a result of having incurred that expenditure.
- (3) The amount of that expenditure is to be treated as being the book value of the plant or machinery.
- (4) For the purposes of the application of section 61 of that Act in relation to the transferor the disposal value of the plant or machinery is to be treated as being the book value of the plant or machinery.
- (5) The references in this paragraph to the book value of the plant or machinery are references to the amount which, in accordance with generally accepted accounting practice (within the meaning of the Tax Acts)—
- (a) was recognised as its value in the accounts of the transferor at the time of the transfer; or

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(b) should have been so recognised at that time.

(6) Expressions used in this paragraph and in Part 2 of the 2001 Act have the same meanings in this paragraph as in that Part.

**Commencement Information**

**I266** Sch. 9 para. 21 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Capital allowances: transfer not to be transaction between connected persons*

22 For the purposes of Part 2 of the 2001 Act references in that Part to a transaction (however described) between connected persons (within the meaning of section 839 of the Taxes Act) are not to include references to a transfer to which this Part of this Schedule applies.

**Commencement Information**

**I267** Sch. 9 para. 22 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Continuity in relation to loan relationships*

23 (1) This paragraph applies if, in consequence of a transfer to which this Part of this Schedule applies, the transferee replaces a person as a party to a loan relationship.

(2) Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) is to have effect in relation to the time when the transfer takes effect and any later time as if—

(a) the transferee had been a party to the loan relationship at the time when the transferor became a party to it and at all times since that time; and

(b) the loan relationship to which the transferee is a party after the time when the transfer takes effect is the same loan relationship as that to which, by virtue of paragraph (a), it is treated as having been a party before that time.

(3) Expressions used in this paragraph and in Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) have the same meanings in this paragraph as in that Chapter.

**Commencement Information**

**I268** Sch. 9 para. 23 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Continuity in relation to derivative contracts*

24 (1) This paragraph applies if, in consequence of a transfer to which this Part of this Schedule applies, the transferee replaces a person as a party to a derivative contract.

(2) Schedule 26 to the Finance Act 2002 (c. 23) is to have effect in relation to the time when the transfer takes effect and any later time as if—

(a) the transferee had been a party to the derivative contract at the time when the transferor became a party to it and at all times since that time; and

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- (b) the derivative contract to which the transferee is a party after the time when the transfer takes effect is the same derivative contract as that to which, by virtue of paragraph (a), it is treated as having been a party before that time.
- (3) Expressions used in this paragraph and in Schedule 26 to the Finance Act 2002 have the same meanings in this paragraph as in that Schedule.

**Commencement Information**

**I269** Sch. 9 para. 24 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Continuity in relation to transfer of intangible assets*

- 25 (1) Where—
- (a) property is transferred by a transfer to which this Part of this Schedule applies, and
  - (b) the property transferred includes a chargeable intangible asset of the transferor,
- the transfer of that asset is to be treated for the purposes of Schedule 29 to the Finance Act 2002 as a tax neutral transfer.
- (2) Where, in the case of a transfer of property by a transfer to which this Part of this Schedule applies—
- (a) the property transferred includes an asset which is not a chargeable intangible asset of the transferor, but
  - (b) that asset falls to be treated after the transfer as a chargeable intangible asset of the transferee,
- that asset shall be treated as acquired by the transferee for an amount equal to the amount of the consideration determined for the purposes of paragraph 18(2) of this Schedule.
- (3) Expressions used in this paragraph and in Schedule 29 to the Finance Act 2002 have the same meanings in this paragraph as in that Schedule.

**Commencement Information**

**I270** Sch. 9 para. 25 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable intangible assets: degrouping charges*

- 26 (1) This paragraph applies if a company (“the degrouped company”)—
- (a) acquired an intangible fixed asset from another company at a time when both were members of the same group of companies (“the old group”); and
  - (b) ceases by virtue of a transfer to which this Part of this Schedule applies to be a member of the old group.
- (2) Paragraph 58 of Schedule 29 to the Finance Act 2002 (c. 23) (company ceasing to be member of group) is not to treat the degrouped company as having, by virtue of the transfer, sold and immediately reacquired the asset.

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- (3) Where sub-paragraph (2) has applied to an asset, paragraph 58 of Schedule 29 to the Finance Act 2002 is to have effect on and after the first subsequent occasion on which the degrouped company ceases to be a member of a group of companies (“the new group”) as if—
- (a) the degrouped company, and
  - (b) the company from which it acquired the asset,
- had been members of the new group at the time of acquisition.
- (4) Expressions used in this paragraph and in paragraph 58 of Schedule 29 to the Finance Act 2002 have the same meanings in this paragraph as in that paragraph.

#### Commencement Information

**I271** Sch. 9 para. 26 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Computation of profits and losses: transfer of trade*

- 27 (1) This paragraph applies where, in consequence of a section 39 scheme—
- (a) a BNFL company ceases to carry on a trade or a part of a trade; and
  - (b) a publicly owned company that is not a subsidiary of the NDA (the “transferee company”) begins to carry on the trade or that part.
- (2) For the purpose of computing, in relation to the time when the scheme comes into force and subsequent times, the relevant trading profits or losses of the BNFL company and the transferee company—
- (a) the trade or part is to be treated as having been a separate trade at the time of its commencement and as having been carried on by the transferee company at all times since its commencement as a separate trade; and
  - (b) the trade carried on by the transferee company after the time when the section 39 scheme comes into force is to be treated as the same trade as that which it is treated, by virtue of paragraph (a), as having carried on as a separate trade before that time.
- (3) This paragraph is subject to paragraph 23.
- (4) In this paragraph—
- “BNFL company” means BNFL or a wholly-owned subsidiary of BNFL; and
  - “relevant trading profits and losses” means profits or losses under Case I of Schedule D in respect of the trade or part of a trade in question.

#### Commencement Information

**I272** Sch. 9 para. 27 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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### PART 3

#### TRANSFERS RELATING TO RELEVANT SITE LICENSEES

- 28 (1) This paragraph applies where, in consequence of a nuclear transfer scheme, a subsidiary of the NDA becomes a relevant site licensee.
- (2) For the purposes of the application of the enactments mentioned in sub-paragraph (3) to the assets of the company which has become a relevant site licensee, that company shall be treated as continuing, for so long as it is a relevant site licensee, to be a member of the group of companies of which it was a member immediately before the scheme took effect.
- (3) Those enactments are—
- (a) the 1992 Act;
  - (b) Schedule 29 to the Finance Act 2002 (c. 23);
  - (c) paragraphs 5, 14, 19 and 26 of this Schedule.
- (4) The reference in sub-paragraph (2) to the group of companies of which a company was a member is to be construed—
- (a) in relation to the 1992 Act in accordance with the provisions of section 170 of that Act; and
  - (b) in relation to Schedule 29 to the Finance Act 2002, in accordance with Part 8 of that Schedule.

#### Commencement Information

**I273** Sch. 9 para. 28 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

- 29 (1) This paragraph applies where—
- (a) as a consequence of a transfer in accordance with a nuclear transfer scheme of securities of a subsidiary of the NDA, that subsidiary becomes a relevant site licensee;
  - (b) as a consequence of a transfer to the NDA or to a subsidiary of the NDA in accordance with such a scheme of securities of a company, that company ceases to be a relevant site licensee; or
  - (c) there is a transfer in accordance with such a scheme of securities of a company that is a relevant site licensee from one person to another person for purposes connected with securing that the condition in section 27(5)(c) continues to be satisfied in relation to the company.
- (2) For the purposes of the 1992 Act, the securities shall be treated as disposed of to the transferee for a consideration of such amount as would secure that, on the disposal, neither a gain nor a loss accrues to the transferor.

#### Commencement Information

**I274** Sch. 9 para. 29 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

- 30 In this Part of this Schedule “relevant site licensee” has the same meaning as in subsection (4) of section 27 (see subsection (5)).



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**Commencement Information**

**I275** Sch. 9 para. 30 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**PART 4**

TRANSFER OF NUCLEAR LIABILITIES INVESTMENT PORTFOLIO

*Application of Part 4 of Schedule*

- 31 This Part of this Schedule applies to a transfer to the Secretary of State in accordance with a nuclear transfer scheme containing provision authorised by section 42 of this Act.

**Commencement Information**

**I276** Sch. 9 para. 31 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Chargeable gains: assets to be treated as disposed without a gain or a loss*

- 32 (1) This paragraph applies for the purposes of the 1992 Act where an asset is transferred by a transfer to which this Part of this Schedule applies.
- (2) The asset shall be treated as disposed of to the Secretary of State for a consideration of such amount as would secure that, on the disposal, neither a gain nor a loss accrues to BNFL.

**Commencement Information**

**I277** Sch. 9 para. 32 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Neutral effect of transfer for loan relationships and derivative contracts*

- 33 No credit or debit shall be required or allowed, in respect of a transfer to which this Part of this Schedule applies, to be brought into account in BNFL's case—
- (a) for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships); or
- (b) for the purposes of Schedule 26 to the Finance Act 2002 (c. 23).

**Commencement Information**

**I278** Sch. 9 para. 33 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**PART 5**

STAMP DUTY ETC.

- 34 (1) Stamp duty is not to be chargeable—

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- (a) on a nuclear transfer scheme, or
  - (b) on an instrument certified by the Secretary of State to the Commissioners of Inland Revenue as made for the purposes of such a scheme, or as made for purposes connected with such a scheme,
- except to the extent that the scheme or instrument includes provision in relation to private transfers.
- (2) But where, by virtue of sub-paragraph (1), stamp duty is not chargeable at all, or is chargeable only to a reduced extent, on a nuclear transfer scheme or instrument, the scheme or instrument is to be treated as duly stamped only if—
- (a) in accordance with section 12 of the Stamp Act 1891 (c. 39) it has been stamped with a stamp denoting either that it is not chargeable to duty or that it has been duly stamped; or
  - (b) it is stamped with the duty to which it would be chargeable apart from sub-paragraph (1).
- (3) An agreement which is made for the purposes of a nuclear transfer scheme or purposes connected with such a scheme is not to give rise to stamp duty reserve tax except to the extent that the agreement relates to private transfers.
- (4) In this paragraph—
- “instrument” has the same meaning as in the Stamp Act 1891;
  - “private transfer” means—
- (a) a transfer of any property, right or liability to a person other than the Secretary of State, the NDA or a publicly owned company; or
  - (b) the creation of an interest or right in favour of a person other than the Secretary of State, the NDA or a publicly owned company.

**Commencement Information**

**I279** Sch. 9 para. 34 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**PART 6**

SUPPLEMENTAL PROVISIONS OF SCHEDULE

*Groups of companies*

- 35 References to a company in the following enactments shall apply to the NDA—
- (a) sections 170 to 181 of the 1992 Act;
  - (b) Part 8 of Schedule 29 to the Finance Act 2002 (c. 23).

**Commencement Information**

**I280** Sch. 9 para. 35 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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### *Consequential amendment*

- 36 In section 35(3)(d) of the 1992 Act (no gain no loss disposals) after subparagraph (xiv) insert—
- “(xv) paragraph 3, 18, 29 or 32 of Schedule 9 to the Energy Act 2004.”

#### **Commencement Information**

**I281** Sch. 9 para. 36 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *Interpretation of Schedule*

- 37 (1) In this Schedule—
- “the 1992 Act” means the Taxation of Chargeable Gains Act 1992 (c. 12);
  - “the 2001 Act” means the Capital Allowances Act 2001 (c. 2);
  - “exempt activities” has the same meaning as in section 27 of this Act;
  - “NDA company” has the same meaning as in section 27 of this Act;
  - “the Nuclear Liabilities Investment Portfolio” means property and rights to which BNFL is entitled and which appear to the Board, from BNFL’s published accounts, to represent assets held by BNFL for the purpose of being able to meet costs or liabilities for which the NDA has a financial responsibility under Chapter 1 of Part 1 of this Act;
  - “section 39 scheme” means a nuclear transfer scheme authorised by section 39 of this Act;
  - “section 40 scheme” means a nuclear transfer scheme authorised by section 40 of this Act;
  - “transferee”, in relation to a transfer in accordance with a nuclear transfer scheme, means the person to whom the transfer is made;
  - “transferor”, in relation to a transfer in accordance with a nuclear transfer scheme, means the person from whom the transfer is made;
  - “the Taxes Act” means the Income and Corporation Taxes Act 1988 (c. 1).
- (2) Before determining for the purposes of this Schedule whether an asset was comprised at a particular time in the Nuclear Liabilities Investment Portfolio, the Board must consult the Secretary of State.
- (3) So far as it relates to corporation tax this Schedule is to be construed as one with the Corporation Tax Acts.
- (4) So far as it relates to capital allowances this Schedule is to be construed as one with the 2001 Act.

#### **Commencement Information**

**I282** Sch. 9 para. 37 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## SCHEDULE 10

Section 51

## THE CIVIL NUCLEAR POLICE AUTHORITY

## PART 1

## MEMBERSHIP

*Appointment*

- 1 (1) The Police Authority shall consist of not fewer than seven and not more than thirteen members.
- (2) The members of the Police Authority are to be appointed by the Secretary of State.
- (3) The Secretary of State must appoint one of the members of the Police Authority to be its chairman.

**Commencement Information**

**I283** Sch. 10 para. 1 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Terms of appointment*

- 2 (1) Subject to what follows, each member of the Police Authority is to hold and vacate office as chairman, or otherwise as a member, in accordance with the terms of his appointment.
- (2) Each appointment must state the period for which it is made.
- (3) That period must not exceed five years; but a person is eligible for re-appointment as chairman, or otherwise as a member of the Police Authority, (on any number of occasions) from the end of a term of office.
- (4) A member of the Police Authority may at any time resign his office as the chairman or as a member of the Police Authority (or both) by giving notice to the Secretary of State.
- (5) If the Secretary of State is satisfied that sub-paragraph (6) applies to the chairman or another member of the Police Authority, the Secretary of State may, by giving him notice to that effect, remove him from office.
- (6) This sub-paragraph applies to a person if—
- (a) he is an undischarged bankrupt or has had his estate sequestrated without being discharged;
  - (b) he is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order;
  - (c) he has made an arrangement with his creditors, or has entered into a trust deed for creditors, or has made a composition contract with his creditors;
  - (d) he has been convicted of an offence;
  - (e) he has been absent, on at least three consecutive occasions and without the consent of the Police Authority, from meetings of that Authority; or

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(f) he is for any other reason incapable of carrying out, or unfit to carry out, the functions of his office.

(7) Oral notice is not effective for the purposes of sub-paragraph (4) or (5).

**Commencement Information**

**I284** Sch. 10 para. 2 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Remuneration*

3 The Police Authority may pay to each of its members such remuneration and allowances as the Secretary of State may determine.

**Commencement Information**

**I285** Sch. 10 para. 3 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

**PART 2**

**PROCEEDINGS**

*Police Authority to regulate procedure*

4 (1) The Police Authority may make such arrangements as it thinks fit for regulating its proceedings.

(2) Those arrangements may include—

- (a) arrangements for quorums and the making of decisions by a majority;
- (b) the establishment of committees and the regulation of their proceedings;
- (c) the delegation of functions to committees established by the Police Authority and to its employees.

(3) The membership of a committee established by the Police Authority may include employees of that Authority and persons who are neither members nor employees of that Authority.

**Commencement Information**

**I286** Sch. 10 para. 4 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Validity etc.*

5 The validity of proceedings of the Police Authority shall not be affected by—

- (a) a failure by the Secretary of State to comply with paragraph 1; or
- (b) any other defect in the appointment of a member of the Police Authority.

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### Commencement Information

**I287** Sch. 10 para. 5 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 01/04/2005

## PART 3

### EMPLOYEES

#### *Employees of the Police Authority*

- 6
- (1) The Police Authority may employ such persons as it may determine.
  - (2) Those persons are to be employed by the Police Authority on such terms and conditions, including terms and conditions as to remuneration, as the Police Authority determines.
  - (3) The Police Authority may—
    - (a) pay to or in respect of its employees such pensions, allowances or gratuities, or
    - (b) with the approval of the Secretary of State, provide and maintain for them such pension schemes (whether contributory or not),
 as it determines.
  - (4) This paragraph is subject to section 58 and any direction to the Police Authority under Schedule 13.

#### *UKAEA pensions for employees of the Police Authority*

- 7
- (1) A pension scheme maintained by the UKAEA under paragraph 7(2)(b) of Schedule 1 to the Atomic Energy Authority Act 1954 (c. 32) (“a UKAEA pension scheme”) may apply to employees of the Police Authority as it applies to persons to whom it applies apart from this paragraph.
  - (2) The Secretary of State may, by direction, require the UKAEA to make such modifications of a UKAEA pension scheme as the Secretary of State considers appropriate in respect of the participation of persons in such a scheme by virtue of this paragraph.
  - (3) A direction under sub-paragraph (2) may also require the UKAEA to make such supplemental, consequential and transitional provision modifying a UKAEA pension scheme as the Secretary of State considers appropriate.
  - (4) Before giving a direction under this paragraph, the Secretary of State must consult—
    - (a) the UKAEA;
    - (b) the Police Authority;
    - (c) the Treasury; and

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- (d) such persons as appear to him to represent the employees likely to be affected by the direction.
- (5) The power of the Secretary of State to give directions under this paragraph—
  - (a) is in addition to the powers of the Secretary of State to give directions to the UKAEA under paragraphs 5 and 6 of Schedule 8 to this Act or section 3 of the Atomic Energy Authority Act 1954; and
  - (b) is to be disregarded in construing those powers.
- (6) The Police Authority must pay such amounts to the UKAEA in respect of the participation of persons in a pension scheme by virtue of this paragraph as are—
  - (a) agreed between the Police Authority and the UKAEA; or
  - (b) in the absence of such agreement, determined by the Secretary of State.
- (7) References in this paragraph to the modification of a UKAEA pension scheme include references to the modification of any one or more of the following—
  - (a) the trust deed of the scheme, if there is one;
  - (b) rules of the scheme; or
  - (c) any other instrument relating to the constitution, management or operation of the scheme.

## PART 4

### FINANCES

VALID FROM 01/04/2005

#### *Borrowing by the Police Authority*

- 8
- (1) The Police Authority may borrow money, but only in accordance with this paragraph.
  - (2) The approval of the Treasury is required for borrowing by the Police Authority.
  - (3) The Police Authority may borrow from the Secretary of State such sums in sterling as it may require for meeting its obligations and for carrying out its functions.
  - (4) The Police Authority may, with the consent of the Secretary of State, borrow temporarily by way of overdraft from persons other than the Secretary of State such sums in sterling as it may require for meeting its obligations and for carrying out its functions.
  - (5) The Police Authority must not borrow if the effect would be—
    - (a) to take the aggregate amount outstanding in respect of the principal of sums it has borrowed over its borrowing limit; or
    - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
  - (6) The Police Authority's borrowing limit is £10 million.
  - (7) The Secretary of State may by order vary the Police Authority's borrowing limit.

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- (8) The approval of the Treasury is required for the making of an order under sub-paragraph (7).
- (9) An order under sub-paragraph (7) is subject to the negative resolution procedure.

VALID FROM 01/04/2005

*Guarantees for borrowing by the Police Authority*

- 9
- (1) The Secretary of State may guarantee—
    - (a) the repayment of the principal of any sum borrowed by the Police Authority;
    - (b) the payment of interest on such a sum; and
    - (c) the discharge of any other financial obligation of the Police Authority in connection with the borrowing of such a sum.
  - (2) The Secretary of State may give a guarantee under this paragraph in such manner, and on such terms, as he thinks fit.
  - (3) As soon as practicable after giving a guarantee under this paragraph, the Secretary of State must lay a statement of the guarantee before Parliament.
  - (4) If sums are paid out by the Secretary of State under a guarantee given under this paragraph, the Police Authority must pay him—
    - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
    - (b) interest, at such rates as he may direct, on amounts outstanding under this sub-paragraph.
  - (5) Payments to the Secretary of State under sub-paragraph (4) must be made at such times, and in such manner, as he may from time to time direct.
  - (6) Where a sum has been paid out by the Secretary of State under a guarantee given under this paragraph, he must lay a statement relating to that sum before Parliament—
    - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
    - (b) as soon as practicable after the end of each subsequent relevant financial year.
  - (7) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of sub-paragraph (6) unless—
    - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under sub-paragraph (4); and
    - (b) the Police Authority is not at any time during that year subject to a liability to pay interest on amounts that became due under that sub-paragraph in respect of that sum.
  - (8) The consent of the Treasury is required—
    - (a) for the giving of a guarantee under this paragraph; and
    - (b) for the giving of a direction under sub-paragraph (4) or (5).



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### *Grants and loans to the Police Authority*

- 10 (1) The Secretary of State may—
- (a) make payments by way of grant to the Police Authority; and
  - (b) also make payments to it by way of loan.
- (2) The Secretary of State may make any grants made by him to the Police Authority subject to such conditions as he thinks fit.
- (3) Loans made by the Secretary of State to the Police Authority shall be on such terms, as to repayment and interest and other matters, as the Secretary of State may determine.

#### **Commencement Information**

**I288** Sch. 10 para. 10 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

### *Financial duties*

- 11 (1) The Secretary of State may determine the financial duties of the Police Authority.
- (2) Before determining any financial duties under this paragraph, the Secretary of State must consult the Police Authority.
- (3) The approval of the Treasury is required for a determination by the Secretary of State of the Police Authority's financial duties.
- (4) A determination by the Secretary of State of the Police Authority's financial duties may—
- (a) relate to a period beginning before, on or after the date on which it is made;
  - (b) contain supplemental provisions; and
  - (c) be varied by a subsequent determination.
- (5) The Secretary of State may make different determinations for different functions and activities of the Police Authority.
- (6) The Secretary of State must give the Police Authority notice of every determination by him of its financial duties.

#### **Commencement Information**

**I289** Sch. 10 para. 11 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

### *Accounts and audit*

- 12 (1) The Police Authority must—
- (a) keep proper accounts and proper accounting records; and
  - (b) prepare, in respect of each of its accounting years, a statement of its accounts.
- (2) A statement of accounts prepared under this paragraph must give a true and fair view of—
- (a) the income and expenditure of the Police Authority for the accounting year in question; and

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- (b) its state of affairs.
- (3) Such a statement of accounts must comply with every requirement which has been notified by the Secretary of State to the Police Authority.
- (4) Those requirements may include, in particular, requirements relating to—
- (a) the information to be contained in the statement;
  - (b) the manner in which that information is to be presented;
  - (c) the methods and principles according to which the statement is to be prepared.
- (5) The approval of the Treasury is required for the imposition of a requirement under sub-paragraph (3).
- (6) The accounts of the Police Authority relating to each of its accounting years, including the statement of accounts prepared for the year under this paragraph, must be audited by the Comptroller and Auditor General.
- (7) The Comptroller and Auditor General must send a copy of his report on what he is required to audit to the Police Authority.
- (8) The Police Authority must send to the Secretary of State, in respect of each of its accounting years—
- (a) a copy of the accounts for that year that are required to be audited under this paragraph; and
  - (b) a copy of the Comptroller and Auditor General’s report on those accounts.
- (9) The Secretary of State must lay a copy of whatever is sent to him under sub-paragraph (8) before Parliament.
- (10) In this paragraph—
- “accounting records” includes all books, papers and other records of the Police Authority relating to—
- (a) the accounts which it is required to keep; or
  - (b) matters dealt with in those accounts;
- “accounting year”, in relation to the Police Authority, means—
- (a) the Police Authority’s first accounting year; or
  - (b) a financial year after the end of the Police Authority’s first accounting year;
- “the Police Authority’s first accounting year” means—
- (a) where the Police Authority is established at the beginning of a financial year, that financial year; and
  - (b) in any other case, the period which begins with the day on which the Police Authority is established and ends—
    - (i) if no direction is given under sub-paragraph (ii), with 31st March in the financial year current on that day; and
    - (ii) if the Secretary of State so directs, with 31st March at the end of the following financial year.

#### **Commencement Information**

**I290** Sch. 10 para. 12 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

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### *Receipts and surpluses*

- 13 (1) The Secretary of State may give a direction requiring the Police Authority to pay to him an amount equal to—
- (a) the whole or part of a sum which it has received (otherwise than from the Secretary of State); or
  - (b) the whole or part of any surplus which it has for a financial year.
- (2) For the purposes of this paragraph, the Police Authority has a surplus for a financial year if its revenues for that year exceed the sums which it requires for carrying out its functions in that year.
- (3) Before giving a direction under this paragraph, the Secretary of State must consult—
- (a) the Police Authority; and
  - (b) the Treasury.

#### **Commencement Information**

**I291** Sch. 10 para. 13 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

### *Destination of receipts*

- 14 The Secretary of State must pay sums received by him under paragraph 9, 10 or 13 into the Consolidated Fund.

#### **Commencement Information**

**I292** Sch. 10 para. 14 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

## **PART 5**

### MISCELLANEOUS

#### *Authentication of Police Authority's seal*

- 15 (1) The application of the seal of the Police Authority is to be authenticated by the signature of—
- (a) a member of the Police Authority; or
  - (b) any other person who has been authorised by it (whether generally or specifically) for the purpose.
- (2) A document purporting to be—
- (a) duly executed under the Police Authority's seal, or
  - (b) signed on behalf of the Police Authority,
- may be received in evidence and, except so far as the contrary is shown, is to be taken to be duly so executed or signed.
- (3) This paragraph does not extend to Scotland.

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**Commencement Information**

**I293** Sch. 10 para. 15 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Status*

- 16 (1) The Police Authority is not to be regarded—
- (a) as the servant or agent of the Crown; or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The Police Authority’s property is not to be regarded as property of the Crown, or as held on behalf of the Crown.

**Commencement Information**

**I294** Sch. 10 para. 16 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Disqualification for House of Commons*

- 17 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified), at the appropriate place, insert—  
 “The Civil Nuclear Police Authority”.

**Commencement Information**

**I295** Sch. 10 para. 17 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Freedom of information*

- 18 In Part 5 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (police bodies to be public authorities for the purposes of that Act), after paragraph 63 insert—
- “63A The Civil Nuclear Police Authority.
  - 63B The chief constable of the Civil Nuclear Constabulary.”

**Commencement Information**

**I296** Sch. 10 para. 18 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

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## SCHEDULE 11

Section 53

### REMOVAL AND SUSPENSION OF SENIOR OFFICERS OF CONSTABULARY

#### *Removal of senior officers by Police Authority*

- 1
- (1) The Police Authority may call on a senior officer, in the interests of efficiency or effectiveness, to retire or to resign.
  - (2) The approval of the Secretary of State is required before the Police Authority may call on a senior officer to retire or to resign.
  - (3) Before seeking the approval of the Secretary of State, the Police Authority must—
    - (a) give the senior officer a notice of its intention to call on him to retire or to resign and an explanation of its grounds for doing so;
    - (b) give the senior officer an opportunity of making representations, including an opportunity of making representations in person; and
    - (c) consider any representations made by or on behalf of the senior officer.
  - (4) A senior officer who is called on to retire or to resign must retire or resign with effect from—
    - (a) such date as the Police Authority may specify; or
    - (b) such earlier date as may be agreed between him and the Police Authority.
  - (5) Oral notice is not effective for the purposes of sub-paragraph (3).

#### **Commencement Information**

**I297** Sch. 11 para. 1 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

#### *Power of Secretary of State to require removal of chief constable*

- 2
- (1) The Secretary of State may require the Police Authority to exercise its power under paragraph 1 to call on the chief constable to retire or to resign.
  - (2) Before requiring the Police Authority to exercise that power, the Secretary of State must—
    - (a) give the chief constable a notice of his intention to require the Police Authority to exercise that power and an explanation of his grounds for doing so;
    - (b) give the chief constable an opportunity of making representations, including an opportunity of making representations in person; and
    - (c) consider any representations made by or on behalf of the chief constable.
  - (3) Where the Secretary of State gives a notice under sub-paragraph (2), he must send a copy of the notice to the Police Authority.
  - (4) The Secretary of State must not exercise his power under sub-paragraph (1) unless he has—
    - (a) appointed one or more persons to hold an inquiry and to report to him; and
    - (b) considered the report made to him.

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- (5) At least one of the persons appointed under sub-paragraph (4)(a) must be a person who is not any of the following—
  - (a) a constable;
  - (b) an employee of the Police Authority;
  - (c) an officer of a Government department.
- (6) At an inquiry held under sub-paragraph (4)—
  - (a) the chief constable, and
  - (b) the Police Authority,
 must each be given an opportunity of making representations, including (in the case of the chief constable) an opportunity of making representations in person.
- (7) The Police Authority must pay the costs reasonably incurred by the chief constable in respect of an inquiry under this paragraph.
- (8) The amount of those costs is to be assessed in such manner as the Secretary of State may direct.
- (9) If the Secretary of State exercises his power under sub-paragraph (1) in relation to the chief constable, the Police Authority—
  - (a) must call on him to retire or to resign; and
  - (b) is not required to comply with paragraph 1(3) before doing so.
- (10) Oral notice is not effective for the purposes of sub-paragraph (2).

#### Commencement Information

**I298** Sch. 11 para. 2 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

#### *Suspension of senior officers by Police Authority pending removal*

- 3 (1) This paragraph applies where—
  - (a) the Police Authority has notified a senior officer that it intends to exercise its power under paragraph 1 to call on him to retire or to resign;
  - (b) the Secretary of State has notified the chief constable under paragraph 2 that he intends to require the Police Authority to exercise that power in his case; or
  - (c) the Police Authority has exercised its power under paragraph 1 in the case of a senior officer, or has been required to do so under paragraph 2, but the senior officer has not yet retired or resigned.
- (2) The Police Authority may suspend the senior officer from duty.
- (3) But this power is to be exercisable only where the Police Authority considers that it is necessary to exercise it in order to maintain public confidence in the Constabulary.
- (4) The approval of the Secretary of State is required for a suspension under this paragraph.

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**Commencement Information**

**I299** Sch. 11 para. 3 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Power of Secretary of State to require suspension of chief constable*

- 4 (1) This paragraph applies where—
- (a) the Police Authority has notified the chief constable that it intends to exercise its power under paragraph 1 to call on him to retire or to resign;
  - (b) the Secretary of State has notified the chief constable under paragraph 2 that he intends to require the Police Authority to exercise that power in his case; or
  - (c) the Police Authority has exercised that power, or has been required to do so under paragraph 2, but the chief constable has not yet retired or resigned.
- (2) The Secretary of State may require the Police Authority to suspend the chief constable from duty.
- (3) But this power is to be exercisable only where the Secretary of State considers that it is necessary to exercise it in order to maintain public confidence in the Constabulary.
- (4) The Police Authority must comply with a requirement under this paragraph to suspend the chief constable from duty.
- (5) Paragraph 3(3) and (4) do not apply to the suspension of the chief constable in pursuance of a requirement under this paragraph.

**Commencement Information**

**I300** Sch. 11 para. 4 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 01/04/2005

SCHEDULE 12

Section 61

PLANNING AND REPORTS ABOUT CONSTABULARY

SCHEDULE 13

Section 63

DIRECTIONS BY SECRETARY OF STATE ABOUT CONSTABULARY

*Objectives*

- 1 (1) The Secretary of State may give directions to the Police Authority setting out objectives for that Authority for a financial year.

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- (2) The objectives may include—
- (a) objectives to be met generally in the carrying out by the Police Authority of its functions;
  - (b) objectives to be met in the carrying out by the Police Authority of particular functions, or in its carrying out of functions, or particular functions, at particular times or places;
  - (c) objectives to be met (whether generally or in relation to particular matters) in the management of the Constabulary;
  - (d) objectives to be met in securing proper accountability by the Police Authority for its own activities and for those of the Constabulary.
- (3) Before giving a direction under this paragraph, the Secretary of State must consult—
- (a) the Police Authority; and
  - (b) the chief constable.

**Commencement Information**

**I301** Sch. 13 para. 1 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Directions with respect to the Constabulary*

- 2 (1) The Secretary of State may give directions to the Police Authority requiring it to secure—
- (a) that such tasks are performed by members of the Constabulary as are set out in the direction, or as are determined under it;
  - (b) that the tasks so set out or determined are performed in the manner so set out or determined;
  - (c) that the financial and other resources available to the Police Authority are allocated and used in such manner as is so set out or determined;
  - (d) that the practices and procedures relating to security that are so set out or determined are adopted and followed by members of the Police Authority;
  - (e) that the practices and procedures (relating to security or any other matter) that are so set out or determined are adopted and followed by and in relation to members of the Constabulary and other employees of the Police Authority, and in relation to their appointment as such;
  - (f) that the practices and procedures (relating to security or any other matter) that are so set out or determined are adopted and followed in relation to agreements between the Police Authority and other persons;
  - (g) that the criteria so set out or determined are applied in assessing the performance of members of the Constabulary and of other employees of the Police Authority, and in determining their operational, training and equipment needs; and
  - (h) that such officers of the Secretary of State’s department as are so set out or determined are given an entitlement, for the purpose of enabling them to monitor or inspect the activities of the Police Authority and of its employees, to have access to or make use of—
    - (i) premises occupied by or under the control of the Police Authority;
    - (ii) apparatus maintained for use by members or employees of the Police Authority; and



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- (iii) documents and records in the custody or under the control of the Police Authority or of the chief constable.
- (2) The Secretary of State may also give the Police Authority such other general or specific directions as he considers appropriate for securing the efficient and effective operation of the Constabulary.
- (3) Before giving a direction under this paragraph, the Secretary of State must consult—
  - (a) the Police Authority; and
  - (b) the chief constable.
- (4) In this paragraph references to adopting and following practices or procedures include references to meeting and complying with standards or guidelines.

**Commencement Information**

**I302** Sch. 13 para. 2 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Government, administration and conditions of service*

- 3 (1) The Secretary of State may give directions to the Police Authority as to the government, administration and conditions of service of the Constabulary and its members.
- (2) The provision that may be required by directions under this paragraph, and that is to be capable of being made in pursuance of any such directions, includes any provision that may be made in relation to police forces under section 50 of the Police Act 1996 (c. 16) (police force regulations).
- (3) If a direction under this paragraph relates to a matter which is the subject of regulations under section 50 of the Police Act 1996, the direction may differ from those regulations only so far as necessary to take account of differences relating to the structure and circumstances of the Constabulary.
- (4) Before giving a direction under this paragraph, the Secretary of State must consult—
  - (a) the Police Authority;
  - (b) the chief constable;
  - (c) the Civil Nuclear Police Federation; and
  - (d) if the direction affects members of a rank-related association, that association.

**Commencement Information**

**I303** Sch. 13 para. 3 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Remedial action*

- 4 (1) This paragraph applies where the Secretary of State considers that the Police Authority is failing—
  - (a) to meet an objective set out by him under this Schedule; or
  - (b) to comply with a direction given under this Schedule.

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- (2) This paragraph also applies where a report under section 62 following an inspection states—
- (a) that the Constabulary is, whether generally or in a specified respect, not efficient or not effective; or
  - (b) that the Constabulary is likely, unless remedial action is taken, to cease to be efficient or effective, whether generally or in a specified respect.
- (3) Where this paragraph applies, the Secretary of State may give a direction requiring the Police Authority to take the particular steps specified in the direction for the purpose of remedying—
- (a) the failure to meet the objective or to comply with the direction; or
  - (b) the matters stated in the report under section 62.
- (4) Before giving a direction under this paragraph, the Secretary of State must—
- (a) notify the Police Authority and the chief constable of his intention to give a direction and of his reasons for doing so; and
  - (b) give the Police Authority and the chief constable an opportunity of making representations.

**Commencement Information**

**I304** Sch. 13 para. 4 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

SCHEDULE 14

Section 69

MINOR AMENDMENTS RELATING TO CONSTABULARY

*Public Records Act 1958*

- 1 In paragraph 3 of Schedule 1 to the Public Records Act 1958 (c. 51) (administrative and departmental records of certain bodies to be public records), in Part 2 of the Table, at the appropriate place, insert— “ Civil Nuclear Police Authority. ”

**Commencement Information**

**I305** Sch. 14 para. 1 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Police (Scotland) Act 1967*

- 2 (1) Section 12 of the Police (Scotland) Act 1967 (c. 77) (collaboration agreements) is amended as follows.
- (2) After subsection (6) insert—
- “(6A) For the purposes of this section—
- (a) the Civil Nuclear Constabulary shall be treated as if it were a police force;

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- (b) “police functions” shall include the functions of the Civil Nuclear Constabulary;
- (c) the Civil Nuclear Police Authority shall be treated as if it were a police authority; and
- (d) “police area”, in relation to the Civil Nuclear Constabulary and the Civil Nuclear Police Authority, means those places where members of that Constabulary have the powers and privileges of a constable.”

(3) In subsection (7) after “British Transport Police Force” insert “ or the Civil Nuclear Constabulary ”.

#### Commencement Information

**I306** Sch. 14 para. 2 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 01/04/2005

#### *Firearms Act 1968*

3 In section 54 of the Firearms Act 1968 (c. 27) (application to Crown servants), after subsection (3) insert—

“(3AA) For the purposes of this section and of any rule of law whereby any provision of this Act does not bind the Crown—

- (a) a member of the Civil Nuclear Constabulary shall be deemed to be a person in the service of Her Majesty; and
- (b) references to the public service shall be deemed to include references to use by a person in the exercise and performance of his powers and duties as a member of the Civil Nuclear Constabulary.”

#### *Race Relations Act 1976*

4 In Part 2 of Schedule 1A to the Race Relations Act 1976 (c. 74) (persons subjected after commencement of duties to general duties with respect to discrimination and equality), after the entry relating to the chief constable of the Ministry of Defence Police insert—

“The Civil Nuclear Police Authority.

The chief constable of the Civil Nuclear Constabulary.”

#### Commencement Information

**I307** Sch. 14 para. 4 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

**Status:** Point in time view as at 01/03/2005. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/04/2005

*Ministry of Defence Police Act 1987*

- 5 (1) In section 2 of the Ministry of Defence Police Act 1987 (c. 4) (jurisdiction of Ministry of Defence Police)—
- (a) for subsection (3A)(d) substitute—
    - “(d) the Civil Nuclear Constabulary,”;
  - (b) in subsection (3B)(d), for “United Kingdom Atomic Energy Authority Constabulary” substitute “Civil Nuclear Constabulary”.
- (2) In section 2A(4) of that Act (provision of assistance to other forces)—
- (a) in the definition of “chief officer”, in paragraph (d), for “United Kingdom Atomic Energy Authority Constabulary” substitute “Civil Nuclear Constabulary”; and
  - (b) in the definition of “relevant force”, for paragraph (d) substitute—
    - “(d) the Civil Nuclear Constabulary.”
- (3) In section 2B(3) of that Act (constables serving with other forces)—
- (a) in the definition of “chief officer”, in paragraph (f), for “United Kingdom Atomic Energy Authority Constabulary” substitute “Civil Nuclear Constabulary”; and
  - (b) in the definition of “relevant force”, for paragraph (f) substitute—
    - “(f) the Civil Nuclear Constabulary.”

*Official Secrets Act 1989*

- 6 In section 12 of the Official Secrets Act 1989 (c. 6) (Crown servants etc.), after subsection (4) insert—
- “(4A) In this section the reference to a police force includes a reference to the Civil Nuclear Constabulary.”

**Commencement Information**

**I308** Sch. 14 para. 6 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

*Police Act 1996*

- 7 In section 23 of the Police Act 1996 (c. 16) (collaboration agreements), after subsection (7A) insert—
- “(7B) For the purposes of this section—
- (a) the Civil Nuclear Constabulary shall be treated as if it were a police force;
  - (b) the chief constable of the Civil Nuclear Constabulary shall be treated as if he were the chief officer of police of that Constabulary;
  - (c) “police functions” shall include the functions of the Civil Nuclear Constabulary; and

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- (d) the Civil Nuclear Police Authority shall be treated as if it were a police authority.”

#### Commencement Information

**I309** Sch. 14 para. 7 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 01/04/2005

#### *Regulation of Investigatory Powers Act 2000*

- 8 (1) In section 46(3) of the Regulation of Investigatory Powers Act 2000 (c. 23) (persons in relation to whom authorisations may apply to any place in the United Kingdom), after paragraph (d) insert—  
“(dza) the Civil Nuclear Constabulary;”
- (2) In Part 1 of Schedule 1 to that Act (relevant authorities for the purposes of sections 28 and 29), for paragraph 1A substitute—  
“**1A** The Civil Nuclear Constabulary.”

VALID FROM 01/04/2005

#### *Criminal Justice and Police Act 2001*

- 9 In section 88 of the Criminal Justice and Police Act 2001 (c. 16) (functions of Central Police Training and Development Authority)—  
(a) in subsection (7), paragraph (c) shall cease to have effect; and  
(b) in subsection (8), after paragraph (k) insert—  
“(ka) the Civil Nuclear Constabulary;”

VALID FROM 01/04/2005

#### *Anti-terrorism, Crime and Security Act 2001*

- 10 (1) In section 77(7) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (interpretation of section 77), for the definitions of “nuclear material” and “nuclear site” substitute—  
““nuclear material” has the same meaning as in Chapter 3 of Part 1 of the Energy Act 2004;  
“nuclear site” means a licensed nuclear site within the meaning of that Chapter;”
- (2) In section 79(4) of that Act (interpretation of section 79), for the definition of “nuclear material” substitute—

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““nuclear material” has the same meaning as in Chapter 3 of Part 1 of the Energy Act 2004;”.

(3) In section 100(1) of that Act (jurisdiction of British Transport Police when assisting other forces), for paragraph (c) substitute—

“(c) the Civil Nuclear Constabulary,”.

VALID FROM 01/04/2005

*Police Reform Act 2002*

11 In section 82 of the Police Reform Act 2002 (c. 30) (nationality requirements applicable to police officers)—

(a) for subsection (1)(e) substitute—

“(e) a member of the Civil Nuclear Constabulary;”;

(b) in subsection (3)(e), for “United Kingdom Atomic Energy Authority Constabulary” substitute “Civil Nuclear Constabulary”.

SCHEDULE 15

Section 75

AMENDMENTS OF 1993 ACT

*Preliminary*

1 The 1993 Act is amended as follows.

**Commencement Information**

**I310** Sch. 15 para. 1 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*Applications for authorisations*

2 In section 16(6) (obligation to send copy of application to local authorities), for “any application being made” substitute “receipt of an application”.

**Commencement Information**

**I311** Sch. 15 para. 2 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*Duty to display documents*

3 In section 19 (duty to display authorisation etc.), for “to whom the authorisation was granted” substitute “who holds the authorisation”.

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#### Commencement Information

**I312** Sch. 15 para. 3 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Requirements with respect to records*

- 4 In section 20(1) (imposition of requirements with respect to records), for “an authorisation under section 13 or 14 has been granted” substitute “ who holds an authorisation under section 13 or 14 ”.

#### Commencement Information

**I313** Sch. 15 para. 4 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Enforcement notices*

- 5 (1) In subsection (1) of section 21 (enforcement notifications), for “to whom an authorisation was granted under section 13 or 14” substitute “ who holds an authorisation under section 13 or 14 ”.
- (2) In subsection (4)(b) of that section, after “16(9)(b)” insert “ or 16A(8)(d) ”.

#### Commencement Information

**I314** Sch. 15 para. 5 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Prohibition notices*

- 6 In section 22(6) (copy of prohibition notice to be served on persons to whom authorisation copied under section 16(9)(b)), after “16(9)(b)” insert “ or 16A(8)(d) ”.

#### Commencement Information

**I315** Sch. 15 para. 6 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Directions in relation to applications etc.*

- 7 (1) In subsection (1)(b) of section 23 (directions in relation to applications), after “14” insert “ or for the transfer (in whole or in part) or variation of an authorisation ”.
- (2) In subsection (2)(a) of that section, after “authorisation” insert “ or for the transfer (in whole or in part) or variation of an authorisation ”.
- (3) After subsection (2)(c) of that section insert—
- “(ca) to grant an application for the transfer (in whole or in part) of an authorisation, or
  - (cb) to carry out a review under section 17A, or”.

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#### Commencement Information

**I316** Sch. 15 para. 7 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Power to call in applications*

- 8 In section 24(1)(a) (applications that may be called in), for “or authorisations” substitute “, authorisations, transfers or variations”.

#### Commencement Information

**I317** Sch. 15 para. 8 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Power to restrict knowledge of applications etc.*

- 9 (1) In subsection (2)(a) of section 25 (directions to restrict knowledge of information about applications), after “14” insert “ or for the transfer (in whole or in part) or variation of an authorisation ”.
- (2) In subsection (3) of that section—
- (a) for “, as the case may be” substitute “ or notice of variation ”; and
  - (b) in paragraph (b), after “16” insert “ 16A or 17 ”.

#### Commencement Information

**I318** Sch. 15 para. 9 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Appeals*

- 10 (1) In subsection (1) of section 26 (appeals), after paragraph (a) insert—
- “(aa) refuses an application under section 16A or 17 for the transfer (in whole or in part) or variation of such an authorisation.”.
- (2) In subsection (5) of that section, after paragraph (b) insert—
- “(c) in relation to an application under section 16A for the transfer of an authorisation, either or both of the persons making the application;
  - (d) in relation to an application for a variation under section 17, the person applying for the variation.”

#### Commencement Information

**I319** Sch. 15 para. 10 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

#### *Offences*

- 11 In each of paragraphs (c) and (d) of section 32(1) (offences relating to registrations and authorisations), for “to whom an authorisation under section 13 or 14 has been granted” substitute “ who holds an authorisation under section 13 or 14 ”.



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**Commencement Information**

**I320** Sch. 15 para. 11 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*False and misleading statements*

- 12 In section 34A (offences of making false and misleading statements)—
- (a) in subsection (1)(a), after “14” insert “ , any transfer of such an authorisation under section 16A ”; and
  - (b) in subsection (2)(a), for “or an authorisation under section 13 or 14” substitute “ , an authorisation under section 13 or 14 or a transfer under section 16A ”.

**Commencement Information**

**I321** Sch. 15 para. 12 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

*Meaning of “prescribed”*

- 13 In section 47(1) (interpretation), for the definition of “prescribed” substitute—
- ““prescribed”—
- (a) in relation to a charging scheme under section 41 of the Environment Act 1995, has the same meaning as in that section;
  - (b) in relation to fees or charges payable in Northern Ireland in accordance with a scheme under section 43 of this Act, means prescribed under that scheme; and
  - (c) in other contexts, means prescribed by regulations under this Act.”

**Commencement Information**

**I322** Sch. 15 para. 13 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

VALID FROM 01/10/2005

SCHEDULE 16

Section 95

APPLICATIONS AND PROPOSALS FOR NOTICES UNDER SECTION 95

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## SCHEDULE 17

Section 138

### CONVERSION OF EXISTING TRANSMISSION LICENCES: LICENSING SCHEME

#### *Licensing scheme*

- 1 (1) Before the commencement of section 136, the Secretary of State shall make a scheme in relation to existing transmission licences.
- (2) A scheme under this paragraph shall provide for each licence to which it relates to have effect on and after such date as the scheme may provide—
- (a) as a licence under section 6(1)(b) of the 1989 Act as amended by Chapter 1 of Part 3 of this Act, and
  - (b) with the inclusion of such provision under section 6(6A) of that Act as the scheme may provide.
- (3) Subject to sub-paragraph (4), a scheme under this paragraph shall provide that the conditions which by virtue of section 137(3) are standard conditions for the purposes of transmission licences are incorporated by reference in each licence to which the scheme relates (in place of the existing standard conditions of that licence).
- (4) A scheme under this paragraph may provide that each licence to which it relates shall have effect with such incidental, consequential and supplementary modifications as appear to the Secretary of State to be necessary or expedient.
- (5) Modifications under sub-paragraph (4) may relate to—
- (a) the terms of a licence, or
  - (b) the conditions of a licence (including the standard conditions which would otherwise be incorporated by virtue of sub-paragraph (3)).
- (6) A scheme under this paragraph may—
- (a) make such transitional provision as appears to the Secretary of State to be necessary or expedient;
  - (b) make different provision for different cases.
- (7) As soon as practicable after making a scheme under this paragraph, the Secretary of State shall publish the text of each licence to which the scheme relates as it has effect by virtue of the scheme.
- (8) Any text so published shall be treated as authoritative unless the contrary is shown.
- (9) The Secretary of State may change the date on which a scheme under this paragraph is to come into operation.

#### **Commencement Information**

**I323** Sch. 17 para. 1 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

#### *Consequential amendment of related codes and agreements*

- 2 The Secretary of State may include in a scheme under paragraph 1 provision amending a code or agreement relevant to the conditions of an existing transmission licence if it appears to him to be necessary or expedient to do so in consequence of anything for which the scheme makes provision.

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#### Commencement Information

**I324** Sch. 17 para. 2 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

#### *Effect of licensing scheme*

- 3
- (1) A scheme under paragraph 1 shall, by virtue of this paragraph, have effect according to its terms.
  - (2) The modification under paragraph 1(4) of what would otherwise be a standard condition of a licence to which the scheme relates shall not prevent any other part of the condition which is not so modified being regarded as a standard condition for the purposes of Part 1 of the 1989 Act.

#### Commencement Information

**I325** Sch. 17 para. 3 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

#### *Modification of licensing scheme*

- 4
- (1) If at any time after a scheme under paragraph 1 has come into operation the Secretary of State considers it appropriate to do so, he may by order provide that the scheme shall for all purposes be deemed to have come into operation with such modifications as may be specified in the order.
  - (2) An order under sub-paragraph (1) may make, with effect from the coming into force of the scheme, such provision as could have been made by the scheme, and in connection with giving effect to that provision from that time may contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
  - (3) An order under sub-paragraph (1) is subject to the negative resolution procedure.

#### Commencement Information

**I326** Sch. 17 para. 4 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

#### *Consultation by the Secretary of State*

- 5
- (1) Before carrying out any function under this Schedule the Secretary of State shall consult—
    - (a) GEMA, and
    - (b) holders of existing transmission licences,in such manner as he considers appropriate.
  - (2) Sub-paragraph (1) may be satisfied by consultation before, as well as by consultation after, the commencement of this paragraph.

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#### Commencement Information

**I327** Sch. 17 para. 5 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

#### *“Existing transmission licence”*

- 6 In this Schedule, references to an existing transmission licence are to a transmission licence which is in force immediately before the day on which section 136 comes into force.

#### Commencement Information

**I328** Sch. 17 para. 6 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## SCHEDULE 18

Section 141

### PROPERTY ARRANGEMENTS SCHEMES

#### *Scheme-making power*

- 1 (1) GEMA may, on application, make a scheme providing for—
- (a) the transfer to the system operator of, or
  - (b) the creation in favour of the system operator of any rights in relation to, property, rights or liabilities of an existing transmission licence holder.
- (2) A scheme under sub-paragraph (1) (“a property arrangements scheme”) may also contain—
- (a) provision for the creation, in relation to property which the scheme transfers, of an interest in or right over the property in favour of the relevant existing transmission licence holder;
  - (b) provision for the creation of any rights or liabilities as between the relevant existing transmission licence holder and the system operator;
  - (c) provision for imposing on the relevant existing transmission licence holder or the system operator an obligation to enter into a written agreement with, or to execute an instrument of another kind in favour of, the other;
  - (d) supplemental, incidental and consequential provision.
- (3) The property, rights or liabilities which may be transferred by a property arrangements scheme include property, rights or liabilities which would not otherwise be capable of being transferred.
- (4) If a property arrangements scheme provides for the division of an estate or interest in land and any rent is—
- (a) payable in respect of the estate or interest under a lease, or
  - (b) charged on the estate or interest,
- the scheme may contain provision for apportionment or division so that one part is payable in respect of, or charged on, only one part of the estate or interest and the

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other part is payable in respect of, or charged on, only the other part of the estate or interest.

- (5) A property arrangements scheme that contains provision which adversely affects a third party may also contain provision requiring the system operator or the relevant existing transmission licence holder to pay the third party compensation.

#### Commencement Information

**I329** Sch. 18 para. 1 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

#### *Applications for schemes*

- 2 (1) An application for the making of a property arrangements scheme may be made by—
- (a) the system operator, or
  - (b) the relevant existing transmission licence holder.
- (2) No application for a property arrangements scheme may be made after the end of the period of three months beginning with the day on which section 141 comes into force.
- (3) An application for a property arrangements scheme shall specify the property, rights or liabilities in relation to which provision of a kind mentioned in paragraph 1(1) is proposed to be included in the scheme.

#### Commencement Information

**I330** Sch. 18 para. 2 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

#### *GEMA's functions in relation to applications*

- 3 (1) On an application for the making of a property arrangements scheme, GEMA shall, in relation to any property, rights or liabilities in respect of which the application proposes provision of a kind mentioned in paragraph 1(1), determine whether provision of such a kind is, in relation to that property, or those rights or liabilities, necessary or expedient for implementation purposes.
- (2) Sub-paragraph (1) does not apply if the system operator and the relevant existing transmission licence holder agree that provision of a kind mentioned in paragraph 1(1) is, in relation to the property, rights or liabilities concerned, necessary or expedient for implementation purposes.
- (3) If GEMA determines under sub-paragraph (1) that provision of a kind mentioned in paragraph 1(1) is not, in relation to any property, rights or liabilities, necessary or expedient for implementation purposes, it shall refuse the application in relation to that property, or those rights or liabilities.
- (4) If—
- (a) GEMA determines under sub-paragraph (1) that provision of a kind mentioned in paragraph 1(1) is, in relation to any property, rights or liabilities, necessary or expedient for implementation purposes, or
  - (b) the system operator and the relevant existing transmission licence holder agree that that is the case,

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GEMA shall, subject to paragraph 4(2), make a property arrangements scheme in relation to that property, or those rights or liabilities.

**Commencement Information**

**I331** Sch. 18 para. 3 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 4
- (1) Subject to the following provisions of this paragraph, where GEMA is required to make a property arrangements scheme, the terms of the scheme shall be such as the system operator and the relevant existing transmission licence holder may agree or, if they fail to agree, as GEMA may determine.
  - (2) GEMA may not include in a property arrangements scheme provision which would adversely affect a third party unless it determines that it is necessary or expedient for implementation purposes for the provision to be made.
  - (3) Where GEMA does include in a property arrangements scheme provision which would adversely affect a third party, GEMA shall determine whether the scheme should include provision for compensation and, if so, what that provision should be.
  - (4) A property arrangements scheme shall not provide for any provision to come into operation before the end of the period of 21 days beginning with the day on which the scheme is made.

**Commencement Information**

**I332** Sch. 18 para. 4 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 5
- (1) A determination under paragraph 4, so far as relating to any financial matter, shall be made on the basis of what is just in all the circumstances of the case.
  - (2) A determination under paragraph 4, so far as relating to any other matter, shall be made on the basis of what appears to GEMA to be appropriate in all the circumstances of the case having regard, in particular, to what is necessary or expedient for implementation purposes.

**Commencement Information**

**I333** Sch. 18 para. 5 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 6
- GEMA may require any of the following persons to give it information and assistance in connection with the making of a determination under this Schedule—
- (a) the system operator,
  - (b) any existing transmission licence holder, and
  - (c) any person who makes representations to GEMA about the application to which the determination relates.

**Commencement Information**

**I334** Sch. 18 para. 6 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

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- 7 GEMA may engage such consultants as it thinks fit for the purpose of advising it in relation to the making of a determination under this Schedule.

**Commencement Information**

I335 Sch. 18 para. 7 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Effect of property arrangements scheme*

- 8 A property arrangements scheme shall, by virtue of this paragraph, have effect according to its terms.

**Commencement Information**

I336 Sch. 18 para. 8 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 9 (1) A transaction of any description effected by or under a property arrangements scheme shall have effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register.
- (2) Subject to sub-paragraph (1), a transaction of any description effected by or under a property arrangements scheme shall be binding on all persons, notwithstanding that it would, apart from this provision, have required the consent or concurrence of any person.

**Commencement Information**

I337 Sch. 18 para. 9 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Review of determinations*

- 10 (1) Any person aggrieved by a determination of GEMA under this Schedule may apply to the Competition Appeal Tribunal for a review of the determination.
- (2) Subject to sub-paragraph (3), no application under sub-paragraph (1) may be made after the end of the period of 7 days beginning with the day on which the determination is made.
- (3) Where GEMA has made a property arrangements scheme, an application under sub-paragraph (1) may be made in respect of a determination relating to the scheme at any time before the end of the period of 7 days beginning with the day on which the scheme is made.
- (4) On an application under sub-paragraph (1), the Competition Appeal Tribunal may—
- (a) dismiss the application, or
  - (b) make an order substituting its own determination.

**Commencement Information**

I338 Sch. 18 para. 10 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

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- 11 (1) This paragraph applies where—
- (a) the Competition Appeal Tribunal makes an order under paragraph 10(4)(b), and
  - (b) GEMA has not made a property arrangements scheme in relation to the property, rights or liabilities concerned.
- (2) The Tribunal may include in the order provision requiring GEMA to make a property arrangements scheme in relation to that property, or those rights or liabilities.
- (3) Where paragraph 4 applies because of provision under this paragraph, anything the Tribunal has determined shall be treated for the purposes of that paragraph as determined by GEMA.

#### Commencement Information

**I339** Sch. 18 para. 11 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 12 (1) This paragraph applies where—
- (a) the Competition Appeal Tribunal makes an order under paragraph 10(4)(b),
  - (b) GEMA has made a property arrangements scheme in relation to the property, rights or liabilities concerned, and
  - (c) the scheme has not come into operation.
- (2) Where the Tribunal's determination is that provision of the kind mentioned in paragraph 1(1) is not, in relation to the property, rights or liabilities concerned, necessary or expedient for implementation purposes, it may include in the order provision quashing the scheme.
- (3) In any other case, the Tribunal may include in the order—
- (a) provision for the scheme to have effect with such amendments with respect to any matter dealt with by GEMA's determination as it thinks fit, and
  - (b) to the extent that GEMA's determination dealt with any financial matter, provision requiring GEMA to redetermine the matter in accordance with the order and to amend the scheme accordingly.

#### Commencement Information

**I340** Sch. 18 para. 12 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 13 (1) This paragraph applies where—
- (a) the Competition Appeal Tribunal makes an order under paragraph 10(4)(b),
  - (b) GEMA has made a property arrangements scheme in relation to the property, rights or liabilities concerned, and
  - (c) the scheme has come into operation.
- (2) The Tribunal may include in the order such provision as it thinks fit for the purpose of doing justice between—
- (a) the system operator,
  - (b) the relevant existing transmission licence holder, and
  - (c) any third party adversely affected by the scheme,
- in the light of its determination.



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- (3) Without prejudice to the generality of sub-paragraph (2), the Tribunal may include in the order—
- (a) provision for retransfer,
  - (b) provision for the surrender or extinction of rights, and
  - (c) provision for the payment of compensation.

**Commencement Information**

**I341** Sch. 18 para. 13 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 14 An order under paragraph 10(4)(b) may include provision for the award of interest at such rate and for such period as the Competition Appeal Tribunal thinks fit.

**Commencement Information**

**I342** Sch. 18 para. 14 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 15 Section 120(6) to (8) of the Enterprise Act 2002 (c. 40) (appeal with leave on point of law from decision of Competition Appeal Tribunal to Court of Appeal or Court of Session) shall apply in relation to decisions of the Tribunal under this Schedule as they apply in relation to decisions under that section.

**Commencement Information**

**I343** Sch. 18 para. 15 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Interim arrangements pending review of determination*

- 16 (1) This paragraph applies where—
- (a) a person makes an application under paragraph 10(1) for the review of a determination, and
  - (b) GEMA has not made a property arrangements scheme in relation to the property, rights or liabilities to which the determination relates.
- (2) The Competition Appeal Tribunal may on application by the system operator or the relevant existing transmission licence holder make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.
- (3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power to make provision for the system operator to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.
- (4) No application under sub-paragraph (2) may be made after the end of the period of 7 days beginning with the day on which the application under paragraph 10(1) is made.

**Commencement Information**

**I344** Sch. 18 para. 16 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

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- 17 (1) This paragraph applies where—
- (a) a person makes an application under paragraph 10(1) for the review of a determination, and
  - (b) GEMA has made a property arrangements scheme in relation to the property, rights or liabilities to which the determination relates.
- (2) The Competition Appeal Tribunal may on application by—
- (a) the system operator,
  - (b) the relevant existing transmission licence holder, or
  - (c) a third party who is adversely affected by any provision of the scheme,
- make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.
- (3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power—
- (a) to make provision postponing or suspending the operation of any provision of the scheme for such period, and on such terms, as the Tribunal thinks fit;
  - (b) to make provision for the system operator to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.
- (4) No application under sub-paragraph (2) may be made after the end of the period of 7 days beginning with the day on which the application under paragraph 10(1) is made.

**Commencement Information**

**I345** Sch. 18 para. 17 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 18 In exercising its powers under paragraph 16 or 17, the Competition Appeal Tribunal shall have regard, in particular, to what is necessary or expedient for implementation purposes.

**Commencement Information**

**I346** Sch. 18 para. 18 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 19 Paragraphs 16 and 17 are without prejudice to any powers of the Competition Appeal Tribunal to make orders on an interim basis under rules under section 15 of the Enterprise Act 2002 (c. 40).

**Commencement Information**

**I347** Sch. 18 para. 19 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 20 (1) If an order under paragraph 16 or 17 is registered in England and Wales in accordance with rules of court or any practice direction, it shall be enforceable as an order of the High Court.
- (2) An order under paragraph 16 or 17 may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.

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- (3) Subject to rules of court or any practice direction, an order under paragraph 16 or 17 may be registered or recorded for execution by a person entitled to any right under the interim arrangements for which the order makes provision.
- (4) Sub-paragraphs (1) to (3) apply to an order on an interim basis made under rules under section 15 of the Enterprise Act 2002 in connection with an application under paragraph 10(1) as they apply to an order under paragraph 16 or 17.

**Commencement Information**

**I348** Sch. 18 para. 20 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Supplementary*

- 21 The Secretary of State may by order designate the holder of a transmission licence as the system operator for the purposes of this Schedule.

**Commencement Information**

**I349** Sch. 18 para. 21 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 22 An application under this Schedule is not allowed to be made orally.

**Commencement Information**

**I350** Sch. 18 para. 22 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 23 (1) In this Schedule—
- “existing transmission licence” means a transmission licence which is in force immediately before the day on which section 136 comes into force;
  - “implementation purposes” means the purposes of implementing the new trading and transmission arrangements in accordance with the timetable for implementation for the time being published by GEMA;
  - “property arrangements scheme” has the meaning given by paragraph 1(2);
  - “relevant existing transmission licence holder”, in relation to a property arrangements scheme, or an application for such a scheme, means the existing transmission licence holder to whose property, rights or liabilities the scheme, or application, relates;
  - “system operator” means the person designated under paragraph 21;
  - “third party”, in relation to a property arrangements scheme, means a person other than the system operator or the relevant existing transmission licence holder.
- (2) For the purposes of this Schedule, a provision of a property arrangements scheme adversely affects a third party if—
- (a) his consent or concurrence would be required to the making of the provision otherwise than by means of the scheme, and
  - (b) he does not consent to the making of the provision by means of the scheme.

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**Commencement Information**

**I351** Sch. 18 para. 23 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

SCHEDULE 19

Section 143

CONSEQUENTIAL AMENDMENTS RELATING TO CHAPTER 1 OF PART 3

*Water (Scotland) Act 1980 (c. 45)*

- 1 In Schedule 4 to the Water (Scotland) Act 1980 (provisions to be incorporated in orders relating to statutory undertakers), in paragraph (b) of the proviso to section 36, for “transmit” substitute “participate in the transmission of”.

**Commencement Information**

**I352** Sch. 19 para. 1 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Telecommunications Act 1984 (c. 38)*

- 2 In section 98(9) of the Telecommunications Act 1984, in the definition of “electricity authority”, for “transmit or supply”, where they first occur, substitute “supply or participate in the transmission of”.

**Commencement Information**

**I353** Sch. 19 para. 2 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Electricity Act 1989 (c. 29)*

- 3 The 1989 Act is amended as follows.

**Commencement Information**

**I354** Sch. 19 para. 3 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 4 In section 3A(5)(a), for “transmit, distribute or supply” substitute “distribute, supply or participate in the transmission of”.

**Commencement Information**

**I355** Sch. 19 para. 4 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 5 In section 6 (licences authorising supply etc.), for subsection (7) substitute—  
 “(7) A licence, and any modification of a licence under subsection (4), (6) or (6B), shall be in writing.”

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**Commencement Information**

**I356** Sch. 19 para. 5 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 6 In section 6A (procedure for licence applications), in subsection (1) (applications to which the section applies), for paragraph (b) substitute—  
“(b) for the modification of a licence under section 6(4), (6) or (6B).”

**Commencement Information**

**I357** Sch. 19 para. 6 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 7 (1) Section 6B (applications for transmission licence) is amended as follows.
- (2) For subsection (2) substitute—  
“(2) The applicant shall give notice of the application to any person who holds a transmission licence and whose interests may be affected if the licence applied for is granted.”
- (3) In subsection (5)(c) (under which there is a duty to give notice of the proposed grant of an application to the holder of a transmission licence whose authorised area is affected by the area to which the application relates), for the words from “authorised area” to “area” substitute “ interests may be affected by the grant of the licence ”.

**Commencement Information**

**I358** Sch. 19 para. 7 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 8 (1) Section 9 (general duties of licence holders) is amended as follows.
- (2) In subsection (2) (duties of transmission licence holder), for “transmit” substitute “ participate in the transmission of ”.
- (3) After that subsection insert—  
“(2A) Subsection (2)(a) shall not have effect to require the holder of a transmission licence which is subject to a condition of the kind mentioned in section 7(2A) (a) to carry on an activity which he would be authorised by the licence to carry on apart from the condition.”

**Commencement Information**

**I359** Sch. 19 para. 8 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 9 (1) Section 10 (powers of licence holders) is amended as follows.
- (2) In subsection (1)(a) (which applies Schedules 3 and 4 to a person authorised by a licence to transmit electricity), for the words from “a person” to “electricity” substitute “ the holder of a transmission licence ”.
- (3) For subsection (4) substitute—

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“(4) A transmission licence may provide that, where the licence is modified under section 6(6B), 11 or 11A above so as to reduce in any respect the area in which the licence holder may carry on activities, Schedule 4 to this Act shall have effect in relation to him as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.”

**Commencement Information**

**I360** Sch. 19 para. 9 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 10 In section 29 (regulations relating to supply and safety), in subsection (2)(c) (power to require persons to keep maps etc.), for “transmit” substitute “ participate in the transmission of ”.

**Commencement Information**

**I361** Sch. 19 para. 10 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 11 In section 30 (electrical inspectors), in subsection (2)(a) (duty to inspect and test equipment belonging to certain persons), for “transmit or distribute” substitute “ distribute or participate in the transmission of ”.

**Commencement Information**

**I362** Sch. 19 para. 11 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 12 (1) Section 35 (which supplements section 34 about fuel stocks at generating stations) is amended as follows.
- (2) In subsection (1) (power to require information from any person authorised by a licence to transmit electricity), for “any person authorised by a licence to transmit electricity” substitute “ the holder of a transmission licence ”.
- (3) For subsection (2) substitute—
- “(2) The Secretary of State may give a direction requiring any person who is authorised by a licence to participate in the transmission of electricity to carry on the activities which the licence authorises (or any of them), at any time when a direction under section 34(4) above is in force, either in a specified manner or with a view to achieving specified objectives.”
- (4) In subsection (3), for the words from “and”, in the second place where it occurs, to the end substitute “ and a person subject to a direction under subsection (2) above shall give effect to it notwithstanding any other duty imposed on him by or under this Part. ”

**Commencement Information**

**I363** Sch. 19 para. 12 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

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- 13 In section 43B (supplementary provision about orders under section 43A), in subsection (7) (definition of “authorised transmitter”), for “transmit” substitute “participate in the transmission of”.

**Commencement Information**

**I364** Sch. 19 para. 13 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 14 In section 58 (directions restricting the use of certain information)—
- (a) in subsection (1), for “any person who is authorised by a licence to transmit electricity” substitute “the holder of a transmission licence”, and
  - (b) in subsection (2), for “transmit or supply” substitute “supply or participate in the transmission of”.

**Commencement Information**

**I365** Sch. 19 para. 14 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 15 (1) Section 64 (interpretation of Part 1) is amended as follows.
- (2) In subsection (1), for the definition of “transmit” substitute—
- ““transmission”, in relation to electricity, has the meaning given by section 4(4) above;
  - “transmission system” has the same meaning given by section 4(4) above;”.
- (3) Before subsection (2) insert—
- “(1B) In this Part, references to participation, in relation to the transmission of electricity, are to be construed in accordance with section 4(3A) and (3B) above.”

**Commencement Information**

**I366** Sch. 19 para. 15 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 16 In Schedule 9 (preservation of amenity and fisheries), in paragraphs 1(1) and 3(1), for “transmit, distribute or supply” substitute “distribute, supply or participate in the transmission of”.

**Commencement Information**

**I367** Sch. 19 para. 16 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Water Industry Act 1991 (c. 56)*

- 17 In Schedule 13 to the Water Industry Act 1991 (protective provisions), in paragraph 1(5) (undertakings protected), in paragraph (f), for “transmit or supply” substitute “supply or participate in the transmission of”.

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**Commencement Information**

**I368** Sch. 19 para. 17 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Water Resources Act 1991 (c. 57)*

- 18 In Schedule 22 to the Water Resources Act 1991 (protective provisions), in paragraph 1(4) (undertakings protected), in paragraph (f), for “transmit or supply” substitute “ supply or participate in the transmission of ”.

**Commencement Information**

**I369** Sch. 19 para. 18 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Land Drainage Act 1991 (c. 59)*

- 19 In Schedule 6 to the Land Drainage Act 1991 (protective provisions), in paragraph 1(1) (undertakings protected), in paragraph (f), for “transmit or supply” substitute “ supply or participate in the transmission of ”.

**Commencement Information**

**I370** Sch. 19 para. 19 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

*Utilities Act 2000 (c. 27)*

- 20 In section 33(1) of the Utilities Act 2000 (which provides that conditions determined under that provision shall be standard conditions for the purposes of any of the types of licence mentioned in section 6(1) of the 1989 Act)—
- (a) for “6(1)” substitute “ 6(1)(a), (c) and (d) ”,
  - (b) omit the words “transmission licences,”, and
  - (c) for the words from “, subject” to the end substitute “be standard conditions for the purposes of licences of that type, subject to any modifications of the standard conditions for the purposes of licences of that type made—
    - (a) under Part 1 of the 1989 Act after the determination under this section, or
    - (b) under the Energy Act 2004.”

**Commencement Information**

**I371** Sch. 19 para. 20 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2



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## SCHEDULE 20

Section 159

### CONDUCT OF ENERGY ADMINISTRATION

#### PART 1

##### APPLICATION OF SCHEDULE B1 TO THE 1986 ACT

###### *Application of Schedule B1 provisions*

- 1 (1) The provisions of Schedule B1 to the 1986 Act specified in paragraph 2 of this Schedule are to have effect in relation to energy administration orders—
- (a) as they have effect in relation to administration orders under that Schedule; but
  - (b) with the modifications set out in Part 2 of this Schedule.
- (2) Those provisions as modified by Part 2 of this Schedule are to have effect in the case of an unregistered company with the further modifications for which provision is made by or under Part 3 of this Schedule.

###### **Commencement Information**

I372 Sch. 20 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 2 Those provisions of Schedule B1 to the 1986 Act are paragraphs 1, 40 to 50, 54, 59 to 68, 70 to 75, 79, 83 to 91, 98 to 107 and 109 to 116.

###### **Commencement Information**

I373 Sch. 20 para. 2 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### PART 2

##### MODIFICATIONS OF SCHEDULE B1

###### *Introductory*

- 3 The modifications set out in this Part of this Schedule to the provisions of Schedule B1 to the 1986 Act specified in paragraph 2 apply where those provisions have effect by virtue of Part 1 of this Schedule.

###### **Commencement Information**

I374 Sch. 20 para. 3 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

###### *General modifications of the applicable provisions*

- 4 In those provisions—

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- (a) for “administration application” in each place where it occurs substitute “energy administration application”;
- (b) for “administration order” in each place where it occurs substitute “energy administration order”;
- (c) for “administrator” in each place where it occurs substitute “energy administrator”;
- (d) for “enters administration” in each place where it occurs substitute “enters energy administration”;
- (e) for “in administration” in each place where it occurs substitute “in energy administration”;
- (f) for “purpose of administration” in each place where it occurs (other than in paragraph 111(1)) substitute “objective of the energy administration”.

#### Commencement Information

**I375** Sch. 20 para. 4 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### *Specific modifications*

- 5 (1) In paragraph 1, for sub-paragraph (1) (which defines “administrator”) substitute—
- “(1) In this Schedule “energy administrator”, in relation to a company, means a person appointed by the court for the purposes of an energy administration order to manage the company’s affairs, business and property.”
- (2) In sub-paragraph (2) of that paragraph, for “Act” substitute “Schedule”.

#### Commencement Information

**I376** Sch. 20 para. 5 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 6 In paragraph 40 (dismissal of pending winding-up petition), omit sub-paragraphs (1)(b), (2) and (3).

#### Commencement Information

**I377** Sch. 20 para. 6 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 7 In paragraph 42 (moratorium on insolvency proceedings), omit sub-paragraphs (4) and (5).

#### Commencement Information

**I378** Sch. 20 para. 7 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 8 In paragraph 44 (interim moratorium), omit sub-paragraphs (2) to (4), (6) and (7) (a) to (c).

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#### Commencement Information

**I379** Sch. 20 para. 8 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 9 In paragraph 46(6) (date for notifying administrator’s appointment), for paragraphs (a) to (c) substitute “ the date on which the energy administration order comes into force ”.

#### Commencement Information

**I380** Sch. 20 para. 9 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 10 (1) In sub-paragraph (2)(b) of paragraph 49 (administrator’s proposals) for “objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved” substitute “ objective of the energy administration should be achieved by means other than just a rescue of the company as a going concern ”.
- (2) After sub-paragraph (4)(a) of that paragraph insert—  
“(aa) to the Secretary of State and to GEMA,”.

#### Commencement Information

**I381** Sch. 20 para. 10 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 11 For paragraph 54 (revision of administrator’s proposals) substitute—  
“54 (1) The energy administrator of a company may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the company.
- (2) Where the energy administrator thinks that a revision by him is substantial, he must send a copy of the revised proposals—  
(a) to the registrar of companies,  
(b) to the Secretary of State and to GEMA,  
(c) to every creditor of the company of whose claim and address he is aware, and  
(d) to every member of the company of whose address he is aware.
- (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
- (4) The energy administrator is to be taken to have complied with sub-paragraph (2)(d) if he publishes, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the company who applies in writing to a specified address.
- (5) The energy administrator commits an offence if he fails without reasonable excuse to comply with this paragraph.”

#### Commencement Information

**I382** Sch. 20 para. 11 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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12 In paragraph 60 (powers of an administrator), the existing text is to be sub-paragraph (1) and after that sub-paragraph insert—

“(2) The energy administrator of a company has the power to act on behalf of the company for the purposes of any enactment or subordinate legislation which confers a power on the company, or imposes a duty on it.

(3) In sub-paragraph (2) “enactment” has the same meaning as in the Energy Act 2004.”

**Commencement Information**

**I383** Sch. 20 para. 12 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

13 (1) In paragraph 68 (management duties of an administrator), for sub-paragraph (1)(a) to (c) substitute “the proposals as—

(a) set out in the statement made under paragraph 49 in relation to the company, and

(b) from time to time revised under paragraph 54,

for achieving the objective of the energy administration. ”

(2) For sub-paragraph (3)(a) to (d) of that paragraph substitute “ the directions are consistent with the achievement of the objective of the energy administration ”.

**Commencement Information**

**I384** Sch. 20 para. 13 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

14 In paragraphs 71(3)(b) and 72(3)(b) (handling of secured property), for “market” substitute “ the appropriate ”.

**Commencement Information**

**I385** Sch. 20 para. 14 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

15 In paragraph 73(3) (which contains a reference to the administrator’s proposals), for “or modified” substitute “ under paragraph 54 ”.

**Commencement Information**

**I386** Sch. 20 para. 15 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

16 (1) In paragraph 74 (challenge to administrator’s conduct), for sub-paragraph (2) substitute—

“(2) Where a company is in energy administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the energy administrator is conducting himself in a manner preventing the achievement of the objective of the energy administration as quickly and efficiently as is reasonably practicable.

(2A) The persons who may apply to the court under sub-paragraph (2) are—

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- (a) the Secretary of State;
  - (b) with the consent of the Secretary of State, GEMA;
  - (c) a creditor or member of the company.”
- (2) In sub-paragraph (6) of that paragraph, for paragraphs (a) to (c) substitute—
  - “(a) a voluntary arrangement approved under Part 1, or
  - (b) a compromise or arrangement sanctioned under section 425 of the Companies Act (compromise with creditors and members).”
- (3) After that sub-paragraph insert—
  - “(7) In the case of a claim made otherwise than by the Secretary of State or GEMA, the court may grant a remedy or relief or make an order under this paragraph only if it has given the Secretary of State or GEMA a reasonable opportunity of making representations about the claim and the proposed remedy, relief or order.
  - (8) The court may grant a remedy or relief or make an order on an application under this paragraph only if it is satisfied, in relation to the matters that are the subject of the application, that the energy administrator—
    - (a) is acting,
    - (b) has acted, or
    - (c) is proposing to act,in a way that is inconsistent with the achievement of the objective of the energy administration as quickly and as efficiently as is reasonably practicable.
  - (9) Before the making of an order of the kind mentioned in sub-paragraph (4) (d)—
    - (a) the court must notify the energy administrator of the proposed order and of a period during which he is to have the opportunity of taking steps falling within sub-paragraphs (10) to (12); and
    - (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken;and that period must be a reasonable period.
  - (10) In the case of a claim under sub-paragraph (1)(a), the steps referred to in sub-paragraph (9) are—
    - (a) ceasing to act in a manner that unfairly harms the interests to which the claim relates;
    - (b) remedying any harm unfairly caused to those interests; and
    - (c) steps for ensuring that there is no repetition of conduct unfairly causing harm to those interests.
  - (11) In the case of a claim under sub-paragraph (1)(b), the steps referred to in sub-paragraph (9) are steps for ensuring that the interests to which the claim relates are not unfairly harmed.
  - (12) In the case of a claim under sub-paragraph (2), the steps referred to in sub-paragraph (9) are—
    - (a) ceasing to act in a manner preventing the achievement of the objective of the energy administration as quickly and as efficiently as is reasonably practicable;

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- (b) remedying the consequences of the energy administrator having acted in such a manner; and
- (c) steps for ensuring that there is no repetition of conduct preventing the achievement of the objective of the energy administration as quickly and as efficiently as is reasonably practicable.”

**Commencement Information**

**I387** Sch. 20 para. 16 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 17 In paragraph 75(2) (misfeasance), after paragraph (b) insert—
- “(ba) a person appointed as an administrator of the company under the provisions of this Act, as they have effect in relation to administrators other than energy administrators.”

**Commencement Information**

**I388** Sch. 20 para. 17 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 18 (1) In paragraph 79 (end of administration), for sub-paragraphs (1) and (2) substitute—
- “(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of an energy administrator of a company to cease to have effect from a specified time.
- (2) An application may be made to the court under this paragraph—
- (a) by the Secretary of State,
  - (b) with the consent of the Secretary of State, by GEMA, or
  - (c) with the consent of the Secretary of State, by the energy administrator.”
- (2) Omit sub-paragraph (3) of that paragraph.

**Commencement Information**

**I389** Sch. 20 para. 18 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 19 In paragraph 83(3) (notice to registrar when moving to voluntary liquidation), after “may” insert “, with the consent of the Secretary of State or of GEMA, ”.

**Commencement Information**

**I390** Sch. 20 para. 19 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 20 (1) In paragraph 84 (notice to registrar when moving to dissolution), in sub-paragraph (1), for “to the registrar of companies” substitute—
- “(a) to the Secretary of State and to GEMA; and
  - (b) if directed to do so by either the Secretary of State or GEMA, to the registrar of companies.”
- (2) Omit sub-paragraph (2) of that paragraph.

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- (3) In sub-paragraphs (3) to (6) of that paragraph, for “(1)”, wherever occurring, substitute “ (1)(b) ”.

**Commencement Information**

**I391** Sch. 20 para. 20 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 21 In paragraph 87 (resignation of administrator), for sub-paragraph (2)(a) to (d) substitute “ by notice in writing to the court ”.

**Commencement Information**

**I392** Sch. 20 para. 21 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 22 In paragraph 89 (administrator ceasing to be qualified), for sub-paragraph (2)(a) to (d) substitute “ to the court ”.

**Commencement Information**

**I393** Sch. 20 para. 22 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 23 In paragraph 90 (filling vacancy in office of administrator), for “Paragraphs 91 to 95 apply” substitute “ Paragraph 91 applies ”.

**Commencement Information**

**I394** Sch. 20 para. 23 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 24 (1) In paragraph 91 (vacancies in court appointments), for sub-paragraph (1) substitute—  
“ (1) The court may replace the energy administrator on an application made—  
(a) by the Secretary of State;  
(b) with the consent of the Secretary of State, by GEMA; or  
(c) where more than one person was appointed to act jointly as the energy administrator, by any of those persons who remains in office.”

- (2) Omit sub-paragraph (2) of that paragraph.

**Commencement Information**

**I395** Sch. 20 para. 24 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 25 In paragraph 98 (discharge from liability on vacation of office), omit sub-paragraphs (2)(b) and (3).

**Commencement Information**

**I396** Sch. 20 para. 25 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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- 26 (1) In paragraph 99 (charges and liabilities upon vacation of office by administrator), in sub-paragraph (4), for the words from the beginning to “cessation”, where first occurring, substitute “ A sum falling within sub-paragraph (4A) ”.
- (2) After that sub-paragraph insert—
- “(4A) A sum falls within this sub-paragraph if it is—
- (a) a sum payable in respect of a debt or liability arising out of a contract that was entered into before cessation by the former energy administrator or a predecessor;
  - (b) a sum that must be repaid by the company in respect of a grant that was made before cessation under section 165 of the Energy Act 2004 as is mentioned in subsection (4) of that section;
  - (c) a sum that must be repaid by the company in respect of a loan made before cessation under that section or that must be paid by the company in respect of interest payable on such a loan;
  - (d) a sum payable by the company under subsection (4) of section 166 of that Act in respect of an agreement to indemnify made before cessation; or
  - (e) a sum payable by the company under subsection (5) of section 167 of that Act in respect of a guarantee given before cessation.”
- (3) In sub-paragraph (5) of that paragraph, for “(4)” substitute “ (4A)(a) ”.

**Commencement Information**

**I397** Sch. 20 para. 26 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 27 In paragraph 100 (joint and concurrent administrators), omit sub-paragraph (2).

**Commencement Information**

**I398** Sch. 20 para. 27 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 28 In paragraph 101(3) (joint administrators), after “87 to” insert “ 91, 98 and ”.

**Commencement Information**

**I399** Sch. 20 para. 28 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 29 (1) In paragraph 103 (appointment of additional administrators), in sub-paragraph (2)—
- (a) omit the words from the beginning to “order”;
  - (b) for paragraph (a) substitute—
    - “(a) the Secretary of State,
    - (aa) GEMA, or”.
- (2) After that sub-paragraph insert—
- “(2A) The consent of the Secretary of State is required for an application by GEMA for the purposes of sub-paragraph (2).”
- (3) Omit sub-paragraphs (3) to (5) of that paragraph.



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#### Commencement Information

**I400** Sch. 20 para. 29 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 30 In paragraph 106 (penalties), omit sub-paragraph (2)(a), (b), (f), (g), (i) and (l) to (n).

#### Commencement Information

**I401** Sch. 20 para. 30 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 31 In paragraph 109 (references to extended periods), omit “or 108”.

#### Commencement Information

**I402** Sch. 20 para. 31 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 32 (1) In sub-paragraph (1) of paragraph 111 (interpretation)—
- (a) omit the definitions of “correspondence”, “holder of a qualifying floating charge”, “market value”, “the purpose of administration” and “unable to pay its debts”;
  - (b) after the definition of “administrator” (as amended by virtue of paragraph 4 of this Schedule) insert—

““appropriate value” means the best price which would be reasonably available on a sale which is consistent with the achievement of the objective of the energy administration;”
  - (c) for the definition of “company” substitute—

““company”, “court” and “energy administration order” have the same meanings as in Chapter 3 of Part 3 of the Energy Act 2004;”
  - (d) after the definition of “creditors' meeting” insert—

““energy administration application” means an application to the court for an energy administration order under Chapter 3 of Part 3 of the Energy Act 2004;

“GEMA” means the Gas and Electricity Markets Authority;”
  - (e) after the definition of “hire purchase agreement” insert—

““objective”, in relation to an energy administration, is to be construed in accordance with section 155 of the Energy Act 2004;

“prescribed” means prescribed by energy administration rules within the meaning of Chapter 3 of Part 3 of the Energy Act 2004;”.
- (2) After sub-paragraph (3) of that paragraph insert—

“(4) For the purposes of this Schedule a reference to an energy administration order includes a reference to an appointment under paragraph 91 or 103.”

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#### Commencement Information

**I403** Sch. 20 para. 32 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### PART 3

#### FURTHER SCHEDULE B1 MODIFICATIONS FOR UNREGISTERED COMPANIES

##### *Introductory*

- 33 (1) Where the provisions of Schedule B1 to the 1986 Act specified in paragraph 2 of this Schedule (as modified by Part 2 of this Schedule) have effect in relation to an unregistered company, they shall do so subject to the further modifications that are set out—
- (a) in this Part of this Schedule; or
  - (b) in an order made by the Secretary of State for the purposes of this paragraph.
- (2) An order under this paragraph may include modifications of paragraphs 35 to 40.
- (3) An order under this paragraph is subject to the negative resolution procedure.

#### Commencement Information

**I404** Sch. 20 para. 33 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 34 In paragraphs 35 to 40—
- (a) the provisions of Schedule B1 to the 1986 Act that are specified in paragraph 2 are referred to as the applicable provisions; and
  - (b) references to those provisions, or to provisions comprised in them, are references to those provisions as modified by Part 2 of this Schedule.

#### Commencement Information

**I405** Sch. 20 para. 34 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

##### *Modifications*

- 35 In the case of an unregistered company—
- (a) paragraphs 42(2), 83 and 84 of Schedule B1 to the 1986 Act do not apply;
  - (b) paragraphs 46(4), 49(4)(a), 54(2)(a), 71(5) and (6), 72(4) and (5) and 86 of that Schedule apply only if the company is subject to a requirement imposed by virtue of section 691(1) or 718 of the Companies Act 1985 (c. 6); and
  - (c) paragraph 61 of that Schedule does not apply if the company is a non-GB company.

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#### Commencement Information

**I406** Sch. 20 para. 35 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 36 (1) The applicable provisions and Schedule 1 to the 1986 Act (as applied by paragraph 60(1) of Schedule B1 to that Act) are to be construed in the case of a non-GB company by reference to the limitation imposed upon the scope of the energy administration order in question by virtue of section 154(4) of this Act.
- (2) Sub-paragraph (1) has effect, in particular, so that—
- (a) a power conferred, or duty imposed, upon the energy administrator by or under the applicable provisions or Schedule 1 to the 1986 Act is to be construed as being conferred or imposed only in relation to the affairs and business of the company so far as carried on in Great Britain and to its property in Great Britain;
  - (b) references to the affairs, business or property of the company are to be construed as references to its affairs or business so far as carried on in Great Britain or to its property in Great Britain;
  - (c) references to goods in the company's possession are to be construed as references to goods in the possession of the company in Great Britain;
  - (d) references to premises let to the company are to be construed as references to premises let to the company in Great Britain;
  - (e) references to legal process instituted or continued against the company or property of the company are to be construed as references to such legal process relating to the affairs or business of the company so far as carried on in Great Britain or to its property in Great Britain.

#### Commencement Information

**I407** Sch. 20 para. 36 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 37 (1) Paragraph 41 of Schedule B1 to the 1986 Act (dismissal of receivers) has effect in the case of a non-GB company as if—
- (a) for sub-paragraph (1) there were substituted the sub-paragraphs set out in sub-paragraph (2) of this paragraph; and
  - (b) sub-paragraphs (2) to (4) of that paragraph were omitted.
- (2) The sub-paragraphs treated as substituted for paragraph 41(1) are—
- “(1) Where an energy administration order takes effect in respect of a company—
- (a) a person appointed to perform functions equivalent to those of an administrative receiver, and
  - (b) if the energy administrator so requires, a person appointed to perform functions equivalent to those of a receiver,
- shall refrain, during the period specified in sub-paragraph (1A), from performing those functions in Great Britain or in relation to any of the company's property in Great Britain.
- (1A) That period is—
- (a) in the case of a person mentioned in sub-paragraph (1)(a), the period while the company is in energy administration; and

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- (b) in the case of a person mentioned in sub-paragraph (1)(b), during so much of that period as is after the date on which he is required by the energy administrator to refrain from performing his functions.”

**Commencement Information**

**I408** Sch. 20 para. 37 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 38 Paragraph 43(6A) of Schedule B1 to the 1986 Act (moratorium on appointment to receiverships) has effect in the case of a non-GB company as if for “An administrative receiver” there were substituted “A person with functions equivalent to those of an administrative receiver”.

**Commencement Information**

**I409** Sch. 20 para. 38 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 39 Paragraph 44(7) of Schedule B1 to the 1986 Act (proceedings to which interim moratorium does not apply) has effect in the case of a non-GB company as if for paragraph (d) there were substituted—  
 “(d) the carrying out of his functions by a person who (whenever his appointment) has functions equivalent to those of an administrative receiver of the company.”

**Commencement Information**

**I410** Sch. 20 para. 39 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 40 Paragraph 64 of Schedule B1 to the 1986 Act (general powers of administrator) has effect in the case of a non-GB company as if—  
 (a) in sub-paragraph (1), after “power” there were inserted “in relation to the affairs or business of the company so far as carried on in Great Britain or to its property in Great Britain”; and  
 (b) in sub-paragraph (2)(b), after “instrument” there were inserted “or by the law of the place where the company is incorporated”.

**Commencement Information**

**I411** Sch. 20 para. 40 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## PART 4

### OTHER MODIFICATIONS

#### *General modifications*

- 41 (1) Subject to paragraph 42, every reference falling within sub-paragraph (2) which is contained—  
 (a) in a provision of the 1986 Act (other than Schedule B1), or

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- (b) in any other enactment passed before this Act,  
shall have effect as including a reference to whatever corresponds to it for the purposes of this paragraph.
- (2) Those references are those (however expressed) which are or include references to—
- (a) an administrator appointed by an administration order;
  - (b) an administration order;
  - (c) an application for an administration order;
  - (d) a company in administration;
  - (e) entering into administration;
  - (f) Schedule B1 or a provision of that Schedule.
- (3) For the purposes of this paragraph—
- (a) an energy administrator corresponds to an administrator appointed by an administration order;
  - (b) an energy administration order corresponds to an administration order;
  - (c) an application for an energy administration order corresponds to an application for an administration order;
  - (d) a company in energy administration corresponds to a company in administration;
  - (e) entering into energy administration corresponds to entering into administration;
  - (f) what corresponds to Schedule B1 or a provision of that Schedule is that Schedule or that provision as applied by Part 1 of this Schedule.

#### Commencement Information

**I412** Sch. 20 para. 41 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 42 (1) Paragraph 41, in its application to section 1(3) of the 1986 Act, does not entitle the energy administrator of an unregistered company to make a proposal under Part 1 of that Act (company voluntary arrangements).
- (2) Paragraph 41 does not confer any right under section 7(4) of the 1986 Act (implementation of voluntary arrangements) for a supervisor of voluntary arrangements to apply for an energy administration order in relation to a protected energy company.
- (3) Paragraph 41 does not apply to section 359 of the Financial Services and Markets Act 2000 (c. 8) (administration applications by Financial Services Authority).

#### Commencement Information

**I413** Sch. 20 para. 42 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### *Modifications of 1986 Act*

- 43 In section 5 of the 1986 Act (effect of approval of voluntary arrangements) after subsection (4) insert—

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“(5) Where the company is in energy administration, the court shall not make an order or give a direction under subsection (3) unless—

- (a) the court has given the Secretary of State or the Gas and Electricity Markets Authority a reasonable opportunity of making representations to it about the proposed order or direction; and
- (b) the order or direction is consistent with the objective of the energy administration.

(6) In subsection (5) “in energy administration” and “objective of the energy administration” are to be construed in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 20 to the Energy Act 2004.”

**Commencement Information**

**I414** Sch. 20 para. 43 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

44 (1) Section 6 of that Act (challenge of decisions in relation to voluntary arrangements) is amended as follows.

(2) In subsection (2) for “this section” substitute “ subsection (1) ”.

(3) After that subsection insert—

“(2A) Subject to this section, where a voluntary arrangement in relation to a company in energy administration is approved at the meetings summoned under section 3, an application to the court may be made—

- (a) by the Secretary of State, or
- (b) with the consent of the Secretary of State, by the Gas and Electricity Markets Authority,

on the ground that the voluntary arrangement is not consistent with the achievement of the objective of the energy administration.”

(4) In subsection (4) after “subsection (1)” insert “ or, in the case of an application under subsection (2A), as to the ground mentioned in that subsection ”.

(5) After subsection (7) insert—

“(8) In this section “in energy administration” and “objective of the energy administration” are to be construed in accordance with Schedule B1 to this Act, as applied by Part 1 of Schedule 20 to the Energy Act 2004.”

**Commencement Information**

**I415** Sch. 20 para. 44 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

45 In section 129(1A) of that Act (commencement of winding up), the reference to paragraph 13(1)(e) of Schedule B1 includes a reference to section 157(1)(e) of this Act.

**Commencement Information**

**I416** Sch. 20 para. 45 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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### *Power to make further modifications*

- 46 (1) The Secretary of State may by order make such modifications of—
- (a) the 1986 Act, or
  - (b) any other enactment passed before this Act that relates to insolvency or makes provision by reference to anything that is or may be done under the 1986 Act,
- as he considers appropriate in relation to any provision made by or under this Chapter.
- (2) An order under this paragraph may also make modifications of this Part of this Schedule.
- (3) The power to make an order containing provision authorised by this paragraph is subject to the affirmative resolution procedure.

#### **Commencement Information**

**I417** Sch. 20 para. 46 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### *Interpretation of Part 4 of Schedule*

- 47 In this Part of this Schedule—
- “administration order”, “administrator”, “enters administration” and “in administration” are to be construed in accordance with Schedule B1 (disregarding Part 1 of this Schedule);
- “enters energy administration” and “in energy administration” are to be construed in accordance with Schedule B1 (as applied by Part 1 of this Schedule);
- “Schedule B1” means Schedule B1 to the 1986 Act.

#### **Commencement Information**

**I418** Sch. 20 para. 47 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## SCHEDULE 21

Section 159.

### ENERGY TRANSFER SCHEMES

#### *Application of Schedule*

- 1 This Schedule applies where—
- (a) the court has made an energy administration order in relation to a company (the “old energy company”); and
  - (b) it is proposed that a transfer falling within section 155(3) be made to another company (the “new energy company”).

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**Commencement Information**

**I419** Sch. 21 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 2 It is for the energy administrator, while the energy administration order is in force, to act on behalf of the old energy company in the doing of anything that it is authorised or required to do by or under this Schedule.

**Commencement Information**

**I420** Sch. 21 para. 2 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Making of energy transfer schemes*

- 3 (1) The old energy company may—
- (a) with the consent of the new energy company, and
  - (b) for the purpose of giving effect to the proposed transfer,
- make a scheme under this Schedule for the transfer of property, rights and liabilities from the old energy company to the new energy company (an “energy transfer scheme”).
- (2) Such a scheme may be made only at a time when the energy administration order is in force in relation to the old energy company.
- (3) An energy transfer scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—
- (a) by specifying or describing them in particular;
  - (b) by identifying them generally by reference to, or to a specified part of, the undertaking of the old energy company; or
  - (c) by specifying the manner in which they are to be determined.
- (4) An energy transfer scheme shall take effect in accordance with paragraph 8 at the time appointed by the court.
- (5) But the court must not appoint a time for a scheme to take effect unless that scheme has been approved by the Secretary of State.
- (6) The Secretary of State may modify an energy transfer scheme before approving it, but only modifications to which both the old energy company and the new energy company have consented may be made.
- (7) In deciding whether to approve an energy transfer scheme, the Secretary of State must have regard, in particular, to—
- (a) the public interest; and
  - (b) the effect the scheme is likely to have (if any) upon the interests of third parties.
- (8) Before approving an energy transfer scheme, the Secretary of State must consult GEMA.
- (9) The old energy company and the new energy company each have a duty to provide the Secretary of State with all information and other assistance that he may reasonably



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require for the purposes of, or in connection with, the exercise of the powers conferred on him by this paragraph.

#### Commencement Information

**I421** Sch. 21 para. 3 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### *Provision that may be made by a scheme*

- 4 (1) An energy transfer scheme may contain provision—
- (a) for the creation, in favour of the old energy company or the new energy company, of an interest or right in or in relation to property transferred in accordance with the scheme;
  - (b) for giving effect to a transfer to the new energy company by the creation, in favour of that company, of an interest or right in or in relation to property retained by the old energy company;
  - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between the old energy company and the new energy company;
  - (d) in connection with any provision made under this sub-paragraph, provision making incidental provision as to the interests, rights and liabilities of other persons with respect to the property, rights and liabilities to which the scheme relates.
- (2) The property, rights and liabilities of the old energy company that may be transferred in accordance with an energy transfer scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the old energy company;
  - (b) property acquired, and rights and liabilities arising, in the period after the making of the scheme but before it takes effect;
  - (c) rights and liabilities arising after it takes effect in respect of matters occurring before it takes effect;
  - (d) property situated anywhere in Great Britain or elsewhere;
  - (e) rights and liabilities under the law of a part of Great Britain or of a place outside Great Britain;
  - (f) rights and liabilities under an enactment, Community instrument or subordinate legislation.
- (3) The transfers to which effect may be given by an energy transfer scheme include transfers of interests and rights that are to take effect in accordance with the scheme as if there were—
- (a) no such requirement to obtain a person's consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,
- as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (4).
- (4) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the old energy company is entitled, or subject, to anything to which the transfer relates.

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- (5) Sub-paragraph (6) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with an energy transfer scheme—
- (a) to terminate, modify, acquire or claim an interest or right; or
  - (b) to treat an interest or right as modified or terminated.
- (6) That entitlement—
- (a) shall not be enforceable in relation to that interest or right until after the transfer of the interest or right by the scheme; and
  - (b) shall then be enforceable in relation to the interest or right only in so far as the scheme contains provision for the interest or right to be transferred subject to whatever confers that entitlement.
- (7) Sub-paragraphs (3) to (6) have effect where shares in a subsidiary of the old energy company are transferred—
- (a) as if the reference in sub-paragraph (4) to the terms on which the old energy company is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect; and
  - (b) in relation to an interest or right of the subsidiary, as if the references in sub-paragraph (6) to the transfer of the interest or right included a reference to the transfer of the shares.
- (8) Sub-paragraphs (3) and (4) apply to the creation of an interest or right by an energy transfer scheme as they apply to the transfer of an interest or right.

**Commencement Information**

**I422** Sch. 21 para. 4 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Transfer of licences*

- 5 (1) The provision that may be made by an energy transfer scheme includes the transfer of a relevant licence from the old energy company to the new energy company.
- (2) Such a transfer may relate to the whole or any part of the licence.
- (3) Where such a transfer relates to a part of the licence, the provision made under sub-paragraph (1) may include—
- (a) provision apportioning responsibility between the old energy company and the new energy company in relation to—
    - (i) the making of payments required by conditions included in the licence;
    - (ii) ensuring compliance with any other requirements of the conditions included in the licence; and
  - (b) provision making incidental modifications to the terms and conditions of the licence.
- (4) References in this paragraph to a part of a licence are references to one or both of—
- (a) a part of the activities authorised by the licence;

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- (b) a part of the area in relation to which the holder of the licence is authorised to carry on those activities.

**Commencement Information**

**I423** Sch. 21 para. 5 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Powers and duties under statutory provisions*

- 6 (1) The provision that may be made by an energy transfer scheme includes provision for some or all of the powers and duties to which this paragraph applies—
- (a) to be transferred to the new energy company; or
- (b) to become powers and duties that are exercisable, or must be performed, concurrently by the old energy company and the new energy company.
- (2) Provision falling within sub-paragraph (1) may apply to powers and duties only in so far as they are exercisable or required to be performed in the area specified or described in the provision.
- (3) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon the old energy company by or under an enactment, so far as those powers and duties are connected with—
- (a) the undertaking of the old energy company to the extent the energy transfer scheme relates to that undertaking; or
- (b) any property, rights or liabilities to be transferred in accordance with the scheme.
- (4) The powers and duties mentioned in sub-paragraph (3) include, in particular, powers and duties relating to the carrying out of works or the acquisition of land.

**Commencement Information**

**I424** Sch. 21 para. 6 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Supplemental provisions relating to transfers*

- 7 (1) An energy transfer scheme may make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme.
- (2) Such provision may include different provision for different cases or different purposes.
- (3) In particular, an energy transfer scheme may make provision, in relation to a provision of the scheme—
- (a) for the new energy company to be treated as the same person in law as the old energy company;
- (b) for agreements made, transactions effected or other things done by or in relation to the old energy company to be treated, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, as made, effected or done by or in relation to the new energy company;

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- (c) for references in an agreement, instrument or other document to the old energy company or to an employee or office holder with the old energy company to have effect, so far as may be necessary for the purposes of or in connection with a transfer in accordance with the scheme, with such modifications as are specified in the scheme;
  - (d) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the old energy company is not to terminate any of those contracts but is to be that periods of employment with that company are to count for all purposes as periods of employment with the new energy company;
  - (e) for proceedings commenced by or against the old energy company to be continued by or against the new energy company.
- (4) Sub-paragraph (3)(c) does not apply to references in an enactment or in subordinate legislation.
- (5) An energy transfer scheme may make provision for disputes as to the effect of the scheme between the old energy company and the new energy company to be referred to such arbitration as may be specified in or determined under the scheme.
- (6) Where a person is entitled, in consequence of an energy transfer scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property—
- (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it; and
  - (b) section 64 of the Law of Property Act 1925 (c. 20) (production and safe custody of documents) shall have effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention.
- (7) Where a person is entitled, in consequence of an energy transfer scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, subsections (1) and (2) of section 16 of the Land Registration (Scotland) Act 1979 (c. 33) (omission of certain clauses in deeds) shall have effect in relation to the transfer—
- (a) as if the transfer had been effected by deed; and
  - (b) as if the words “unless specially qualified” were omitted from each of those subsections.
- (8) In this paragraph references to a transfer in accordance with an energy transfer scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

**Commencement Information**

**1425** Sch. 21 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Effect of scheme*

- 8 (1) In relation to each provision of an energy transfer scheme for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—

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- (a) this Act shall have effect so as, without further assurance, to vest the property or interests, or those rights or liabilities, in the transferee at the time appointed by the court for the purposes of paragraph 3(4); and
  - (b) the provisions of that scheme in relation to that property or those interests, or those rights or liabilities, shall have effect from that time.
- (2) In this paragraph “the transferee”—
- (a) in relation to property, rights or liabilities transferred by an energy transfer scheme, means the new energy company; and
  - (b) in relation to interests, rights or liabilities created by such a scheme, means the person in whose favour, or in relation to whom, they are created.
- (3) In its application to Scotland, sub-paragraph (1) has effect with the omission of the words “without further assurance”.

#### Commencement Information

**I426** Sch. 21 para. 8 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### *Subsequent modification of scheme*

- 9
- (1) The Secretary of State may by notice to the old energy company and the new energy company modify an energy transfer scheme after it has taken effect, but only modifications to which both the old energy company and the new energy company have consented may be made.
  - (2) The notice must specify the time at which it is to take effect (the “modification time”).
  - (3) Where a notice is issued under this paragraph in relation to an energy transfer scheme, as from the modification time, the scheme shall for all purposes be treated as having taken effect, at the time appointed for the purposes of paragraph 3(4), with the modifications made by the notice.
  - (4) Those modifications may make—
    - (a) any provision that could have been included in the scheme when it took effect at the time appointed for the purposes of paragraph 3(4); and
    - (b) transitional provision in connection with provision falling within paragraph (a).
  - (5) In deciding whether to modify an energy transfer scheme, the Secretary of State must have regard, in particular, to—
    - (a) the public interest; and
    - (b) the effect the modification is likely to have (if any) upon the interests of third parties.
  - (6) Before modifying an energy transfer scheme that has taken effect, the Secretary of State must consult GEMA.
  - (7) The old energy company and the new energy company each have a duty to provide the Secretary of State with all information and other assistance that he may reasonably require for the purposes of, or in connection with, the exercise of the powers conferred on him by this paragraph.

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#### Commencement Information

**I427** Sch. 21 para. 9 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Transfers in the case of non-GB companies*

- 10 Where the old energy company is a non-GB company, the property, rights and liabilities of that company which may be transferred by an energy transfer scheme, or in relation to which interests, rights or liabilities may be created by such a scheme, are confined to—
- (a) property of the old energy company in Great Britain;
  - (b) rights and liabilities arising in relation to any such property; and
  - (c) rights and liabilities arising in connection with the affairs and business of the company so far as carried on in Great Britain.

#### Commencement Information

**I428** Sch. 21 para. 10 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Provision relating to foreign property etc.*

- 11 (1) Where there is a transfer in accordance with an energy transfer scheme of—
- (a) any foreign property, or
  - (b) a foreign right or liability,
- the old energy company and the new energy company must each take all requisite steps to secure that the vesting of the foreign property, right or liability in the new energy company is effective under the relevant foreign law.
- (2) Until the vesting of the foreign property, right or liability in the new energy company in accordance with the energy transfer scheme is effective under the relevant foreign law, the old energy company must—
- (a) hold the property or right for the benefit of the new energy company; or
  - (b) discharge the liability on behalf of the new energy company.
- (3) The old energy company must comply with any directions given to it by the new energy company in relation to the performance of the obligations under sub-paragraphs (1) and (2) of the old energy company.
- (4) Nothing in sub-paragraphs (1) to (3) prejudices the effect under the law of a part of Great Britain of the vesting of a foreign property, right or liability in the new energy company in accordance with an energy transfer scheme.
- (5) Where—
- (a) any foreign property, right or liability is acquired or incurred in respect of any other property, right or liability by a company, and
  - (b) by virtue of this paragraph, the company holds the other property or right for the benefit of the new energy company or is required to discharge the liability on behalf of the new energy company,
- the property, right or liability acquired or incurred shall immediately become the property, right or liability of the new energy company.

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- (6) The provisions of sub-paragraphs (1) to (5) shall have effect in relation to foreign property, rights or liabilities transferred to the new energy company under sub-paragraph (5) as they have effect in the case of property, rights and liabilities transferred in accordance with an energy transfer scheme.
- (7) References in this paragraph to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside Great Britain.
- (8) Expenses incurred under this paragraph by a company as the company from which anything is transferred shall be met by the new energy company.
- (9) An obligation imposed under this paragraph in relation to property, rights or liabilities shall be enforceable as if contained in a contract between the old energy company and the new energy company.

**Commencement Information**

**I429** Sch. 21 para. 11 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Application of Schedule to transfers to subsidiaries*

- 12 Where the proposed transfer falling within subsection (3) of section 155 is a transfer of the kind mentioned in subsection (4)(a) of that section, this Schedule shall have effect in relation to that transfer as if—
- (a) paragraph 3(1)(a) were omitted; and
  - (b) paragraph 3(6) had effect with “ the old energy company has consented may be made ” substituted for the words from “both” onwards.

**Commencement Information**

**I430** Sch. 21 para. 12 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Interpretation*

- 13 In this Schedule—
- “energy transfer scheme” has the meaning given by paragraph 3(1);
  - “new energy company” has the meaning given by paragraph 1;
  - “third party”, in relation to an energy transfer scheme or any modification of such a scheme, means a person who is neither—
    - (a) the old energy company; nor
    - (b) the new energy company.

**Commencement Information**

**I431** Sch. 21 para. 13 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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## SCHEDULE 22

Section 174

### PROCEDURE FOR APPEALS UNDER SECTION 173

#### *Application for permission to bring appeal*

- 1 (1) An application for permission to bring an appeal may be made only by sending a notice to the Commission requesting the permission.
- (2) Only a person who will be entitled under section 173 to bring the appeal if permission is granted may apply for permission.
- (3) Where GEMA publishes a decision to which section 173 applies, an application for permission is not to be made after the end of fifteen working days following the earliest day on which the decision was published.
- (4) An application for permission must be accompanied by all such information as may be required by appeal rules.
- (5) Those rules may require information contained in the application to be verified by a statement of truth.
- (6) The applicant must send GEMA—
- (a) a copy of his application; and
  - (b) such other information as may be required by appeal rules.
- (7) The applicant must also send a copy of that application and of that information to—
- (a) such persons (apart from GEMA) as appear to him to be affected by the decision appealed against; and
  - (b) such other persons as GEMA may require him to keep informed about his appeal.
- (8) The Commission's decision on an application for permission must be made before the end of ten working days following the day on which it received it.
- (9) The Commission's decision whether to grant permission is to be taken by an authorised member of the Commission.
- (10) A decision to grant permission may be made subject to conditions.
- (11) Those conditions may include—
- (a) conditions which limit the matters that are to be considered on the appeal in question;
  - (b) conditions for the purpose of expediting the determination of the appeal; and
  - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (12) Where a decision is made to grant or to refuse an application for permission, the Commission must notify the decision—
- (a) to the applicant;
  - (b) to GEMA; and
  - (c) to each person who was sent a copy of the application in accordance with sub-paragraph (7).



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### Commencement Information

**I432** Sch. 22 para. 1 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Addition of parties to appeal*

- 2 (1) This paragraph applies if—
- (a) before the end of twenty working days following the day of the making of an application for permission to bring an appeal, or
  - (b) within such longer period as an authorised member of the Commission may allow,
- a person falling within sub-paragraph (2) gives notice to the Commission asking to become a party to the appeal.
- (2) A person falls within this sub-paragraph if he—
- (a) is not the applicant for permission; but
  - (b) is a person who would have been entitled, at the time of the application, to make his own application to the Commission for permission to bring an appeal against the decision in question.
- (3) A person who gives a notice asking to become a party to an appeal must send GEMA—
- (a) a copy of the notice; and
  - (b) such other information as may be required by appeal rules.
- (4) That person must also send a copy of the notice and of that information to—
- (a) such persons (apart from GEMA) as appear to him to be affected by the decision appealed against; and
  - (b) such other persons as GEMA may require him to keep informed about his appeal.
- (5) An authorised member of the Commission may, on behalf of the Commission, give a direction that a person who has asked in accordance with this paragraph to become a party to an appeal is to be a party to that appeal.
- (6) A member of the Commission is not to give a direction under this paragraph if he considers that it would prevent the determination of the appeal within the period allowed by paragraph 6 to do so.
- (7) Where a direction is given under this paragraph—
- (a) the application for permission, and
  - (b) if permission is or has been granted, the appeal brought by the applicant and any other appeals that are considered with it,
- are to proceed (subject to any direction under sub-paragraph (8)(b)) as if the intervener had joined with the applicant in making that application and bringing the appeal.
- (8) A direction under this paragraph—
- (a) does not allow the intervener to rely on grounds of appeal not contained in the appellant's application for permission to bring an appeal;

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- (b) may allow the intervener to become a party to the appeal for the purpose of opposing it; and
  - (c) may be given subject to conditions.
- (9) The conditions of a direction under this paragraph may include—
- (a) conditions which limit the matters that are to be considered on the appeal in question;
  - (b) conditions for the purpose of expediting the determination of the appeal.

**Commencement Information**

**I433** Sch. 22 para. 2 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Suspension of decision*

- 3 (1) Where permission has been granted to bring an appeal against a decision to give a consent, an authorised member of the Commission may, on behalf of the Commission, direct that, pending the determination of the appeal—
- (a) the consent is not to have effect; or
  - (b) the consent is not to have effect to such extent as may be specified in the direction.
- (2) The power to give a direction under this paragraph is exercisable only where—
- (a) an application for its exercise has been made by the applicant for permission or by another person with interests or functions that entitle him, or would have entitled him, to appeal against the decision;
  - (b) the applicant for the exercise of the power would incur significant costs if the consent were to have effect, or to continue to have effect, before the determination of the appeal; and
  - (c) the balance of convenience does not otherwise require effect to be given to the consent pending that determination.
- (3) That power is exercisable at any time before the determination of the appeal.
- (4) A person making an application under this paragraph must notify GEMA.
- (5) Before determining whether to grant an application under this paragraph, the authorised member of the Commission must give GEMA an opportunity of making representations about the matter.
- (6) In this paragraph “consent” includes an approval or direction.

**Commencement Information**

**I434** Sch. 22 para. 3 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Time limit for representations and observations by GEMA*

- 4 (1) Where GEMA wishes to make representations or observations to the Commission about—
- (a) a decision in respect of which permission to bring an appeal has been granted,

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- (b) GEMA's reasons for that decision, or
  - (c) the grounds on which an appeal is being brought against that decision,
- it must do so before the end of fifteen working days following the day of the making of the application for permission to bring the appeal.
- (2) Where more than one application for permission to bring an appeal was made in accordance with paragraph 1 in respect of the same decision, that period of fifteen working days begins to run from the end of the day of the making of the last of those applications to be made.
  - (3) GEMA must send a copy of its representations and observations to every person who received a copy of—
    - (a) the application for permission to bring the appeal; or
    - (b) a notice by which a person asked to become a party to the appeal.

#### Commencement Information

I435 Sch. 22 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Consideration and determination of appeal by group*

- 5 (1) The following functions of the Commission must be carried out, in accordance with appeal rules, by a group selected for the purpose by the Chairman—
  - (a) considering an appeal;
  - (b) determining an appeal; and
  - (c) giving directions and taking other steps to give effect to the Commission's determination on an appeal.
- (2) A group must consist of three members of the Commission.
- (3) The Chairman must appoint one of the members of a group to be its chairman.
- (4) The Chairman may select a member of the Commission to replace another as a member of a group if—
  - (a) the person being replaced has ceased to be a member of the Commission;
  - (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform his duties as a member of the group; or
  - (c) it appears to the Chairman that it is inappropriate, because of a particular interest of the person being replaced, for that person to remain a member of the group.
- (5) The replacement of a member of a group does not prevent the group from continuing after his replacement with anything begun before it.
- (6) In selecting members of a group (whether originally or by way of replacement) the Chairman must ensure that at least one of the group's members is a person appointed to the Commission under section 104(1) of the Utilities Act 2000 (c. 27) (specialist members).
- (7) The persons who may be selected by the Chairman to be (or to replace) a member of a group, or who may be appointed by him to be the chairman of a group, include himself.

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- (8) A decision of a group is effective if, and only if—
- (a) all the members of the group are present when it is made; and
  - (b) at least two members of the group are in favour of the decision.

**Commencement Information**

**I436** Sch. 22 para. 5 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Timetable for determination of appeal*

- 6
- (1) The group with the function of determining an appeal must determine that appeal before the end of thirty working days following the last day for the making of representations or observations by GEMA in accordance with paragraph 4.
  - (2) If the group with the function of determining an appeal is satisfied that there are good reasons for departing from the normal requirements, it may (on one occasion only) extend that period of thirty working days by not more than ten more working days.
  - (3) The Commission must ensure that an extension under sub-paragraph (2) is notified to every party to the appeal.

**Commencement Information**

**I437** Sch. 22 para. 6 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Matters to be considered on appeal*

- 7
- The group with the function of determining an appeal, if it thinks it necessary to do so for the purpose of securing the determination of the appeal within the period allowed by paragraph 6, may disregard—
- (a) all matters raised by the appellant or an intervener that were not raised by him at the time of his application for permission to bring the appeal or in his request under paragraph 2; and
  - (b) all matters raised by GEMA that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 4.

**Commencement Information**

**I438** Sch. 22 para. 7 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Production of documents*

- 8
- (1) The Commission may, by notice, require a person to produce to the Commission the documents specified or otherwise identified in the notice.
  - (2) The power to require the production of a document is a power to require its production—
    - (a) at the time and place specified in the notice; and
    - (b) in a legible form.

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- (3) No person is to be compelled under this paragraph to produce a document that he could not be compelled to produce in civil proceedings in the High Court or Court of Session.
- (4) The Commission may take copies of a document produced to it under this paragraph.
- (5) A notice for the purposes of this paragraph may be issued on the Commission's behalf by any member of the Commission or by its secretary.

#### Commencement Information

**I439** Sch. 22 para. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Oral hearings*

- 9 (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—
  - (a) by a person considering an application for permission to bring an appeal;
  - (b) by a person considering an application for a direction under paragraph 2 or 3; or
  - (c) by a group with the function of determining an appeal;and, for that purpose, such a person or group may administer oaths.
- (2) The Commission may, by notice, require a person—
  - (a) to attend at a time and place specified in the notice; and
  - (b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).
- (3) At any oral hearing the person or group conducting the hearing may require—
  - (a) the applicant, or the appellant or any intervener, if he is present at the hearing, or
  - (b) a person attending the hearing as a representative of a person mentioned in paragraph (a) or of GEMA,to give evidence or to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.
- (5) If a person is not present at a hearing to be subjected to a requirement under sub-paragraph (3)—
  - (a) the Commission is not required to give notice to him under sub-paragraph (2); and
  - (b) the person or group conducting the hearing may determine the application or appeal without hearing his evidence, representations or observations.
- (6) No person is to be compelled under this paragraph to give evidence which he could not be compelled to give in civil proceedings in the High Court or Court of Session.
- (7) Where a person is required under this paragraph to attend at a place more than ten miles from his place of residence, the Commission must pay him the necessary expenses of his attendance.

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- (8) A notice for the purposes of this paragraph may be issued on the Commission’s behalf by any member of the Commission or by its secretary.

**Commencement Information**

**I440** Sch. 22 para. 9 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Written statements*

- 10 (1) The Commission may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—
- (a) a person who is considering, or is to consider, an application for a direction under paragraph 3; or
  - (b) a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
- (a) to specify the time and place at which it is to be produced; and
  - (b) to require it to be verified by a statement of truth;
- and a statement produced in accordance with this paragraph must be disregarded unless it is so verified.
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which he could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.
- (4) A notice for the purposes of this paragraph may be issued on the Commission’s behalf by any member of the Commission or by its secretary.

**Commencement Information**

**I441** Sch. 22 para. 10 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Defaults in relation to evidence*

- 11 (1) If a person (“the defaulter”)—
- (a) fails to comply with a notice or other requirement issued or imposed under paragraph 8, 9 or 10,
  - (b) in complying with a notice under paragraph 10, makes a statement that is false in any material particular, or
  - (c) in providing information otherwise verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,
- a member of the Commission may certify the failure, or the fact that such a false statement has been made, to the High Court or the Court of Session.
- (2) The High Court or Court of Session may inquire into a matter certified to it under this paragraph; and if, after having heard—
- (a) any witness against or on behalf of the defaulter, and
  - (b) any statement in his defence,

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it is satisfied that the defaulter did, without reasonable excuse, refuse or otherwise fail to comply with the notice or other requirement, or made the false statement, that court may punish him as if he had been guilty of contempt of court.

- (3) Where the High Court or Court of Session has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).
- (4) A person who wilfully alters, suppresses or destroys a document that he has been required to produce under paragraph 8 is guilty of an offence and shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

#### Commencement Information

**I442** Sch. 22 para. 11 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Appeal rules*

- 12 (1) The Commission may make rules regulating the conduct and disposal of appeals under section 173.
- (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—
  - (a) the taking of evidence at an oral hearing; or
  - (b) the making of representations or observations at such a hearing.
- (3) The Commission must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (4) Before making rules under this paragraph, the Commission must consult such persons as it considers appropriate.
- (5) Rules under this paragraph may make different provision for different cases.

#### Commencement Information

**I443** Sch. 22 para. 12 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Costs*

- 13 (1) A group that determines an appeal must make an order requiring the payment to the Commission of the costs incurred by the Commission in connection with the appeal.
- (2) Where the appeal is allowed, the order must require those costs to be paid by GEMA.
- (3) Where the appeal is dismissed, the order must require those costs to be paid by the appellant but, if there is more than one appellant—

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- (a) may provide that only such one or more of the appellants as may be specified in the order is to be liable for the costs; and
  - (b) may determine the proportions in which the appellants so specified are to be so liable.
- (4) In sub-paragraph (3) references to an appellant do not include references to an intervener.
- (5) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another in respect of costs incurred by that other party in connection with the appeal.
- (6) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of five days beginning with the day after the making of the order.
- (7) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (6) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

#### Commencement Information

**I444** Sch. 22 para. 13 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### *The Secretary of State's power to modify time limits*

- 14 (1) The Secretary of State may by order modify any period specified in this Schedule as the period within which anything must be done.
- (2) An order under this paragraph is subject to the negative resolution procedure.

#### Commencement Information

**I445** Sch. 22 para. 14 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### *Interpretation of Schedule*

- 15 (1) In this Schedule—
- “appeal” means an appeal under section 173;
  - “appeal rules” means rules under paragraph 12;
  - “authorised member of the Commission”, in relation to a power exercisable in the case of an appeal or an application for permission to bring an appeal, means—
    - (a) the Chairman;
    - (b) a member of the Commission authorised by the Chairman to exercise that power; or
    - (c) the chairman of the group which has, or (if permission is granted) will have, the function of determining the appeal;
  - “the Chairman” means the Chairman of the Commission;
  - “the Commission” means the Competition Commission;
  - “a group” means a group selected in accordance with paragraph 5;



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“intervener” means a person who has become a party to an appeal in pursuance of a direction under paragraph 2;

“statement of truth” means a statement that the person producing the document believes the facts stated in the document to be true;

“working day” means any day other than—

- (a) Saturday or Sunday;
- (b) Christmas Day or Good Friday;
- (c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971 (c. 80).

(2) References in this Schedule to a party to an appeal are references to—

- (a) the appellant;
- (b) an intervener; or
- (c) GEMA.

#### Commencement Information

**I446** Sch. 22 para. 15 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## SCHEDULE 23

Section 197

### REPEALS

#### PART 1

#### REPEALED PROVISIONS

#### Commencement Information

**I447** Sch. 23 Pt. 1 in force at 1.9.2004 for specified purposes by [S.I. 2004/2184](#), art. 2(2), [Sch. 2](#)

**I448** Sch. 23 Pt. 1 in force at 5.10.2004 for specified purposes by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**I449** Sch. 23 Pt. 1 in force at 1.12.2004 for specified purposes by [S.I. 2004/2575](#), art. 2(2), [Sch. 2](#)

| <i>Short title and chapter</i>           | <i>Extent of repeal</i>  |
|--|--|
| Atomic Energy Authority Act 1954 (c. 32) | Section 2(2)(d).<br>Section 9(8).<br>In Schedule 1, paragraph 4.<br>In Schedule 3, the paragraphs relating to section 3 of the Special Constables Act 1923, section 2 of the Metropolitan Police Act 1860 and section 6 of the Public Stores Act 1875. |
| Pipe-lines Act 1962 (c. 58)              | In section 9(7), the words “and section 10B”.<br>In section 9A(7), the words “and section 10B”.<br>Section 10B.<br>In section 10C—   |

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|   | (a) in subsection (1), the words “to which this section applies (a “relevant gas pipe-line”); and   |
|   | (b) in subsections (2) to (11), the word “relevant” wherever occurring.   |
|   | In section 66(1), the definition of “interconnector”.   |
| Continental Shelf Act 1964 (c. 29)                            | In section 8(1), the words “high voltage”.  |
| Nuclear Installations Act 1965 (c. 57)                        | Section 27(2), (3) and (6).<br>In Schedule 1—<br>(a) paragraph 4(1) and (3);<br>(b) in paragraph 7, sub-paragraph (b) and the word “and” immediately preceding it.  |
| Atomic Energy Authority Act 1971 (c. 11)                      | In section 4—<br>(a) subsections (1) and (3); and<br>(b) in subsection (4) the words “subsection (1) or” and “the Nuclear Fuels Company, or between the Authority and”.<br>Section 11(1) to (3).<br>Section 19.<br>Section 20(4).   |
| Atomic Energy Authority (Special Constables) Act 1976 (c. 23) | Section 1.<br>Section 2.<br>Section 4.  |
| Nuclear Industry (Finance) Act 1977 (c. 7)                    | In section 1(1), the words “or the Radiochemical Centre Limited (“T.R.C.L.”) and “concerned”.<br>In section 2(1), paragraph (b) and the word “and” immediately preceding it.  |
| Atomic Energy (Miscellaneous Provisions) Act 1981 (c. 48)     | Section 1(6).   |
| Police and Criminal Evidence Act 1984 (c. 60)                 | Section 6(3) and (4).<br>In section 23, the word “and” at the end of the definition of “premises”.  |
| Gas Act 1986 (c. 44)  | In section 7(1), paragraph (c) and the word “or” immediately preceding it.  |
| Ministry of Defence Police Act 1987 (c. 4)                    | In section 2(5), the definition of “United Kingdom Atomic Energy Authority Constabulary”.<br>In section 2A(4), the definition of “United Kingdom Atomic Energy Authority Constabulary” and the word “and” immediately preceding it.<br>In section 2B(3), the definition of “United Kingdom Atomic Energy Authority Constabulary”. |

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|---|---|
|   | Section 7(3) and (4)(a).  |
| Electricity Act 1989 (c. 29)                        | <p>In section 4(1)(b), the word “or” at the end.</p> <p>In section 6—</p> <p>(a) in subsection (1)(c), the word “or” at the end; and</p> <p>(b) in subsection (9), the definition of “authorised area”.</p> <p>In section 11A(10), in paragraph (b) of the definition of “relevant licence holder”, the words “(by virtue of anything done under section 33(2) of the Utilities Act 2000)”.</p> <p>In section 64(1), the definition of “authorised area”.</p> |
| Atomic Energy Authority Act 1995 (c. 37)            | <p>Sections 1 to 10.</p> <p>Sections 12 and 13.</p> <p>Schedules 1 to 4.</p>  |
| Petroleum Act 1998 (c. 17)                          | <p>Sections 17A and 17B.</p> <p>In section 17H—</p> <p>(a) in subsection (1) the words “17B(6) and”; and</p> <p>(b) in subsection (4), the words “17B(1) and (3)”.</p> <p>In section 27(1A), the words “of downstream gas pipelines and”.</p> <p>In section 28(1), the definition of “downstream gas pipeline”.</p>   |
| Terrorism Act 2000 (c. 11)                          | In section 44(4C), the word “or” at the end of paragraph (a).   |
| Utilities Act 2000 (c. 27)                          | <p>Section 28(3)(b).</p> <p>In section 33(1), the words “transmission licences,”.</p> <p>Section 53(5).</p> <p>In Schedule 6, paragraph 31(2)(a).</p>   |
| Criminal Justice and Police Act 2001 (c. 16)        | Section 88(7)(c).   |
| Anti-terrorism, Crime and Security Act 2001 (c. 24) | <p>Section 76.</p> <p>Section 78(2).</p> <p>In section 98(6), paragraph (b) and the word “and” immediately preceding it.</p> <p>In section 100(4), the definition of “United Kingdom Atomic Energy Authority Constabulary” and the word “and” immediately preceding it.</p> <p>In Schedule 7, paragraph 26.</p>   |
| Police Reform Act 2002 (c. 30)                      | In section 82(5), the definition of “the United Kingdom Atomic Energy Authority Constabulary”.  |

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## PART 2

### SAVINGS ETC.

VALID FROM 01/04/2005

- 1 The repeal by this Act of section 19 of the Atomic Energy Authority Act 1971 (c. 11) does not affect so much of any designation under that section as identifies a person for the purposes of obligations imposed by regulations made under section 77 of the Anti-terrorism, Crime and Security Act 2001 (c. 24).
- 2 The repeal by this Act of a provision of the Atomic Energy Authority Act 1995 (c. 37) does not affect that provision so far as it has effect in relation to—
  - (a) a transfer scheme under that Act that was made before the coming into force of the repeal; or
  - (b) a company that is a successor company by reference to such a scheme.

#### Commencement Information

**I450** Sch. 23 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

VALID FROM 01/04/2005

- 3 The repeal by this Act of section 76 of the Anti-terrorism, Crime and Security Act 2001 does not affect the construction of any subordinate legislation which defines expressions by reference to definitions contained in that section.

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