



Energy Act 2004

2004 CHAPTER 20

PART 1

THE CIVIL NUCLEAR INDUSTRY

CHAPTER 1

NUCLEAR DECOMMISSIONING

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

II S. 33 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Changes to legislation: Energy Act 2004, Cross Heading: Supplementary provisions of Chapter 1 of Part 1 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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.”

Commencement Information

I2 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

I3 S. 35 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004, Cross Heading: Supplementary provisions of Chapter 1 of Part 1 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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.
- (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,

Changes to legislation: Energy Act 2004, Cross Heading: Supplementary provisions of Chapter 1 of Part 1 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- 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;
 - (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

I4 S. 36 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

I5 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

Changes to legislation: Energy Act 2004, Cross Heading: Supplementary provisions of Chapter 1 of Part 1 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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;
 - “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).

Changes to legislation: Energy Act 2004, Cross Heading: Supplementary provisions of Chapter 1 of Part 1 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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) [^{F1}Schedule 6 to the Companies Act 2006] (meaning of “voting rights” etc.) applies for construing references in this Chapter to holding voting rights in a company as it applies for construing [^{F1}section 1159] of that Act.
- (6) Sections 17 to 20 bind the Crown.
- (7) In this section—
- “company” [^{F2}means a company as defined in section 1(1) of the Companies Act 2006];
- “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 [^{F3}the 1993 Act][^{F3}the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)].

Textual Amendments

- F1** Words in s. 37(5) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 220(2)(a)** (with art. 10)
- F2** Words in s. 37(7) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 220(2)(b)** (with art. 10)
- F3** Words in s. 37(7) substituted (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 17(3)** (with reg. 1(2), Sch. 4) and further substituted (E.W.) (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), **Sch. 29 para. 16(3)** (with regs. 1(3), 77-79, Sch. 4)

Commencement Information

- I6** S. 37 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), **Sch. 1**

Changes to legislation: Energy Act 2004, Cross Heading: Supplementary provisions of Chapter 1 of Part 1 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

17 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](#)

Changes to legislation:

Energy Act 2004, Cross Heading: Supplementary provisions of Chapter 1 of Part 1 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)