

---

**Changes to legislation:** Energy Act 2004, Cross Heading: Compensation for third parties 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

---

## SCHEDULES

### SCHEDULE 5

#### SUPPLEMENTARY PROVISIONS ABOUT NUCLEAR TRANSFER SCHEMES

##### *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 subparagraph (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 subparagraphs (5) and (6) as—

*Changes to legislation: Energy Act 2004, Cross Heading: Compensation for third parties 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*

- (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.

**Changes to legislation:** Energy Act 2004, Cross Heading: Compensation for third parties 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](#)

(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**

**II** Sch. 5 para. 11 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**Changes to legislation:**

Energy Act 2004, Cross Heading: Compensation for third parties 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\(2\)\(b\)](#)