
Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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 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—
- he is an undischarged bankrupt or has had his estate sequestrated without being discharged [^{F1}or a moratorium period under a debt relief order applies in relation to him (under Part 7A of the Insolvency Act 1986)];
 - he is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order [^{F2}or a debt relief restrictions order or an interim debt relief restrictions order (under Schedule 4ZB of the Insolvency Act 1986)];
 - 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;
 - 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;
 - he is unfit for office by reason of misbehaviour; or
 - 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.

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(9) Oral notice is ineffective for the purposes of sub-paragraph (5) or (6).

Textual Amendments

- F1** Words in Sch. 1 para. 1(7)(a) inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, **Sch. 2 para. 50(2)(a)** (with art. 5)
- F2** Words in Sch. 1 para. 1(7)(b) inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, **Sch. 2 para. 50(2)(b)** (with arts. 5, 6)

Commencement Information

- I1** 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

- I2** [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.

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- (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.
- (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

I3 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;

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- (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

I4 Sch. 1 para. 4 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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

I5 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

I6 Sch. 1 para. 6 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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PART 2

PROCEEDINGS OF NDA

Committees of the NDA and advisory committees

- 7 (1) The NDA may make such arrangements as it thinks fit—
- (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

I7 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.

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Commencement Information

18 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—
- (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

19 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.

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- (4) The NDA must publish, in such manner as it considers appropriate, the arrangements made under this paragraph.

Commencement Information

I10 Sch. 1 para. 10 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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

I11 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

I12 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;

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- (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—
- (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

I13 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

I14 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

I15 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).

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Commencement Information

I16 Sch. 1 para. 16 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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

I17 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

I18 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

I19 Sch. 1 para. 19 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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—

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- (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.

Commencement Information

I20 Sch. 2 para. 1 in force at 31.3.2005 by S.I. 2005/442, art. 2(2), Sch. 2

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.

Commencement Information

I21 Sch. 2 para. 2 in force at 31.3.2005 by S.I. 2005/442, art. 2(2), Sch. 2

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—

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- (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—
- (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.

Commencement Information

I22 Sch. 2 para. 3 in force at 31.3.2005 by S.I. 2005/442, art. 2(2), Sch. 2

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—
- [^{F3}(za) the Office for Nuclear Regulation;]
 - (a) the Health and Safety Executive;
 - (b) the Environment Agency;
 - [^{F4}(ba) the Natural Resources Body for Wales;]
 - (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.

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- (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 subparagraph (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.

Textual Amendments

- F3** Sch. 2 para. 4(2)(za) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 79(2)**; S.I. 2014/251, art. 4
- F4** Sch. 2 para. 4(2)(ba) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 427(2)** (with Sch. 7)

Commencement Information

- I23** Sch. 2 para. 4 in force at 31.3.2005 by S.I. 2005/442, art. 2(2), **Sch. 2**

Approval of strategy

- 5 (1) This paragraph applies where—
 - (a) anything is submitted for approval under this Schedule; or
 - (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),

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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 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;
 - [^{F5}(aa) the Office for Nuclear Regulation;]
 - (b) the Health and Safety Executive;
 - (c) the Environment Agency;
 - [^{F6}(ca) the Natural Resources Body for Wales;]
 - (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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Textual Amendments

- F5** Sch. 2 para. 5(9)(aa) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 79(3)**; S.I. 2014/251, art. 4
- F6** Sch. 2 para. 5(9)(ca) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 427(3)** (with Sch. 7)

Commencement Information

- I24** Sch. 2 para. 5 in force at 31.3.2005 by S.I. 2005/442, art. 2(2), **Sch. 2**

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.

Commencement Information

- I25** Sch. 2 para. 6 in force at 31.3.2005 by S.I. 2005/442, art. 2(2), **Sch. 2**

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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

I26 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—
 - [^{F7}(za) the Office for Nuclear Regulation;]
 - (a) the Health and Safety Executive;
 - (b) the Environment Agency;
 - [^{F8}(ba) the Natural Resources Body for Wales;]
 - (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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

- (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
 - (b) is to come into force during the year to which the plan relates.

Textual Amendments

- F7** Sch. 3 para. 2(1)(za) inserted (1.4.2014) by [Energy Act 2013 \(c. 32\), s. 156\(1\), Sch. 12 para. 80\(2\)](#); [S.I. 2014/251, art. 4](#)
- F8** Sch. 3 para. 2(1)(ba) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 428\(2\)](#) (with Sch. 7)

Commencement Information

- I27** 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

- (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;
 - [^{F9}(aa) the Office for Nuclear Regulation;]
 - (b) the Health and Safety Executive;
 - (c) the Environment Agency;
 - [^{F10}(ca) the Natural Resources Body for Wales;]
 - (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.

Textual Amendments

- F9** Sch. 3 para. 3(8)(aa) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), Sch. 12 para. 80(3); S.I. 2014/251, art. 4
- F10** Sch. 3 para. 3(8)(ca) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 428(3) (with Sch. 7)
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Commencement Information

- I28** 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—

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- (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 subparagraph (6) the NDA must have regard to whether the harm that would be caused by publication is likely to outweigh the benefits.

Commencement Information

I29 Sch. 3 para. 4 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

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

I30 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,

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ends (if it would not otherwise do so) when it ceases to be an NDA company.

Commencement Information

I31 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 [F11No qualifying charitable donations made]—
- (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 [F12Part 6 of the Corporation Tax Act 2010].

Textual Amendments

- F11** Words in Sch. 4 para. 3 substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 437(a) (with Sch. 2)
- F12** Words in Sch. 4 para. 3 substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 437(b) (with Sch. 2)

Commencement Information

I32 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—
- (a) the lessor is the NDA or an NDA company;
 - (b) the lessee is the NDA or an NDA company;
 - (c) the lessee is carrying on exempt activities; and
 - (d) 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

I33 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

F135

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Textual Amendments

- F13** Sch. 4 para. 5 omitted (with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 27 para. 25](#)

Residue of qualifying expenditure on industrial buildings

F14₆

Textual Amendments

- F14** Sch. 4 para. 6 omitted (with effect in accordance with Sch. 27 para. 30(1) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 27 para. 25](#)

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

- I34** [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
 - (f) rights and liabilities under an enactment, ^{F15}EU instrument or subordinate legislation.

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- (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.

Textual Amendments

F15 Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3)4(2)6(4)(5))

Commencement Information

I35 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;

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- (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;
 - (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

I36 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

- (3) A nuclear transfer scheme may provide for—
- (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

I37 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).

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

- (3) In its application to Scotland, sub-paragraph (1) has effect with the omission of the words “without further assurance”.

Commencement Information

I38 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

- (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 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

I39 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

I40 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

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- (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,
 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

I41 [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.

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- (3) If—
- (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

I42 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 [^{F16}2006 regulations] apply to a transfer of an undertaking [^{F17}or business] or part of an undertaking [^{F17}or business]—
- (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 [^{F18}that undertaking or business or that part of an undertaking or business] was vested immediately before the coming into force of the transfer.
- [^{F19}(1A) The 2006 regulations apply to a service provision change—
- (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 by whom the activities

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affected by the service provision change were carried out immediately before the coming into force of the service provision change.]

- (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 ^[F20]2006 regulations] applicable to a transfer ^[F21](or service provision change)] 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 ^[F22](or service provision change)], means the person who is the transferor in relation to that transfer ^[F22](or service provision change)] for the purposes of the ^[F23]2006 regulations].
- (4) In this paragraph—
- “the 1981 regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794);
- ^[F24]references to a service provision change are references to a service provision change falling within regulation 3(1)(b) of the 2006 regulations.]

Textual Amendments

- F16** Words in Sch. 5 para. 10(1) substituted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(2\)](#)
- F17** Words in Sch. 5 para. 10(1) inserted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(3\)\(a\)](#)
- F18** Words in Sch. 5 para. 10(1) substituted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(3\)\(b\)](#)
- F19** Sch. 5 para. 10(1A) inserted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(4\)](#)
- F20** Words in Sch. 5 para. 10(2) substituted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(2\)](#)
- F21** Words in Sch. 5 para. 10(2) inserted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(5\)](#)
- F22** Words in Sch. 5 para. 10(3) inserted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(6\)](#)
- F23** Words in Sch. 5 para. 10(3) substituted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(2\)](#)
- F24** Words in Sch. 5 para. 10(4) substituted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 14\(7\)](#)

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Commencement Information

I43 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—
- (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

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- (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.
- (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,

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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

I44 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.

Commencement Information

I45 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—

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“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

I46 Sch. 5 para. 13 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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;

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- “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” [^{F25}means a company as defined in section 1(1) of the Companies Act 2006].

Textual Amendments

- F25** Words in Sch. 6 para. 1(3) 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\(8\)\(a\)](#) (with art. 10)

Commencement Information

- I47** 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;
 - (b) shall be issued as fully paid; and
 - (c) shall be treated for the purposes of [^{F26}the Companies Act 2006] 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

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- (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).

Textual Amendments

F26 Words in [Sch. 6 para. 2\(4\)\(c\)](#) 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\(8\)\(b\)](#) (with art. 10)

Commencement Information

I48 [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

I49 [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

I50 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

I51 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) [F27 section 830 of the Companies Act 2006] (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 [F28 section 831 of the Companies Act 2006] (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

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reserves (subject to any modification of the direction by a subsequent direction under sub-paragraph (4)).

- (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 ^{F29}section 391 of the Companies Act 2006];
 - “called-up share capital” has the meaning given by ^{F30}section 547 of that Act];
 - “net assets” has the meaning given by ^{F31}section 831(2) of ^{F32}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 ^{F33}section 831(4) of that Act.

Textual Amendments

- F27** Words in Sch. 6 para. 6(2)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(2)(a)** (with arts. 6, 11, 12)
- F28** Words in Sch. 6 para. 6(3) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(2)(b)** (with arts. 6, 11, 12)
- F29** Words in Sch. 6 para. 6(8) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(2)(c)(i)** (with arts. 6, 11, 12)
- F30** Words in Sch. 6 para. 6(8) 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(8)(c)(i)** (with art. 10)
- F31** Words in Sch. 6 para. 6(8) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(2)(c)(iii)** (with arts. 6, 11, 12)
- F32** Words in Sch. 6 para. 6(8) 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(8)(c)(ii)** (with art. 10)
- F33** Words in Sch. 6 para. 6(8) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(2)(c)(iv)** (with arts. 6, 11, 12)

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I52 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) [^{F34}sections 836 to 840][^{F35}of the Companies Act 2006] (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—
- (a) references in [^{F36}section 836] to the company’s accounts and to accounts relevant under that section, and
 - (b) references in [^{F37}section 839] to initial accounts,
- included references to such accounts as, on the assumptions stated in subparagraph (3), would have been prepared under [^{F38}section 394] of that Act in respect of the relevant year (“the relevant accounts”).
- (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 [^{F39}section 391 of the Companies Act 2006];
 - “complete financial year” means a financial year ending with 31st March;
 - “distribution” has the same meaning as in [^{F40}Part 23 of the Companies Act 2006 (see section 829 of that Act)];
 - “the relevant year”, in relation to a transfer date, means the last complete financial year ending before that date;

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“a transfer date”, in relation to the transferee company, means the date of the coming into force of the relevant scheme.

Textual Amendments

- F34** Words in Sch. 6 para. 7(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(3)(a)(i)** (with arts. 6, 11, 12)
- F35** Words in Sch. 6 para. 7(2) inserted (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(8)(d)(i)** (with art. 10)
- F36** Words in Sch. 6 para. 7(2)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(3)(a)(ii)** (with arts. 6, 11, 12)
- F37** Words in Sch. 6 para. 7(2)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(3)(a)(iii)** (with arts. 6, 11, 12)
- F38** Words in Sch. 6 para. 7(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(3)(a)(iv)** (with arts. 6, 11, 12)
- F39** Words in Sch. 6 para. 7(5) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), **Sch. 1 para. 228(3)(b)** (with arts. 6, 11, 12)
- F40** Words in Sch. 6 para. 7(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(8)(d)(ii)** (with art. 10)

Commencement Information

- I53** 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

- I54** Sch. 6 para. 8 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

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—

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- (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” [^{F41}means a company as defined in section 1(1) of the Companies Act 2006].

Textual Amendments

F41 Words in Sch. 7 para. 1(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\(9\)](#) (with art. 10)

Commencement Information

I55 Sch. 7 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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.

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- (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

I56 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

I57 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.
- (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.

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- (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

I58 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—
 - (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;

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- (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

I59 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;
 - (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

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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

I60 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.
- (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

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- (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

I61 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
 - “statutory accounts”, in relation to a company, means accounts of that company prepared for the purposes of a provision of [^{F42}the Companies Act 2006], including group accounts.

Textual Amendments

F42 Words in Sch. 7 para. 8(4) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 229\(a\)](#) (with arts. 6, 11, 12)

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Commencement Information

I62 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 [^{F43}the Companies Act 2006], are laid before the company at that meeting, and
 - (b) all documents which are annexed or attached to those accounts.

Textual Amendments

F43 Words in [Sch. 7 para. 9\(a\)](#) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 229\(b\)](#) (with arts. 6, 11, 12)

Commencement Information

I63 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

Modifications etc. (not altering text)

C1 [Sch. 8](#): power to amend conferred (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), [ss. 315, 334\(2\)\(o\)](#)

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;

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(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;

“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).

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- (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—
- (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” [^{F44}means a company as defined in section 1(1) of the Companies Act 2006].

Textual Amendments

F44 Words in Sch. 8 para. 1(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\(10\)](#) (with art. 10)

Commencement Information

I64 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

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- (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.
- (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

I65 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.

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Commencement Information

I66 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—
- (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.

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- (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;
 - (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

I67 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.

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- (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—
- (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

I68 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

I69 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;

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- (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—
- (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

I70 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

I71 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.

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- (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.
- (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-

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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
 - (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

I72 Sch. 8 para. 9 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

^{F45}Persons entitled to reformed protection under paragraphs 10 and 11

Textual Amendments

F45 Sch. 8 para. 9A and cross-heading inserted (27.2.2024) by The Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 (S.I. 2024/219), regs. 1(1), 5(2)

- 9A. (1) For the purposes of this Part of the Schedule, a person is entitled to reformed protection in relation to a nuclear transfer scheme or any transfer arrangements if the person is entitled to pension protection in relation to the scheme or arrangements, and—
- (a) either—
 - (i) paragraph 9(7) applies to the person by reference to a relevant Section of the CNPP, or
 - (ii) that is not the case but the person has been a participant in a relevant Section of the CNPP,
 and the benefits which the person is accruing or would accrue or has accrued under that Section are, or include, reformed benefits, or
 - (b) either—
 - (i) paragraph 9(7) applies to the person by reference to the SLC Section of the ME Group of the ESPS, or
 - (ii) that is not the case but the person has been a participant in that Section,
 and the benefits which the person is accruing or would accrue or has accrued under that Section are, or include, reformed benefits.

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- (2) In this paragraph—
- (a) “the CNPP” means the Combined Nuclear Pension Plan constituted by the deed made on 28 March 2012 by the NDA and the deeds supplemental to that deed;
 - (b) “the ESPS” means the Electricity Supply Pension Scheme established by a resolution of the Electricity Council passed on 20 January 1983, as amended from time to time;
 - (c) “the ME Group” means the Magnox Electric Group of the ESPS, being one of the groups into which the ESPS is divided under the provisions of the ESPS;
 - (d) “reformed benefits” means defined benefits under a structure that, as a result of amendments made in pursuance of regulations under section 311 of the Energy Act 2023, is a career average revalued earnings structure;
 - (e) “relevant Section of the CNPP” means any of the following Sections into which the CNPP is divided (under clause 7 of the deed made on 28 March 2012 as it stood on 1 May 2022)—
 - (i) Closed;
 - (ii) DSRL;
 - (iii) GPS DRS;
 - (iv) GPS SLC;
 - (v) LLWR;
 - (vi) Magnox;
 - (vii) Nirex;
 - (viii) Sellafield;
 - (f) “the SLC Section of the ME Group of the ESPS” means the SLC Section of the ME Group, being one of the Sections into which the ME Group is divided under the provisions of the ESPS.
- (3) Where—
- (a) at any time after 1 May 2022, any of the Sections named in sub-paragraph (2) (e)(i) to (viii) is re-named, or has merged with another of those Sections (including by a transfer of the Section and another of those Sections to a new Section), a reference in sub-paragraph (2)(e) to that Section is to be read as, or as including, a reference to the re-named or merged Section;
 - (b) at any time after the day on which the Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 come into force, the SLC Section of the ME Group of the ESPS is re-named, or has merged with another Section (including by transfer of that Section to a new Section), then a reference to that Section is to be read as, or as including, a reference to the re-named or merged Section.]

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.

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- (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,
- 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—
- [^{F46}(za) in the case of a person entitled to reformed protection in relation to the nuclear transfer scheme who falls within paragraph 9A(1)(a), the Section mentioned in paragraph 9A(1)(a);
 - (zb) in the case of a person entitled to reformed protection in relation to the nuclear transfer scheme who falls within paragraph 9A(1)(b), the Section mentioned in paragraph 9A(1)(b);]
 - (a) in the case of a person [^{F47}who is not entitled to reformed protection in relation to the nuclear transfer scheme and] 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—
- [^{F48}(za) in a case falling within sub-paragraph (6)(za), the relevant time in relation to the person on the first occasion on which the person was owed a duty under

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either sub-paragraph (2) or paragraph 11(3) after the making of amendments to the Section mentioned in paragraph 9A(1)(a) in pursuance of regulations under section 311 of the Energy Act 2023;

(zb) in a case falling within sub-paragraph (6)(zb), the relevant time in relation to the person on the first occasion on which the person was owed a duty under either sub-paragraph (2) or paragraph 11(3) after the making of amendments to the Section mentioned in paragraph 9A(1)(b) in pursuance of regulations under section 311 of the Energy Act 2023;]

(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.

Textual Amendments

F46 Sch. 8 para. 10(6)(za)(zb) inserted (27.2.2024) by The Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 (S.I. 2024/219), regs. 1(1), **5(3)(a)(i)**

F47 Words in Sch. 8 para. 10(6)(a) inserted (27.2.2024) by The Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 (S.I. 2024/219), regs. 1(1), **5(3)(a)(ii)**

F48 Sch. 8 para. 10(7)(za)(zb) inserted (27.2.2024) by The Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 (S.I. 2024/219), regs. 1(1), **5(3)(b)**

Commencement Information

I73 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—

(a) the NDA itself;

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- (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—
- [^{F49}(za) in the case of a person entitled to reformed protection in relation to the transfer arrangements who falls within paragraph 9A(1)(a), the Section mentioned in paragraph 9A(1)(a);
 - (zb) in the case of a person entitled to reformed protection in relation to the transfer arrangements who falls within paragraph 9A(1)(b), the Section mentioned in paragraph 9A(1)(b);]
 - (a) in the case of a person [^{F50}who is not entitled to reformed protection in relation to the transfer arrangements and] 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).

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- (8) That time is—
- [^{F51}(za) in a case falling within sub-paragraph (7)(za), the relevant time in relation to the person on the first occasion on which the person was owed a duty under either sub-paragraph (3) or paragraph 10(2) after the making of amendments to the Section mentioned in paragraph 9A(1)(a) in pursuance of regulations under section 311 of the Energy Act 2023;
 - (zb) in a case falling within sub-paragraph (7)(zb), the relevant time in relation to the person on the first occasion on which the person was owed a duty under either sub-paragraph (3) or paragraph 10(2) after the making of amendments to the Section mentioned in paragraph 9A(1)(b) in pursuance of regulations under section 311 of the Energy Act 2023;]
 - (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—
- (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.

Textual Amendments

- F49** Sch. 8 para. 11(7)(za)(zb) inserted (27.2.2024) by The Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 (S.I. 2024/219), regs. 1(1), **5(4)(a)(i)**
- F50** Words in Sch. 8 para. 11(7)(a) inserted (27.2.2024) by The Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 (S.I. 2024/219), regs. 1(1), **5(4)(a)(ii)**
- F51** Sch. 8 para. 11(8)(za)(zb) inserted (27.2.2024) by The Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 (S.I. 2024/219), regs. 1(1), **5(4)(b)**

Commencement Information

- I74** 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,

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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

I75 Sch. 8 para. 12 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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;

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- (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

I76 Sch. 8 para. 13 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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.

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Commencement Information

I77 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) [^{F52}Sections 944 and 951 to 953 of the Corporation Tax Act 2010 (transfers of trade without a 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 [^{F53}Chapter 1 of Part 22 of that Act];
 - (b) the transferor company were the predecessor; and
 - (c) the NDA or the NDA company in question were the successor.

Textual Amendments

F52 Words in Sch. 9 para. 2(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 438(2)(a) (with Sch. 2)

F53 Words in Sch. 9 para. 2(3)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 438(2)(b) (with Sch. 2)

Commencement Information

I78 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.

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- (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

179 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

180 Sch. 9 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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.

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- (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

I81 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

I82 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.
- (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

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- (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

183 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 subparagraph (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.

Commencement Information

184 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.

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- (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

I85 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 [F54 section 1122 of the Corporation Tax Act 2010]) 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.

Textual Amendments

F54 Words in Sch. 9 para. 10 substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 438(3) (with Sch. 2)

Commencement Information

I86 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) [F55 Part 5 of the Corporation Tax Act 2009] is to have effect in relation to the time when the transfer takes effect and any later time as if—

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- (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 [F56Part 5 of the Corporation Tax Act 2009] have the same meanings in this paragraph as in [F56that Part].

Textual Amendments

- F55** Words in Sch. 9 para. 11(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(2)(a) (with Sch. 2 Pts. 1, 2)
- F56** Words in Sch. 9 para. 11(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(2)(b) (with Sch. 2 Pts. 1, 2)

Commencement Information

- I87** 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) [F57Part 7 of the Corporation Tax Act 2009] 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 [F58Part 7 of the Corporation Tax Act 2009] have the same meanings in this paragraph as in [F59that Part].

Textual Amendments

- F57** Words in Sch. 9 para. 12(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(3)(a) (with Sch. 2 Pts. 1, 2)
- F58** Words in Sch. 9 para. 12(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(3)(b)(i) (with Sch. 2 Pts. 1, 2)
- F59** Words in Sch. 9 para. 12(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(3)(b)(ii) (with Sch. 2 Pts. 1, 2)

Commencement Information

- I88** Sch. 9 para. 12 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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Continuity in relation to transfer of intangible assets

- 13 (1) Where—
- (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

189 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.

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Commencement Information

I90 Sch. 9 para. 14 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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 [^{F60}under Part 3 of the Corporation Tax Act 2009 in respect of the trade or part of a trade in question for periods in which the trade was carried on wholly or partly in the United Kingdom.]

Textual Amendments

F60 Words in Sch. 9 para. 15(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(4) (with Sch. 2 Pts. 1, 2)

Commencement Information

I91 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

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- (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.
- (4) In this paragraph “BNFL company” means BNFL or a wholly-owned subsidiary of BNFL.

Commencement Information

I92 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

- [^{F61}17 Where Chapter 1 of Part 22 of the Corporation Tax Act 2010 (transfers of trade without a change of ownership) applies in relation to a transfer to which this Part of this Schedule applies, that Chapter has effect in relation to the transfer with the omission of section 945.]

Textual Amendments

F61 Sch. 9 para. 17 substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 438(4) (with Sch. 2)

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

I93 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

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- (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,
- 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

194 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

195 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) [F62Chapter 1 of Part 22 of the Corporation Tax Act 2010] 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

- (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.

Textual Amendments

F62 Words in [Sch. 9 para. 21\(1\)\(b\)](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 438\(5\)](#) (with [Sch. 2](#))

Commencement Information

I96 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 ^{F63}section 1122 of the Corporation Tax Act 2010]) are not to include references to a transfer to which this Part of this Schedule applies.

Textual Amendments

F63 Words in [Sch. 9 para. 22](#) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 438\(6\)](#) (with [Sch. 2](#))

Commencement Information

I97 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) ^{F64}Part 5 of the Corporation Tax Act 2009] 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

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- (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 [^{F65}Part 5 of the Corporation Tax Act 2009] have the same meanings in this paragraph as in [^{F65}that Part].

Textual Amendments

- F64** Words in Sch. 9 para. 23(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(5)(a) (with Sch. 2 Pts. 1, 2)
- F65** Words in Sch. 9 para. 23(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(5)(b) (with Sch. 2 Pts. 1, 2)

Commencement Information

- I98** 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) [^{F66}Part 7 of the Corporation Tax Act 2009] 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
- (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 [^{F67}Part 7 of the Corporation Tax Act 2009] have the same meanings in this paragraph as in [^{F68}that Part].

Textual Amendments

- F66** Words in Sch. 9 para. 24(2) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(6) (with Sch. 2 Pts. 1, 2)
- F67** Words in Sch. 9 para. 24(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(7)(a) (with Sch. 2 Pts. 1, 2)
- F68** Words in Sch. 9 para. 24(3) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(7)(b) (with Sch. 2 Pts. 1, 2)

Commencement Information

- I99** 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

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- (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

I100 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.
- (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

I101 Sch. 9 para. 26 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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 [^{F69}under Part 3 of the Corporation Tax Act 2009 in respect of the trade or part of a trade in question for periods in which the trade was carried on wholly or partly in the United Kingdom.]

Textual Amendments

F69 Words in Sch. 9 para. 27(4) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(8) (with Sch. 2 Pts. 1, 2)

Commencement Information

I102 Sch. 9 para. 27 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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);

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- (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

I103 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

I104 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)).

Commencement Information

I105 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I106 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

I107 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 [F70Part 5 of the Corporation Tax Act 2009] (loan relationships); or
- (b) for the purposes of [F71Part 7 of the Corporation Tax Act 2009].

Textual Amendments

F70 Words in Sch. 9 para. 33(a) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(9)(a) (with Sch. 2 Pts. 1, 2)

F71 Words in Sch. 9 para. 33(b) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 1 para. 586(9)(b) (with Sch. 2 Pts. 1, 2)

Commencement Information

I108 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—
- (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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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) 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

I109 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

I110 Sch. 9 para. 35 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Consequential amendment

^{F72}36

Textual Amendments

F72 Sch. 9 para. 36 omitted (with effect in accordance with Sch. 2 para. 71 of the amending Act) by virtue of Finance Act 2008 (c. 9), Sch. 2 para. 70(f)

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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

1111 Sch. 9 para. 37 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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) 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

I112 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 [^{F73}or a moratorium period under a debt relief order applies in relation to him (under Part 7A of the Insolvency Act 1986)];
 - (b) he is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order [^{F74}or a debt relief restrictions order or an interim debt relief restrictions order (under Schedule 4ZB of the Insolvency Act 1986)];
 - (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
 - (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).

Textual Amendments

- F73** Words in Sch. 10 para. 2(6)(a) inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, [Sch. 2 para. 50\(3\)\(a\)](#) (with art. 5)
- F74** Words in Sch. 10 para. 2(6)(b) inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, [Sch. 2 para. 50\(3\)\(b\)](#) (with arts. 5, 6)

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I113 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

I114 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

I115 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.

Commencement Information

I116 Sch. 10 para. 5 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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.

Commencement Information

I117 Sch. 10 para. 6 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

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
 - (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

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- (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.

Commencement Information

I118 Sch. 10 para. 7 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

PART 4

FINANCES

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.
 - (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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I119 Sch. 10 para. 8 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

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).

Commencement Information

I120 Sch. 10 para. 9 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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

I121 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

I122 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

I123 Sch. 10 para. 12 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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

I124 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

I125 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I126 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

I127 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

I128 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

I129 Sch. 10 para. 18 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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

I130 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

- (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

1131 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I132 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

I133 Sch. 11 para. 4 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

SCHEDULE 12

Section 61

PLANNING AND REPORTS ABOUT CONSTABULARY

PART 1

PLANNING

Determination of annual objectives for Constabulary

- 1 (1) Before the beginning of each financial year, the Police Authority must determine objectives for policing by the Constabulary during that year.
- (2) The objectives must—
- (a) incorporate every objective relating to policing imposed by directions under paragraph 1 of Schedule 13; and
 - (b) otherwise be consistent with the directions given by the Secretary of State to the Police Authority under this Chapter.

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- [^{F75}(3) In determining the objectives, the Police Authority must have regard to any strategic priorities determined for that year by the Secretary of State under section 37A of the Police Act 1996 (strategic priorities for police authorities).]
- (4) Before determining the objectives, the Police Authority must consult the chief constable.

Textual Amendments

F75 Sch. 12 para. 1(3) substituted (8.11.2006) by Police and Justice Act 2006 (c. 48), s. 53(2), Sch. 14 para. 59

Commencement Information

I134 Sch. 12 para. 1 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Annual policing plan

- 2 (1) Before the beginning of each financial year, the Police Authority must issue a plan setting out the proposed arrangements for policing by the Constabulary during the year (the “annual policing plan”).
- (2) The annual policing plan must include a statement of—
- (a) the objectives determined for the year under paragraph 1;
 - (b) the Police Authority’s priorities for the year;
 - (c) the performance targets set by the Police Authority for the year; and
 - (d) the financial resources expected to be available and the proposed allocation of those resources.
- (3) The annual policing plan for a financial year must be consistent with the three-year strategy plan ^{F76}... issued or proposed to be issued under paragraph 3 for a period that includes that financial year.
- (4) Before an annual policing plan for a financial year is issued, a draft of a plan for that year must have been—
- (a) prepared by the chief constable; and
 - (b) submitted by him to the Police Authority for its consideration.
- (5) Before the Police Authority issues an annual policing plan which differs from the draft submitted by the chief constable, it must consult him.
- (6) The Police Authority must—
- (a) arrange for every annual policing plan to be published in such manner as appears to it to be appropriate; and
 - (b) send a copy of every annual policing plan to the Secretary of State.

Textual Amendments

F76 Words in Sch. 12 para. 2(3) omitted (31.1.2024) by virtue of Energy Act 2023 (c. 52), ss. 310(2)(b)(i), 334(1); S.I. 2024/32, reg. 3(c)

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I135 Sch. 12 para. 2 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Three-year strategy plan

- 3
- (1) Before the beginning of each [^{F77}three-year period], the Police Authority must issue a plan setting out the Police Authority’s medium and long term strategies for policing by the Constabulary during [^{F78}that period] (the “three-year strategy plan”).
 - (2) Before a three year strategy plan for any period is issued, a draft of a plan for that period must have been—
 - (a) prepared by the chief constable; and
 - (b) submitted by him to the Police Authority for its consideration.
 - (3) Before the Police Authority issues a three-year strategy plan which differs from the draft submitted by the chief constable, it must consult him.
 - (4) The Police Authority must—
 - (a) arrange for every three-year strategy plan to be published in such manner as appears to it to be appropriate; and
 - (b) send a copy of every three-year strategy plan to the Secretary of State.
- [^{F79}(5) In sub-paragraph (1), “three-year period” means—
 - (a) the period of three successive financial years beginning with 1 April 2024, and
 - (b) each subsequent period of three successive financial years.]

Textual Amendments

- F77** Words in Sch. 12 para. 3(1) substituted (31.1.2024) by Energy Act 2023 (c. 52), ss. 310(1)(a)(i), 334(1); S.I. 2024/32, reg. 3(c)
- F78** Words in Sch. 12 para. 3(1) substituted (31.1.2024) by Energy Act 2023 (c. 52), ss. 310(1)(a)(ii), 334(1); S.I. 2024/32, reg. 3(c)
- F79** Sch. 12 para. 3(5) substituted (31.1.2024) by Energy Act 2023 (c. 52), ss. 310(1)(b), 334(1); S.I. 2024/32, reg. 3(c)

Commencement Information

I136 Sch. 12 para. 3 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Initial objectives and plans

- 4
- The first objectives that are required to be determined under paragraph 1, and the first plans or draft plans to be issued or prepared under paragraphs 2 and 3, must be determined, issued or prepared as if the references in this Part of this Schedule to a financial year were references to such period ending—
 - (a) not more than two years after the commencement of this Part of this Schedule, and
 - (b) with a 31st March,as may be notified to the Police Authority by the Secretary of State.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I137 Sch. 12 para. 4 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

PART 2

REPORTS

Annual report by chief constable

- 5 The chief constable must, as soon as possible after the end of each reporting year—
- (a) submit to the Police Authority a report on the policing carried out by the Constabulary during that year; and
 - (b) arrange for the report to be published in such manner as appears to him to be appropriate.

Commencement Information

I138 Sch. 12 para. 5 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Power of Police Authority to require reports

- 6 (1) Whenever he is required to do so by the Police Authority, the chief constable must submit to it a report—
- (a) on such matters connected with policing by the Constabulary, and
 - (b) in such form,
- as it may specify.
- (2) The Police Authority may—
- (a) arrange for a report submitted to it under this paragraph to be published in such manner as appears to it to be appropriate; or
 - (b) require the chief constable to arrange for it to be published in that manner.
- (3) If it appears to the chief constable that a report required from him under this paragraph would contain—
- (a) information which, in the public interest, ought not to be disclosed, or
 - (b) information which is not needed by the Police Authority for the carrying out of its functions,
- he may request the Police Authority to refer its requirement for a report to the Secretary of State.
- (4) Where a request is made under sub-paragraph (3), the requirement for the report has effect only to the extent that it is confirmed by the Secretary of State.

Commencement Information

I139 Sch. 12 para. 6 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Annual report by Police Authority

- 7
- (1) As soon as possible after the end of each reporting year, the Police Authority must issue a report relating to the policing carried out by the Constabulary during that year (an “annual report”).
 - (2) The annual report must include an assessment of the extent to which, during that year, proposals have been implemented and things have been done in accordance with—
 - (a) the three-year strategy plan ^{F80}... for a period in which that year ends; and
 - (b) the annual policing plan issued—
 - (i) in the case of the first annual report, for every financial year the whole or a part of which is included in the reporting year; and
 - (ii) in any other case, for the financial year that coincides with the reporting year.
 - (3) The Police Authority must send a copy of each annual report to the Secretary of State.
 - (4) Where the Secretary of State receives a copy of the Police Authority’s annual report for any year, he must—
 - (a) lay it before Parliament; and
 - (b) arrange for it to be published in such manner as appears to him to be appropriate.

Textual Amendments

F80 Words in Sch. 12 para. 7(2)(a) omitted (31.1.2024) by virtue of Energy Act 2023 (c. 52), ss. 310(2)(b)(ii), 334(1); S.I. 2024/32, reg. 3(c)

Commencement Information

I140 Sch. 12 para. 7 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Power of Secretary of State to require reports

- 8
- (1) The Secretary of State may at any time require the Police Authority to submit to him a report on such matters connected with—
 - (a) the carrying out of its functions, or
 - (b) policing by the Constabulary,as he may specify.
 - (2) The Secretary of State may at any time require the chief constable to submit to him a report on such matters connected with policing by the Constabulary as the Secretary of State may specify.
 - (3) If the Secretary of State specifies a particular form for a report under this paragraph, the report must be submitted in that form.
 - (4) Where a report is submitted to the Secretary of State under this paragraph, he may—
 - (a) arrange for it to be published in such manner as appears to him to be appropriate; or
 - (b) require the person submitting the report to arrange for it to be published in that manner.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I141 Sch. 12 para. 8 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Meaning of “reporting year”

- 9 (1) In this Part of this Schedule “reporting year”, in relation to the Police Authority or the chief constable, means—
- (a) the initial reporting year; or
 - (b) a financial year after the end of the initial reporting year.
- (2) In this paragraph “the initial reporting 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

I142 Sch. 12 para. 9 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

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.
- (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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I143 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 [^{F81}persons authorised by the Secretary of State] 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
 - (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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Textual Amendments

F81 Words in [Sch. 13 para. 2\(1\)\(h\)](#) substituted (26.1.2009) by [Energy Act 2008 \(c. 32\), s. 110\(2\), Sch. 5 para. 21](#); [S.I. 2009/45, art. 2\(e\)\(iv\)](#)

Commencement Information

I144 [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).
- [^{F82}(2A) To the extent that sub-paragraph (2) concerns provision that may be made in pursuance of section 50(3A) of the Police Act 1996, the reference in sub-paragraph (1) to members of the Constabulary includes former members.]
- (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.

Textual Amendments

F82 [Sch. 13 para. 3\(2A\)](#) inserted (31.1.2017 for specified purposes, 1.2.2020 in so far as not already in force) by [Policing and Crime Act 2017 \(c. 3\), s. 183\(1\)\(5\)\(e\), Sch. 7 para. 13\(2\)](#); [S.I. 2020/5, reg. 2\(o\)](#)

Commencement Information

I145 [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.

Changes to legislation: *Energy Act 2004 is up to date with all changes known to be in force on or before 13 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) 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

I146 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

I147 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;

Changes to legislation: *Energy Act 2004 is up to date with all changes known to be in force on or before 13 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) “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

I148 Sch. 14 para. 2 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

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.”

Commencement Information

I149 Sch. 14 para. 3 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Race Relations Act 1976

^{F83}4

Textual Amendments

F83 Sch. 14 para. 4 repealed (4.4.2011) by Equality Act 2010 (c. 15), Sch. 27 Pt. 1A (as inserted by S.I. 2011/1060, arts. 1(2), 3(3)(a), Sch. 3)

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 ”.

Changes to legislation: *Energy Act 2004 is up to date with all changes known to be in force on or before 13 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) 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.”

Commencement Information

I150 Sch. 14 para. 5 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

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

I151 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
 - (d) the Civil Nuclear Police Authority shall be treated as if it were a police authority.”

Commencement Information

I152 Sch. 14 para. 7 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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.”

Commencement Information

I153 Sch. 14 para. 8 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Criminal Justice and Police Act 2001

F849

Textual Amendments

F84 Sch. 14 para. 9 repealed (1.4.2007) by *Police and Justice Act 2006* (c. 48), s. 53(1), Sch. 15 Pt. 1(A); S.I. 2007/709, art. 3(q) (with art. 6)

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—
 ““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;”.

Commencement Information

I154 Sch. 14 para. 10 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Changes to legislation: *Energy Act 2004 is up to date with all changes known to be in force on or before 13 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*

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;”;
- ^{F85}(b)

Textual Amendments

F85 Sch. 14 para. 11(b) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8)(8), **Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), Sch. para. 13(qq)

Commencement Information

I155 Sch. 14 para. 11 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), **Sch. 1**

SCHEDULE 15

Section 75

AMENDMENTS OF 1993 ACT

[^{F86}Preliminary

Textual Amendments

F86 Sch. 15 repealed (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 28** (with reg. 1(2), Sch. 4)

- 1 [^{F87}The 1993 Act is amended as follows.]

Textual Amendments

F87 Sch. 15 paras. 1-8 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), reg. 1, **sch. 7 para. 1** (with reg. 78, sch. 5 para. 2)

Commencement Information

I156 Sch. 15 para. 1 in force at 27.7.2004 by S.I. 2004/1973, art. 2, **Sch.**

Applications for authorisations

- 2 [^{F87}In section 16(6) (obligation to send copy of application to local authorities), for “any application being made” substitute “ receipt of an application ”.]

Textual Amendments

F87 Sch. 15 paras. 1-8 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), reg. 1, **sch. 7 para. 1** (with reg. 78, sch. 5 para. 2)

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Commencement Information

I157 Sch. 15 para. 2 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

Duty to display documents

- 3 ^[F87]In section 19 (duty to display authorisation etc.), for “to whom the authorisation was granted” substitute “ who holds the authorisation ”.]

Textual Amendments

F87 Sch. 15 paras. 1-8 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), [reg. 1](#), [sch. 7 para. 1](#) (with [reg. 78](#), [sch. 5 para. 2](#))

Commencement Information

I158 Sch. 15 para. 3 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

Requirements with respect to records

- 4 ^[F87]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 ”.]

Textual Amendments

F87 Sch. 15 paras. 1-8 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), [reg. 1](#), [sch. 7 para. 1](#) (with [reg. 78](#), [sch. 5 para. 2](#))

Commencement Information

I159 Sch. 15 para. 4 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

Enforcement notices

- 5 ^[F87](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) ”.]

Textual Amendments

F87 Sch. 15 paras. 1-8 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), [reg. 1](#), [sch. 7 para. 1](#) (with [reg. 78](#), [sch. 5 para. 2](#))

Commencement Information

I160 Sch. 15 para. 5 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

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Prohibition notices

- 6 [F87] 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) ”.]

Textual Amendments

F87 Sch. 15 paras. 1-8 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), reg. 1, **sch. 7 para. 1** (with reg. 78, sch. 5 para. 2)

Commencement Information

I161 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 [F87] (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”.]

Textual Amendments

F87 Sch. 15 paras. 1-8 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), reg. 1, **sch. 7 para. 1** (with reg. 78, sch. 5 para. 2)

Commencement Information

I162 Sch. 15 para. 7 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, **Sch.**

Power to call in applications

- 8 [F87] In section 24(1)(a) (applications that may be called in), for “or authorisations” substitute “, authorisations, transfers or variations ”.]

Textual Amendments

F87 Sch. 15 paras. 1-8 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), reg. 1, **sch. 7 para. 1** (with reg. 78, sch. 5 para. 2)

Commencement Information

I163 Sch. 15 para. 8 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, **Sch.**

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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

I164 Sch. 15 para. 9 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

Appeals

- 10 ^{F88}(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.”]

Textual Amendments

F88 Sch. 15 paras. 10-12 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), [reg. 1](#), [sch. 7 para. 1](#) (with [reg. 78](#), [sch. 5 para. 2](#))

Commencement Information

I165 Sch. 15 para. 10 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

Offences

- 11 ^{F88}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 ”.]

Textual Amendments

F88 Sch. 15 paras. 10-12 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), [reg. 1](#), [sch. 7 para. 1](#) (with [reg. 78](#), [sch. 5 para. 2](#))

Commencement Information

I166 Sch. 15 para. 11 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

False and misleading statements

- 12 [F88] 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 ”.]

Textual Amendments

F88 Sch. 15 paras. 10-12 repealed (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), reg. 1, [sch. 7 para. 1](#) (with reg. 78, sch. 5 para. 2)

Commencement Information

I167 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

I168 Sch. 15 para. 13 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, [Sch.](#)

SCHEDULE 16

Section 95

APPLICATIONS AND PROPOSALS FOR NOTICES UNDER SECTION 95

Modifications etc. (not altering text)

C2 Sch. 16 modified in part (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 13\(5\)\(6\)](#), [324\(3\)](#); [S.I. 2010/298](#), art. 2, [Sch. para. 5](#) (with art. 4(2))

Interpretation

- 1 In this Schedule references to a safety zone notice are references to a notice under section 95.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I169 Sch. 16 para. 1 in force at 1.10.2005 by [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

- 2 In this Schedule “relevant renewable energy installation”, in relation to an application for a safety zone notice or a proposal by the [^{F89}appropriate Minister] to issue such a notice, means the renewable energy installation by reference to which the notice applied for or proposed would fall to be issued.

Textual Amendments

F89 Words in Sch. 16 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), ss. [62\(18\)](#), [72\(4\)\(e\)](#); [S.I. 2017/300](#), reg. 3

Commencement Information

I170 Sch. 16 para. 2 in force at 1.10.2005 by [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

Requirements for applications

- 3 (1) An application for a safety zone notice must describe, by way of a map—
- (a) the place where the relevant renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; and
 - (b) the waters in relation to which any declaration applied for will establish a safety zone.
- (2) The application must also—
- (a) describe the other provisions the application asks to be included in the notice applied for; and
 - (b) include such other information as may be prescribed by regulations made by the [^{F89}appropriate Minister].
- (3) An application is not allowed to be made orally.

Textual Amendments

F89 Words in Sch. 16 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), ss. [62\(18\)](#), [72\(4\)\(e\)](#); [S.I. 2017/300](#), reg. 3

Commencement Information

I171 Sch. 16 para. 3 in force at 1.10.2005 by [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

Objections to an application

- 4 (1) The [^{F89}appropriate Minister] may by regulations make provision for securing—
- (a) that, in the prescribed circumstances, notice of an application is published in the prescribed manner;
 - (b) that, in the prescribed circumstances and in any other case where the [^{F89}appropriate Minister] so directs, notice of an application is served on the persons who are prescribed or are specified in the direction;

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- (c) that every notice published or served in pursuance of the regulations states the period within which objections to the application may be made, and the manner in which any objections are to be made;
 - (d) that the period so stated is not less than the prescribed period after the publication or service of the notice;
 - (e) that, where such a notice requires objections to be sent to a person other than the [F89 appropriate Minister], the recipient of the objections is required to send copies of them to the [F89 appropriate Minister].
- (2) The regulations may provide that the [F89 appropriate Minister] may give such directions dispensing with the requirements of the regulations as he considers appropriate.
- (3) Where objections, or copies of objections, to an application have been sent to the [F89 appropriate Minister] in compliance with the regulations, the [F89 appropriate Minister]—
- (a) must consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the application; and
 - (b) if he thinks it appropriate to do so, must cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the application.
- (4) In this paragraph “prescribed” means prescribed by regulations under this paragraph.

Textual Amendments

F89 Words in Sch. 16 substituted (1.4.2017) by Scotland Act 2016 (c. 11), ss. 62(18), 72(4)(e); S.I. 2017/300, reg. 3

Commencement Information

I172 Sch. 16 para. 4 in force at 1.10.2005 by S.I. 2005/877, art. 2(2), Sch. 2

Objections in other cases

- 5 (1) This paragraph applies where—
- (a) the [F89 appropriate Minister] is proposing to issue a safety zone notice without an application having been made; or
 - (b) the [F89 appropriate Minister], in response to an application but without the holding of a public inquiry, is proposing to issue a safety zone notice in terms that are materially different from those applied for.
- (2) The [F89 appropriate Minister] must—
- (a) publish notice of the proposal 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; and
 - (b) serve notice of the proposal on such persons as he considers appropriate.
- (3) The notice that is published or served must describe, by way of a map—
- (a) the place where the relevant renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; and

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- (b) the waters in relation to which any declaration proposed will establish a safety zone;
- and it must also describe the other provisions that the [^{F89}appropriate Minister] proposes to include in the safety zone notice.
- (4) That notice must also—
- (a) state the period within which objections to the proposal may be made; and
- (b) the manner in which any objections are to be made.
- (5) The period for making objections must not be shorter than the minimum period which would be applicable, in accordance with regulations under paragraph 4, if the notice were being published in respect of an application for a safety zone notice.
- (6) Where objections or copies of objections to the proposal have been sent to the [^{F89}appropriate Minister], he—
- (a) must consider those objections, together with all other material considerations, with a view to determining whether a public inquiry should be held with respect to the proposal; and
- (b) if he thinks it appropriate to do so, must cause a public inquiry to be held, either in addition to or instead of any other hearing or opportunity of stating objections to the proposal.

Textual Amendments

F89 Words in Sch. 16 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), ss. **62(18)**, 72(4)(e); S.I. 2017/300, reg. 3

Commencement Information

I173 Sch. 16 para. 5 in force at 1.10.2005 by S.I. 2005/877, art. 2(2), [Sch. 2](#)

Public inquiries

- 6 (1) This paragraph applies where a public inquiry is to be held.
- (2) In the case of an inquiry to be held in respect of an application—
- (a) the [^{F89}appropriate Minister] must inform the applicant that it is to be held; and
- (b) the applicant must, in two successive weeks, publish a notice in one or more local newspapers circulating in one or more areas determined in accordance with regulations made by the [^{F89}appropriate Minister].
- (3) In the case of an inquiry in respect of a proposal of the [^{F89}appropriate Minister], he must publish a notice in such manner as he considers appropriate for bringing the inquiry to the attention of persons likely to be affected by the proposal.
- (4) A notice that is published under sub-paragraph (2) or (3) must contain—
- (a) a statement of the fact that the application or proposal has been made; and
- (b) a description of the application or proposal.
- (5) The notice must also set out—
- (a) a place where a copy of the application or proposal, and of the map referred to in it, can be inspected; and

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- (b) the place, date and time of the public inquiry.
- (6) The place set out in accordance with sub-paragraph (5)(a) in the case of an inquiry in respect of an application for a safety zone notice must be the place determined in accordance with regulations made by the [F89 appropriate Minister].
- (7) If it appears to the [F89 appropriate Minister], in the case of an inquiry in respect of such an application, that further notification of the inquiry should be given (in addition to the published notice) in order to secure that the matters set out in the published notice are sufficiently made known to persons who are likely to be affected by the application—
- (a) the [F89 appropriate Minister] may direct the applicant to take such further steps for that purpose (whether by the service of notices, advertisement or otherwise) as may be specified in the direction; and
- (b) that person must comply with the direction.
- (8) If it appears to the [F89 appropriate Minister], in the case of an inquiry in respect of a proposal of his, that further notification of the inquiry should be given (in addition to the published notice) in order to secure that the matters set out in the published notice are sufficiently made known to persons who are likely to be affected by the proposal, he must take such further steps for that purpose (whether by the service of notices, advertisement or otherwise) as he considers appropriate.
- (9) The following provisions—
- (a) subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (which relates to evidence at inquiries and the costs of inquiries), and
- (b) subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (which makes similar provision for Scotland),
- shall apply in relation to a public inquiry held under this Schedule as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (10) For the purposes of this paragraph a public inquiry under sub-paragraph (6) of paragraph 5 in a case where that paragraph applies by virtue of sub-paragraph (1) (b) of that paragraph—
- (a) is a public inquiry in respect of a proposal of the [F89 appropriate Minister]; and
- (b) is not a public inquiry in respect of an application.

Textual Amendments

F89 Words in Sch. 16 substituted (1.4.2017) by [Scotland Act 2016 \(c. 11\), ss. 62\(18\), 72\(4\)\(e\)](#); [S.I. 2017/300](#), reg. 3

Commencement Information

I174 Sch. 16 para. 6 in force at 1.10.2005 by [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

Use of additional inspectors for an inquiry

- 7 (1) This paragraph applies in the case of—
- (a) a public inquiry in England and Wales under this Schedule; or

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- (b) a public inquiry in England and Wales which is a combination under section 62 of the 1989 Act into one inquiry of—
 - (i) two or more inquiries under this Schedule; or
 - (ii) one or more inquiries under this Schedule 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—
 - (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.

Commencement Information

I175 Sch. 16 para. 7 in force at 6.4.2007 by [S.I. 2007/1091](#), art. 2(b)

Combined notices

- 8 A notice required by or under this Schedule may be combined with a notice required by or under Schedule 8 to the 1989 Act (procedure on application for a consent

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in respect of a generating station) in any case involving the same installation or proposed installation.

Commencement Information

I176 Sch. 16 para. 8 in force at 1.10.2005 by [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

Parliamentary control of regulations

- 9 Regulations under this Schedule^{F90}—
- (a) if made by the Secretary of State^{F91} or the Welsh Ministers], are subject to the negative resolution procedure^{F92};
 - (b) if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).]

Textual Amendments

F90 Words in Sch. 16 para. 9 inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), ss. [62\(19\)\(a\)](#), [72\(4\)\(e\)](#); [S.I. 2017/300](#), reg. 3

F91 Words in [Sch. 16 para. 9\(a\)](#) inserted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), s. [71\(4\)](#), [Sch. 6 para. 61](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179](#), reg. 5(b)

F92 Words in Sch. 16 para. 9 inserted (1.4.2017) by [Scotland Act 2016 \(c. 11\)](#), ss. [62\(19\)\(b\)](#), [72\(4\)\(e\)](#); [S.I. 2017/300](#), reg. 3

Commencement Information

I177 Sch. 16 para. 9 in force at 1.10.2005 by [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

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).

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- (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

I178 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.

Commencement Information

I179 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

I180 Sch. 17 para. 3 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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

I181 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.

Commencement Information

I182 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

I183 Sch. 17 para. 6 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

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 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

I184 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.

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- (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

I185 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,GEMA shall, subject to paragraph 4(2), make a property arrangements scheme in relation to that property, or those rights or liabilities.

Commencement Information

I186 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.

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- (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

I187 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

I188 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

I189 Sch. 18 para. 6 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 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

I190 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

I191 Sch. 18 para. 8 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

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- 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

I192 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

I193 Sch. 18 para. 10 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 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

I194 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—

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- (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

I195 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.
- (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

I196 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

I197 Sch. 18 para. 14 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

- 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

I198 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

I199 Sch. 18 para. 16 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 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;

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(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

I200 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

I201 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

I202 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.
 - (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

I203 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.

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Commencement Information

I204 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

I205 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.

Commencement Information

I206 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”.

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Commencement Information

I207 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

I208 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

I209 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

I210 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.”

Commencement Information

I211 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

I212 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—

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“(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

I213 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

I214 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—
- “(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

I215 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”.

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Commencement Information

I216 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

I217 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

I218 Sch. 19 para. 12 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

- 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

I219 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”.

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Commencement Information

I220 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

I221 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

I222 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”.

Commencement Information

I223 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

I224 Sch. 19 para. 18 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

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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

I225 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

I226 Sch. 19 para. 20 in force at 1.9.2004 by S.I. 2004/2184, art. 2(2), Sch. 2

SCHEDULE 20

Section 159

CONDUCT OF ENERGY ADMINISTRATION

Modifications etc. (not altering text)

- C3** Sch. 20 modified (1.10.2005) by [Energy Administration Rules 2005 \(S.I. 2005/2483\)](#), rules 1, **184** (with rules 3, 187)
- C4** Sch. 20 applied (with modifications) (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), s. **96(1)-(4)**, 121(3)
- C5** Sch. 20 modified (7.6.2013) by [The Energy Supply Company Administration Rules 2013 \(S.I. 2013/1046\)](#), rules 1, **205(2)-(4)** (with rules 3, 208)
- C6** Sch. 20 applied (with modifications) (23.7.2018) by [Smart Meters Act 2018 \(c. 14\)](#), ss. **4(1)-(4)**, 14(5)
- C7** Schs. 20, 21 modified (E.W.) (1.8.2020) by [The Smart Meter Communication Licensee Administration \(England and Wales\) Rules 2020 \(S.I. 2020/629\)](#), rules 1, **3(2)-(4)** (with rule 4(1))
- C8** Sch. 20 applied (with modifications) (31.3.2022 for specified purposes, 1.6.2022 in so far as not already in force) by [Nuclear Energy \(Financing\) Act 2022 \(c. 15\)](#), ss. **33(1)-(5)**, 44(1)(c)(2)(c)
- C9** Sch. 20 power to apply (with modifications) conferred (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), s. 334(2) (1), **Sch. 18 para. 50**
- C10** Sch. 20 applied (with modifications) (26.12.2023) by [Energy Act 2023 \(c. 52\)](#), ss. **44**, 334(3)(a)

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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 [^{F93}a non-GB company] with the further modifications for which provision is made by or under Part 3 of this Schedule.

Textual Amendments

F93 Words in Sch. 20 para. 1(2) 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\(11\)\(a\)](#) (with art. 10)

Commencement Information

I227 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

I228 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

I229 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

I230 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

I231 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

I232 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

I233 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

I234 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

I235 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

I236 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

I237 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

I238 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

I239 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

I240 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

I241 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 [^{F94}section 899 [^{F95}or 901F] of the Companies Act 2006] (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—

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- (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;
- (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.”

Textual Amendments

- F94** Words in Sch. 20 para. 16(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 230](#) (with arts. 6, 11, 12)
- F95** Words in Sch. 20 para. 16(2) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 9 para. 27](#) (with ss. 2(2), 5(2))

Commencement Information

- I242** 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

- I243** 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

- I244** 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,”.

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Commencement Information

I245 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.
- (3) In sub-paragraphs (3) to (6) of that paragraph, for “(1)”, wherever occurring, substitute “(1)(b)”.

Commencement Information

I246 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

I247 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

I248 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

I249 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.

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Commencement Information

I250 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

I251 Sch. 20 para. 25 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

- 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

I252 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

I253 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

I254 Sch. 20 para. 28 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Changes to legislation: *Energy Act 2004 is up to date with all changes known to be in force on or before 13 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*

- 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.

Commencement Information

I255 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

I256 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

I257 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—

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““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.”

Commencement Information

I258 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 [^{F96}NON-GB COMPANIES]

Textual Amendments

F96 Words in Sch. 20 Pt. 3 heading 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\(11\)\(b\)](#) (with art. 10)

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 [^{F97}a non-GB 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.

Textual Amendments

F97 Words in Sch. 20 para. 33(1) 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\(11\)\(c\)](#) (with art. 10)

Commencement Information

I259 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

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- (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

I260 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 [^{F98}a non-GB 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 [^{F99}by regulations under section 1043 or 1046 of the Companies Act 2006 (unregistered UK companies or overseas companies)]; and
 - (c) paragraph 61 of that Schedule does not apply ^{F100}....

Textual Amendments

- F98** Words in Sch. 20 para. 35 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(11)(d)(i) (with art. 10)
- F99** Words in Sch. 20 para. 35(b) 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(11)(d)(ii) (with art. 10)
- F100** Words in Sch. 20 para. 35(c) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 220(11)(d)(iii) (with art. 10)

Commencement Information

I261 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 ^{F101}... 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;

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- (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.

Textual Amendments

F101 Words in Sch. 20 para. 36(1) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 220\(11\)\(e\)](#) (with art. 10)

Commencement Information

I262 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 ^{F102}... 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
 - (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.”

Textual Amendments

F102 Words in Sch. 20 para. 37(1) omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 220\(11\)\(e\)](#) (with art. 10)

Commencement Information

I263 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 ^{F103}... as if for “An administrative receiver” there were substituted “ A person with functions equivalent to those of an administrative receiver ”.

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Textual Amendments

F103 Words in Sch. 20 para. 38 omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 220(11)(e)** (with art. 10)

Commencement Information

I264 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 ^{F104}... 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.”

Textual Amendments

F104 Words in Sch. 20 para. 39 omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 220(11)(e)** (with art. 10)

Commencement Information

I265 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 ^{F105}... 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 ”.

Textual Amendments

F105 Words in Sch. 20 para. 40 omitted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 220(11)(e)** (with art. 10)

Commencement Information

I266 Sch. 20 para. 40 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

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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
 - (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

I267 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) ([^{F106}administration order]).

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Textual Amendments

F106 Words in Sch. 20 para. 42(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 101](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

Commencement Information

I268 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—

“(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

I269 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.”

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Commencement Information

I270 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

I271 Sch. 20 para. 45 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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 [^{F107}(including this Chapter as applied by section 96 of the Energy Act 2011)].
- (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.

Textual Amendments

F107 Words in Sch. 20 para. 46 inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), [ss. 101\(2\)](#), 121(3)

Modifications etc. (not altering text)

C11 Sch. 20 para. 46 power to modify extended (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), [ss. 101\(1\)](#), 121(3)

Commencement Information

I272 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.

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I273 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

Modifications etc. (not altering text)

- C12** Sch. 21 modified (1.10.2005) by Energy Administration Rules 2005 (S.I. 2005/2483), rules 1, **184** (with rules 3, 187)
- C13** Sch. 21 applied (with modifications) (18.12.2011) by Energy Act 2011 (c. 16), ss. **96(1)-(4)**, 121(3)
- C14** Sch. 21 modified (7.6.2013) by The Energy Supply Company Administration Rules 2013 (S.I. 2013/1046), rules 1, **205(2)-(4)** (with rules 3, 208)
- C15** Sch. 21 applied (with modifications) (23.7.2018) by Smart Meters Act 2018 (c. 14), ss. **4(1)-(4)**, 14(5)
- C16** Sch. 21 applied (with modifications) (31.3.2022 for specified purposes, 1.6.2022 in so far as not already in force) by Nuclear Energy (Financing) Act 2022 (c. 15), ss. **33(1)-(5)**, 44(1)(c)(2)(c)
- C17** Sch. 21 power to apply (with modifications) conferred (26.10.2023) by Energy Act 2023 (c. 52), s. 334(2) (1), **Sch. 18 para. 50**
- C18** Sch. 21 applied (with modifications) (26.12.2023) by Energy Act 2023 (c. 52), ss. **44**, 334(3)(a)

Application of Schedule

- 1 This Schedule applies where—
- the court has made an energy administration order in relation to a company (the “old energy company”); and
 - it is proposed that a transfer falling within section 155(3) be made to another company (the “new energy company”).

Commencement Information

I274 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

I275 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—
- with the consent of the new energy company, and
 - for the purpose of giving effect to the proposed transfer,

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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 require for the purposes of, or in connection with, the exercise of the powers conferred on him by this paragraph.

Commencement Information

I276 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;

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- (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^{F108} ... 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.
- (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

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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.

Textual Amendments

F108 Words in Sch. 21 para. 4(2)(f) omitted (31.12.2020) by virtue of [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/530\)](#), regs. 1(1), 76; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I277 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;
 - (b) a part of the area in relation to which the holder of the licence is authorised to carry on those activities.

Commencement Information

I278 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.

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- (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

I279 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;
 - (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.

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- (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

I280 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—
- (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”.

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Commencement Information

I281 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.

Commencement Information

I282 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.

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Commencement Information

I283 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.
- (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.

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Commencement Information

I284 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

I285 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

I286 Sch. 21 para. 13 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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 ^{F109}CMA] 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.

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- (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 [^{F110}CMA'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 [^{F111}CMA's] decision whether to grant permission is to be taken by an authorised member of the [^{F112}CMA].
- (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, [^{F113}an authorised member of the CMA 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).

Textual Amendments

- F109** Word in Sch. 22 para. 1(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F110** Word in Sch. 22 para. 1(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F111** Word in Sch. 22 para. 1(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(2\)\(c\)\(i\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F112** Word in Sch. 22 para. 1(9) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(2\)\(c\)\(ii\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F113** Words in Sch. 22 para. 1(12) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(2\)\(d\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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Commencement Information

I287 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 [F114CMA] may allow,
- a person falling within sub-paragraph (2) gives notice to the [F114CMA] 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 [F114CMA] 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 [F115CMA] may, on behalf of the [F115CMA], 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 [F115CMA] 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;
 - (b) may allow the intervener to become a party to the appeal for the purpose of opposing it; and

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- (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.

Textual Amendments

- F114** Words in Sch. 22 para. 2(1) (2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F115** Words in Sch. 22 para. 2(5) (6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

- I288** 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 [^{F116}CMA] may, on behalf of the [^{F116}CMA], 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 [^{F117}CMA] must give GEMA an opportunity of making representations about the matter.
- (6) In this paragraph “consent” includes an approval or direction.

Textual Amendments

- F116** Word in Sch. 22 para. 3(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F117** Word in Sch. 22 para. 3(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Changes to legislation: Energy Act 2004 is up to date with all changes known to be in force on or before 13 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

Commencement Information

I289 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 [F118CMA] about—
- (a) a decision in respect of which permission to bring an appeal has been granted,
 - (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.

Textual Amendments

F118 Word in Sch. 22 para. 4(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 107(5); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I290 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 F119(1)
- (2) A group [F120constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 173] must consist of three members of the [F121CMA panel].
- F122(3)
- F122(4)
- F122(5)
- F122(6)
- F122(7)
- (8) A decision of [F123the group] is effective if, and only if—

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- (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.

Textual Amendments

- F119** Sch. 22 para. 5(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(6\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F120** Words in Sch. 22 para. 5(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(6\)\(b\)\(i\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F121** Words in Sch. 22 para. 5(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(6\)\(b\)\(ii\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F122** Sch. 22 para. 5(3)-(7) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(6\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F123** Words in Sch. 22 para. 5(8) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(6\)\(d\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

- I291** 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) [^{F124}The CMA must determine an 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 [^{F125}CMA] is satisfied that there are good reasons for departing from the normal requirements [^{F126}in respect of an appeal], it may (on one occasion only) extend that period of thirty working days by not more than ten more working days.
- (3) The [^{F127}CMA] must ensure that an extension under sub-paragraph (2) is notified to every party to the appeal.

Textual Amendments

- F124** Words in Sch. 22 para. 6(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(7\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F125** Word in Sch. 22 para. 6(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(7\)\(b\)\(i\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F126** Words in Sch. 22 para. 6(2) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(7\)\(b\)\(ii\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F127** Word in Sch. 22 para. 6(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(7\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

- I292** Sch. 22 para. 6 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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Matters to be considered on appeal

- 7 [F128The CMA], if it thinks it necessary to do so for the purpose of securing the [F129determination of an 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.

Textual Amendments

F128 Words in Sch. 22 para. 7 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(8\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F129 Words in Sch. 22 para. 7 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(8\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I293 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 [F130CMA] may, by notice, require a person to produce to the [F130CMA] 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.
- (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) [F131An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken] of a document produced ^{F132}... under this paragraph.
- (5) A notice for the purposes of this paragraph may be issued on the [F133CMA's behalf by an authorised member of the CMA].

Textual Amendments

F130 Word in Sch. 22 para. 8(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(9\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F131 Words in Sch. 22 para. 8(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(9\)\(b\)\(i\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F132 Words in Sch. 22 para. 8(4) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 107\(9\)\(b\)\(ii\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F133 Words in Sch. 22 para. 8(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 107(9)(c); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I294 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 [F134CMA] 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) [F135there is no requirement] 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, [F136an authorised member of the CMA must arrange for that person to be paid] the necessary expenses of his attendance.
- (8) A notice for the purposes of this paragraph may be issued on the [F137CMA's behalf by an authorised member of the CMA].

Textual Amendments

F134 Word in Sch. 22 para. 9(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 107(10)(a); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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F135 Words in Sch. 22 para. 9(5)(a) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 107(10)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F136 Words in Sch. 22 para. 9(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 107(10)(c)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F137 Words in Sch. 22 para. 9(8) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 107(10)(d)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I295 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 [^{F138}CMA] may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—
- a person who is considering, or is to consider, an application for a direction under paragraph 3; or
 - a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
- to specify the time and place at which it is to be produced; and
 - 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 [^{F139}CMA's behalf by an authorised member of the CMA].

Textual Amendments

F138 Word in Sch. 22 para. 10(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 107(11)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

F139 Words in Sch. 22 para. 10(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 107(11)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I296 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”)—
- fails to comply with a notice or other requirement issued or imposed under paragraph 8, 9 or 10,
 - in complying with a notice under paragraph 10, makes a statement that is false in any material particular, or
 - 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,

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- [^{F140}an authorised member of the CMA] 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,
- 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.

Textual Amendments

F140 Words in Sch. 22 para. 11(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013](#) (c. 24), s. 103(3), [Sch. 6 para. 107\(12\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I297 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 [^{F141}CMA Board] 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 [^{F141}CMA Board] 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 [^{F141}CMA Board] must consult such persons as it considers appropriate.
- (5) Rules under this paragraph may make different provision for different cases.

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Textual Amendments

F141 Words in Sch. 22 para. 12 substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(13\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

I298 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 [F142CMA] of the costs incurred by the [F142CMA] 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—
- (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 [F143twenty-eight] 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.

Textual Amendments

F142 Word in Sch. 22 para. 13(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(14\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

F143 Word in Sch. 22 para. 13(6) substituted (27.7.2006) by [Electricity and Gas Appeals \(Modification of Time Limits\) Order 2006 \(S.I. 2006/1519\), arts. 1, 2](#)

Commencement Information

I299 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.

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(2) An order under this paragraph is subject to the negative resolution procedure.

Commencement Information

I300 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;

[^{F144}“authorised member of the CMA”—

(a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;

(b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—

(i) any member of the CMA Board who is also a member of the CMA panel, or

(ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question.]

^{F145}

[^{F146}“the CMA” means the Competition and Markets Authority;”]

[^{F146}“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;]

^{F147}

“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.

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Textual Amendments

- F144** Words in Sch. 22 para. 15(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(15\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F145** Words in Sch. 22 para. 15(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(15\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F146** Words in Sch. 22 para. 15(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(15\)\(c\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F147** Words in Sch. 22 para. 15(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 107\(15\)\(d\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

- I301** 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

- I302** Sch. 23 Pt. 1 in force at 1.9.2004 for specified purposes by [S.I. 2004/2184, art. 2\(2\), Sch. 2](#)
- I303** Sch. 23 Pt. 1 in force at 5.10.2004 for specified purposes by [S.I. 2004/2575, art. 2\(1\), Sch. 1](#)
- I304** Sch. 23 Pt. 1 in force at 1.12.2004 for specified purposes by [S.I. 2004/2575, art. 2\(2\), Sch. 2](#)
- I305** Sch. 23 Pt. 1 in force at 1.4.2005 for specified purposes by [S.I. 2005/877, art. 2\(1\), Sch. 1](#)
- I306** Sch. 23 Pt. 1 in force at 1.1.2006 for specified purposes by [S.I. 2005/877, art. 2\(3\), Sch. 3](#)
- I307** Sch. 23 Pt. 1 in force at 1.4.2006 for specified purposes and 1.4.2010 for specified purposes by [S.I. 2005/2965, art. 4](#)

Short title and chapter

Atomic Energy Authority Act 1954 (c. 32)

Pipe-lines Act 1962 (c. 58)

Extent of repeal

Section 2(2)(d).
Section 9(8).
In Schedule 1, paragraph 4.
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.

In section 9(7), the words “and section 10B”.
In section 9A(7), the words “and section 10B”.
Section 10B.
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). In Schedule 1— (a) paragraph 4(1) and (3); (b) in paragraph 7, sub-paragraph (b) and the word “and” immediately preceding it.
Atomic Energy Authority Act 1971 (c. 11)	In section 4— (a) subsections (1) and (3); and (b) in subsection (4) the words “subsection (1) or” and “the Nuclear Fuels Company, or between the Authority and”. Section 11(1) to (3). Section 19. Section 20(4).
Atomic Energy Authority (Special Constables) Act 1976 (c. 23)	Section 1. Section 2. 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”. 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). 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”. In section 2A(4), the definition of “United Kingdom Atomic Energy Authority Constabulary” and the word “and” immediately preceding it. 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)	<p>In section 44(4C), the word “or” at the end of paragraph (a).</p>
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)	<p>Section 88(7)(c).</p>
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)	<p>In section 82(5), the definition of “the United Kingdom Atomic Energy Authority Constabulary”.</p>

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PART 2

SAVINGS ETC.

- 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).

Commencement Information

I308 Sch. 23 para. 1 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

- 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

I309 Sch. 23 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

- 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.

Commencement Information

I310 Sch. 23 para. 3 in force at 1.4.2005 by S.I. 2005/877, art. 2(1), Sch. 1

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 89(1) words inserted by 2023 c. 52 Sch. 14 para. 12(a)(i)
- s. 89(1) words inserted by 2023 c. 52 Sch. 14 para. 12(a)(ii)
- s. 89(1) words inserted by 2023 c. 52 Sch. 14 para. 12(b)
- s. 137(3)(a) word omitted by 2011 c. 16 s. 117(a)
- s. 172(2D)(b) words inserted by 2023 c. 52 Sch. 17 para. 14(a)
- s. 172(4) words inserted by 2023 c. 52 Sch. 17 para. 14(b)
- Sch. 22 para. 4(1) words substituted by 2023 c. 52 Sch. 14 para. 11(2)(a)
- Sch. 22 para. 4(2) words substituted by 2023 c. 52 Sch. 14 para. 11(2)(c)
- Sch. 22 para. 6(1) words substituted by 2023 c. 52 Sch. 14 para. 11(3)(a)
- Sch. 22 para. 6(2) words substituted by 2023 c. 52 Sch. 14 para. 11(3)(b)(i)
- Sch. 22 para. 6(2) words substituted by 2023 c. 52 Sch. 14 para. 11(3)(b)(ii)

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)