

# ENERGY ACT 2008

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## EXPLANATORY NOTES

### **Part 3: Decommissioning of Energy Installations**

#### **Chapter 1: Nuclear Sites: Decommissioning and Clean-Up**

##### **Commentary on Sections**

##### **Enforcement**

##### **Section 57: Offence to fail to comply with approved programme**

283. This section makes it an offence for a site operator or persons associated with the operator (such as a parent company), to fail to comply with their obligations under an approved funded decommissioning programme, unless they prove that they exercised due diligence to avoid committing the offence.
284. *Subsection (3)* sets out the sanctions in the event of a prosecution:
- on summary conviction, a fine not exceeding the statutory maximum (currently £5,000 in England, Wales and Northern Ireland); or
  - on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both.

##### **Section 58: Secretary of State's power of direction**

285. This section provides the Secretary of State with the power to direct a person with obligations under an approved funded decommissioning programme to take action that the Secretary of State considers necessary or appropriate in the following circumstances:
- if it has been shown that the person failed to comply with any obligations imposed by the programme
  - if the person has been engaged in unlawful conduct which the Secretary of State considers may affect the programme. *Subsection (2)* defines unlawful conduct and *subsection (3)* specifies that a person can only be considered to have been engaged in unlawful conduct on the conclusion of any appeal process.
286. *Subsection (4)* sets out that the Secretary of State can direct a person with obligations under a funded decommissioning programme to take the steps which he considers necessary or appropriate to comply with obligations under the programme.
287. *Subsection (5)* imposes a duty on the Secretary of State to consult with the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland prior to giving a direction, insofar as the direction relates to one or more of their statutory functions.

*These notes refer to the Energy Act 2008 (c.32)  
which received Royal Assent on 26 November 2008*

288. *Subsections (6) and (7)* allow the Secretary of State to apply to the High Court for a court order where the Secretary of State believes that a person has failed to comply with a direction. If the application is successful the court may order the person to comply with the requirement.

***Section 59: Offence of further disclosure of information***

289. This section allows for the disclosure of information obtained by virtue of section 52(4) or 53(2) or 53(5), or regulations under section 54(2)(e), only if that information is:
- disclosed as a result of section 63 or any other function under this Chapter; or
  - disclosed with the consent of the person who originally provided the information; or
  - information obtained by the Health and Safety Executive under section 63 and disclosed for the purposes of its functions under the [Nuclear Installations Act 1965 \(c. 57\)](#); or
  - information obtained by environmental agencies under section 63 and disclosed for the purposes of the functions of those agencies under the [Radioactive Substances Act 1993 \(c.12\)](#).

***Section 60: Offence of supplying false information***

290. This section creates an offence of knowingly or recklessly supplying information which is false or misleading in a material respect.
291. *Subsection (2)* sets out the sanctions in the event of a prosecution:
- on summary conviction, a fine not exceeding the statutory maximum, (currently £5,000 in England, Wales and Northern Ireland); or
  - on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both.

***Section 61: Restriction on prosecutions under this Chapter***

292. This section sets out how prosecutions generated by an offence under this Chapter are to be initiated. This includes proceedings that may be instigated for any new offences created by regulations under section 54. Proceedings may be instituted by the Secretary of State, or in England and Wales the Director of Public Prosecutions, or in Northern Ireland the Director of Public Prosecutions for Northern Ireland.