

SCHEDULES

SCHEDULE 8

Section 83

INSPECTORS

PART 1

APPOINTMENT AND POWERS OF INSPECTORS

Appointment of inspectors

- 1 (1) The ONR may appoint persons (referred to in this Part of this Act as “inspectors”) to carry into effect the relevant statutory provisions.
- (2) A person appointed as an inspector must be someone who appears to the ONR to be suitably qualified to carry out the functions that the ONR authorises the person to carry out.
- (3) The appointment of an inspector under this paragraph is to be on such terms as the ONR may determine and may be ended by the ONR at any time.
- (4) Any appointment of an inspector under this paragraph must be made by a written instrument.
- (5) References in this Schedule to carrying into effect the relevant statutory provisions include in particular assisting the ONR to fulfil its functions under the relevant statutory provisions.

Powers of inspectors

- 2 (1) An inspector’s instrument of appointment may authorise the inspector to exercise any relevant power.
- (2) Authority to exercise a relevant power may be given—
 - (a) without restriction, or
 - (b) only to a limited extent or for limited purposes.
- (3) The authority conferred by an inspector’s instrument of appointment to exercise any relevant powers may be varied by the ONR by a further instrument in writing varying the instrument of appointment.
- (4) For the purposes of this Schedule, an inspector is “authorised”, in relation to a power, if and so far as the inspector is authorised by the instrument of appointment to exercise the power.
- (5) In this Part, “relevant power” means a power conferred by any of the relevant statutory provisions on an inspector if and so far as so authorised.

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- (6) When exercising or seeking to exercise any relevant power, an inspector must, if asked, produce the instrument of appointment (including any instrument varying it) or a duly authenticated copy.

PART 2

POWERS EXERCISABLE BY INSPECTORS AUTHORISED BY INSTRUMENT OF APPOINTMENT: IMPROVEMENT NOTICES AND PROHIBITION NOTICES

Improvement notices

- 3 (1) This paragraph applies where an inspector is of the opinion that a person—
- (a) is contravening one or more applicable provisions, or
 - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector may, if authorised, give the person a notice (an “improvement notice”) requiring the person to remedy—
- (a) the contravention, or
 - (b) as the case may be, the matters giving rise to the notice, within the period specified in the notice.
- (3) The improvement notice must—
- (a) specify the applicable provision or provisions in question, and
 - (b) state that the inspector is of the opinion mentioned in sub-paragraph (1), and why.
- (4) The period specified under sub-paragraph (2) must end no earlier than the period within which an appeal against the notice may be brought under paragraph 6.
- (5) In this paragraph “applicable provision” means—
- (a) any of the relevant statutory provisions other than—
 - (i) a provision of the Nuclear Safeguards Act 2000, or
 - (ii) any provision of nuclear regulations identified in accordance with section 74(9) (requirement for provisions made for nuclear security purposes or nuclear safeguards purposes, or both, to be identified as such), or
 - (b) any condition attached to a nuclear site licence under section 4 of the Nuclear Installations Act 1965 relating to a site in England, Wales or Scotland.

Prohibition notices

- 4 (1) This paragraph applies where an inspector is of the opinion that—
- (a) relevant activities, as they are being carried on by or under the control of a person, involve a risk of serious personal injury, or
 - (b) relevant activities which are likely to be carried on by or under the control of a person will, as so carried on, involve a risk of serious personal injury.
- (2) The inspector may, if authorised, give the person a notice (“a prohibition notice”) directing that the activities to which the notice relates must not be carried on by or under the control of the person unless the following have been remedied—

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- (a) the matters specified in the notice under sub-paragraph (3)(b), and
 - (b) any associated contraventions of provisions specified under sub-paragraph (3)(c).
- (3) A prohibition notice must—
- (a) state that the inspector is of the opinion mentioned in sub-paragraph (1);
 - (b) specify the matters which in the inspector’s opinion give, or, as the case may be, will give rise to the risk mentioned in that sub-paragraph;
 - (c) where in the inspector’s opinion any of those matters involves or, as the case may be, will involve a contravention of any applicable provision—
 - (i) specify the provision or provisions in question, and
 - (ii) state that the inspector is of that opinion, and why.
- (4) A prohibition notice takes effect—
- (a) at the end of the period specified in the notice, or
 - (b) if the notice so specifies, immediately.
- (5) In this paragraph—
- “applicable provision” has the same meaning as in paragraph 3;
 - “relevant activities” means any activities in relation to which any applicable provision applies (or would apply if they were being carried on).

Improvement and prohibition notices: supplementary

- 5
- (1) In this paragraph “a notice” means an improvement notice or a prohibition notice.
 - (2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates.
 - (3) Any such directions—
 - (a) may be expressed by reference to any approved code of practice, and
 - (b) may afford the person to whom the notice is given a choice between different ways of remedying the contravention or matter.
 - (4) Sub-paragraph (5) applies where—
 - (a) any of the applicable provisions applies to a building or any matter connected with a building, and
 - (b) an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with the building or matter.For this purpose “applicable provision” has the same meaning as in paragraph 3.
 - (5) The notice must not direct any measures to be taken to remedy the contravention that are more onerous than any measures that would be necessary to secure conformity with—
 - (a) current new-build requirements, or
 - (b) if the provision in question imposes specific requirements that are more onerous than the requirements of any current new-build requirements, those specific requirements.
 - (6) In sub-paragraph (5), “current new-build requirements”, in relation to a building, or matter connected with a building, means the requirements of any building regulations

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for the time being in force to which the building or matter would be required to conform if the relevant building were being newly erected.

- (7) In sub-paragraph (6), “building regulations”, in relation to Scotland, has the meaning given by section 1 of the Building (Scotland) Act 2003 (asp 8).
- (8) Where an improvement notice or a prohibition notice which is not to take immediate effect has been given—
 - (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it under paragraph 3(2) or 4(4)(a), and
 - (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Appeal against improvement or prohibition notice

- 6 (1) In this paragraph “a notice” means an improvement notice or a prohibition notice.
- (2) A person to whom a notice is given may appeal within such period after the notice is given as may be prescribed by regulations made by the Secretary of State (“the prescribed period”).
- (3) An appeal under this paragraph lies to an employment tribunal.
- (4) On an appeal, the tribunal may—
 - (a) cancel the notice, or
 - (b) confirm it—
 - (i) in its original form, or
 - (ii) with such modifications as, in the circumstances, the tribunal considers appropriate.
- (5) Where an appeal under this paragraph is brought against an improvement notice within the prescribed period, the operation of the notice is suspended until the appeal is withdrawn or finally disposed of.
- (6) Where—
 - (a) an appeal under this paragraph is brought against a prohibition notice within the prescribed period, and
 - (b) on the application of the appellant, the tribunal so directs,
 the operation of the notice is suspended from the time the direction is given until the appeal is withdrawn or finally disposed of.
- (7) One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under this paragraph.

Improvement and prohibition notices: offences

- 7 (1) It is an offence to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice.
- (2) A person who commits an offence under this paragraph is liable—
 - (a) on summary conviction—
 - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland),

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- (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland), or
 - (iii) to both;
 - (b) on conviction on indictment—
 - (i) to imprisonment for a term not exceeding 2 years,
 - (ii) to a fine, or
 - (iii) to both.
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in sub-paragraph (2)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

PART 3

OTHER POWERS EXERCISABLE BY INSPECTOR IF AUTHORISED BY INSTRUMENT OF APPOINTMENT

Power of entry

- 8 (1) An inspector may, if authorised, enter any premises which the inspector has reason to believe it is necessary for the inspector to enter for the relevant purpose—
- (a) at any reasonable time, or
 - (b) at any time, in a situation—
 - (i) which in the inspector's opinion is or may be dangerous, or
 - (ii) in which, in the inspector's opinion, delay would or might be prejudicial to the nuclear security purposes.
- (2) In relation to domestic premises, the power may be exercised only—
- (a) in accordance with a warrant issued by a justice of the peace, or
 - (b) in a situation which in the inspector's opinion is or may be dangerous.
- (3) A justice of the peace may issue a warrant under sub-paragraph (2)(a) only if satisfied, on the application of the inspector,—
- (a) that—
 - (i) there are reasonable grounds to believe that a contravention of a relevant statutory provision is occurring on the premises, or
 - (ii) the inspector has been refused consent to enter the premises for the relevant purpose or there are reasonable grounds to believe that such consent will be refused, and
 - (b) that it is reasonable in the circumstances to issue a warrant to the inspector.
- (4) The reference to premises in sub-paragraph (1) includes any ship outside the United Kingdom or its territorial sea.
- (5) For the purposes of this paragraph, “domestic premises” means premises used wholly or mainly as a private dwelling.

Power to take persons and equipment etc onto premises

- 9 In exercising the power of entry mentioned in paragraph 8, an inspector may—

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- (a) be accompanied—
 - (i) by any person approved by the ONR for the purpose, and
 - (ii) if the inspector has reasonable cause to expect any serious obstruction in the exercise of any of the inspector’s powers, by a constable, and
- (b) take along any equipment and materials required for any purpose for which the inspector is exercising the power of entry.

Power to deal with cause of imminent danger

- 10 (1) Sub-paragraph (2) applies where an inspector finds any article or substance in relevant premises in circumstances in which the inspector has reasonable cause to believe it is a cause of imminent danger of serious personal injury.
- (2) The inspector may, if authorised, do any of the following—
- (a) seize the article or substance;
 - (b) cause it to be made harmless or the risk of harm from it to be reduced (in either case, by destruction or otherwise);
 - (c) for the purpose mentioned in paragraph (b), seize any other article or substance.
- (3) Before any article that forms part of a batch of similar articles, or any substance, is dealt with under sub-paragraph (2)(b), the inspector must, if it is practicable,—
- (a) take a sample, and
 - (b) give a portion of the sample, marked so as to be identifiable, to a responsible person.
- (4) As soon as practicable after seizing or dealing with any article or substance under sub-paragraph (2), the inspector must make and sign a written report setting out the circumstances in which the article or substance was seized or so dealt with.
- (5) The inspector must give a signed copy of the report to a responsible person.
- (6) If that person is not the owner of the article or substance, the inspector must also—
- (a) give a signed copy of the report to the owner, or
 - (b) if that is not possible because—
 - (i) the inspector cannot find out the owner’s name or address after making reasonable enquiries, and
 - (ii) the owner has not indicated a willingness in accordance with section 110 to receive a signed copy of the report by any means mentioned in subsection (1)(b) of that section,give a further signed copy of the report to that responsible person.
- (7) For the purposes of this paragraph—
- (a) “responsible person”, in relation to any article or substance, means a responsible person at the premises in which the inspector finds the article or substance;
 - (b) in the case of a report in electronic form, any signature required on the report or a copy of it may be an electronic signature (within the meaning given in section 7(2) of the Electronic Communications Act 2000).

Powers exercisable in relation to particular articles or substances or in particular circumstances

- 11 (1) An authorised inspector may cause any article or substance in relevant premises—
- (a) to be dismantled;
 - (b) to be tested;
 - (c) to have any other process applied to it.
- (2) The inspector may exercise any of those powers only if it appears to the inspector—
- (a) that the article or substance has caused, or is likely to cause, danger to health or safety, or
 - (b) that it is desirable to do so for the nuclear security purposes.
- (3) Before exercising a power in this paragraph, the inspector must consult anyone whom the inspector considers it appropriate to consult about the dangers (if any) of what is proposed.
- (4) Anything done to the article or substance under this paragraph must not damage or destroy it unless in the circumstances that is unavoidable for the relevant purpose.
- (5) If requested by a person who has responsibilities in relation to the relevant premises, and is on the premises, the inspector must allow anything done to the article or substance under this paragraph to be done in that person's presence, unless the inspector considers that that would be prejudicial to national security.
- 12 (1) An authorised inspector may take possession of any article or substance found on relevant premises and retain it for as long as necessary—
- (a) for it to be examined;
 - (b) for anything to be done to it which the inspector may cause to be done under paragraph 11;
 - (c) to ensure that it is not tampered with before any examination or other procedure mentioned in paragraph (a) or (b) is complete;
 - (d) to ensure that it is available for use in—
 - (i) any proceedings for an offence under any of the relevant statutory provisions, or
 - (ii) any proceedings relating to an improvement notice or a prohibition notice.
- (2) The inspector may exercise that power only if it appears to the inspector—
- (a) that it is desirable to do so for the nuclear security purposes, or
 - (b) that the article or substance has caused, or is likely to cause, danger to health or safety.
- (3) Before taking possession of any substance under this paragraph, the inspector must, if it is practicable,—
- (a) take a sample of it, and
 - (b) give a portion of the sample, marked so as to be identifiable, to a responsible person at the premises.
- (4) An inspector who takes possession of any article or substance under this paragraph must—
- (a) if it is practicable to do so, give a notice to that effect to a responsible person at the premises;

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- (b) otherwise, fix such a notice in a conspicuous position at the premises.
- (5) The notice must include sufficient information about the article or substance to identify it.

Powers of inspection and examination and to take samples

- 13 (1) An authorised inspector may carry out any examination or investigation necessary for the relevant purpose and, in doing so, may—
- (a) take measurements and photographs, and
 - (b) make recordings.
- (2) An authorised inspector may take and deal with samples of—
- (a) any article or substance found in relevant premises, or
 - (b) the atmosphere in or in the vicinity of relevant premises.
- (3) The Secretary of State may by regulations make provision about—
- (a) the procedure to be followed in taking any such samples, and
 - (b) the way in which any such samples are to be dealt with.
- 14 (1) An authorised inspector may direct that any relevant premises, or any article or substance in them, must be left undisturbed for as long as reasonably necessary for the purposes of any examination or investigation necessary for the purpose of any of the relevant statutory provisions.
- (2) A direction under sub-paragraph (1)—
- (a) may relate to part of any relevant premises;
 - (b) may relate to particular aspects of any premises or article or substance.

Powers to require information and documents

- 15 (1) An authorised inspector may require any person who the inspector has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph 13—
- (a) to answer any question the inspector thinks fit, and
 - (b) to sign a declaration of the truth of the person’s answers.
- (2) Where a person required to answer questions under this paragraph has nominated another person to be present, the person may not be required to answer questions except in the presence of the nominated person (if any).
- (3) When exercising the power in this paragraph, an inspector may allow another person to be present (in addition to the nominated person (if any)).
- (4) No answer given by a person by virtue of this paragraph is admissible in evidence against the person, or the person’s spouse or civil partner, in any proceedings.
- 16 (1) An authorised inspector may—
- (a) require any relevant documents to be produced, and
 - (b) inspect and take copies of (or of any information in) any relevant documents.
- (2) For this purpose—
- (a) “document” includes information recorded in any form;
 - (b) “relevant document” means a record or other document which—

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- (i) is required to be kept by virtue of any of the relevant statutory provisions, or
 - (ii) the inspector needs to see for the purposes of any examination or investigation under paragraph 13.
- (3) In the case of a relevant document that consists of information held in electronic form, the inspector may—
 - (a) require it to be produced—
 - (i) in a legible form, or
 - (ii) in a form from which it can readily be produced in a legible form, and
 - (b) require access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with the relevant document.

Offences

- 17 (1) It is an offence for a person to contravene any requirement imposed by an inspector under this Part of this Schedule.
- (2) It is an offence for a person to prevent or attempt to prevent any other person from—
 - (a) appearing before an inspector, or
 - (b) answering any question to which an inspector may require an answer by virtue of paragraph 15.
- (3) A person who commits an offence under this paragraph is liable—
 - (a) on summary conviction—
 - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
 - (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland or Northern Ireland), or
 - (iii) to both;
 - (b) on conviction on indictment—
 - (i) to imprisonment for a term not exceeding 2 years,
 - (ii) to a fine, or
 - (iii) to both.
- (4) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), the reference in sub-paragraph (3)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.
- 18 (1) It is an offence for a person intentionally to obstruct an inspector in the exercise or performance of the inspector's functions.
- (2) A person who commits an offence under this paragraph is liable on summary conviction—
 - (a) to imprisonment for a term not exceeding 51 weeks (in England and Wales), 12 months (in Scotland) or 6 months (in Northern Ireland),
 - (b) to—
 - (i) in England and Wales, a fine, or

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- (ii) in Scotland or Northern Ireland, a fine not exceeding level 5 on the standard scale, or
- (c) to both.
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in sub-paragraph (2)(a), as it has effect in England and Wales, to 51 weeks is to be read as a reference to 6 months.
- 19 (1) It is an offence for a person falsely to pretend to be an inspector.
- (2) A person who commits an offence under this paragraph is liable on summary conviction to—
 - (a) in England and Wales, a fine, or
 - (b) in Scotland or Northern Ireland, a fine not exceeding level 5 on the standard scale.

Supplementary powers

- 20 A power conferred by this Schedule includes power to require any person to provide any facilities or assistance relating to matters or things—
 - (a) within the person’s control, or
 - (b) in relation to which the person has responsibilities,
 which are needed in order to enable an authorised inspector to exercise the power.
- 21 A power conferred by this Schedule includes power to do anything incidental that is necessary for the relevant purpose.

Protection for documents subject to legal professional privilege etc

- 22 Nothing in this Part of this Schedule is to be taken to confer power to compel the production by any person of a document or information in respect of which—
 - (a) in England and Wales or Northern Ireland, a claim to legal professional privilege, or
 - (b) in Scotland, a claim to confidentiality of communications,
 could be maintained in legal proceedings.

PART 4

SUPPLEMENTARY

Duty to provide information to employees or their representatives

- 23 (1) An inspector must provide to people employed at any premises (or their representatives) any relevant information that needs to be provided in order for them (or their representatives) to be kept adequately informed about matters affecting their health, safety or welfare.
- (2) Where information is provided to employees (or their representatives) under sub-paragraph (1), the inspector must provide the same information to their employer.
- (3) For this purpose—

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- (a) “relevant information”, in relation to any premises, means—
 - (i) factual information which is protected information within the meaning of Schedule 9 and is relevant to the premises, and
 - (ii) information about action which the inspector has taken or proposes to take in relation to the premises, and
- (b) “employee”, “employer” and “employed” have the same meanings as in Part 1 of the 1974 Act.

Interpretation

24 (1) In this Schedule—

“authorised” is to be read in accordance with paragraph 2(4);

“offshore installation” means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, ship or aircraft,
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or its subsoil, or resting on other land covered with water or its subsoil), and
- (c) any tent or movable structure;

“relevant premises”, in relation to an inspector, means premises which the inspector has entered—

- (a) with the consent of a person who reasonably appeared to the inspector to be an appropriate person to give consent, or
- (b) in exercise of the power in paragraph 8;

“the relevant purpose”, in relation to a power, means—

- (a) if an instrument of appointment authorises the inspector to exercise the power only for limited purposes, that purpose;
- (b) in any other case, the purpose of carrying into effect the relevant statutory provisions;

“ship” includes every description of vessel used in navigation;

“substance” means any natural or artificial substance, whether solid or liquid or in the form of a gas or vapour.

- (2) In this Schedule, references to an inspector, in relation to any power, are to the inspector exercising or proposing to exercise the power.