

Working Draft – 12 April 2013 – subject to change

Extract from Draft Order to be laid before Parliament under sections 76 and 192(3) of the Energy Act 2004, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

NUCLEAR ENERGY

The Nuclear Installations (Liability for Damage) Order 2013

Made - - - - *****

Coming into force in accordance with article 1(2) and (4)

The Secretary of State, in exercise of the powers conferred by sections 76 and 192(1) of the Energy Act 2004(a), makes the following Order.

In accordance with section 192(3) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Nuclear Installations (Liability for Damage) Order 2013.

(2) Subject to paragraph (4), this Order comes into force on the day on which the Protocols come into force in respect of the United Kingdom.

(3) The Secretary of State is to give notice in the London, Edinburgh and Belfast Gazettes of the date on which the Protocols come into force in respect of the United Kingdom.

(4) This article and articles 2, 34 and 40 come into force on the Xth day after the day on which this Order is made, if earlier.

Interpretation

2. In this Order—

“the 1965 Act” means the Nuclear Installations Act 1965(b);

“the Protocols” means—

(a) the Protocol of 12 February 2004 to amend the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982, and

(a) 2004 c. 20.

(b) 1965 c. 57.

- (b) the Protocol of 12 February 2004 to amend the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982.

Cost of measures of reinstatement

8.—(1) After section 11 of the 1965 Act insert—

“Cost of measures of reinstatement

11A Cost of measures of reinstatement

(1) Where as a result of a breach of a duty imposed by section 7, 7B, 8, 9 or 10 there is significant impairment of the environment, a qualifying public authority may make a claim under this Act for compensation in respect of the reasonable cost of measures of reinstatement relating to that impairment to the extent that they are relevant measures of reinstatement.

(2) Subsection (1) is subject to subsection (3) and sections 11B and 11D.

(3) Compensation is not payable by virtue of a claim under subsection (1) in respect of the cost of measures of reinstatement that benefit or would benefit property if the property is such that damage to it would not constitute damage in breach of a duty imposed by section 7, 7B, 8, 9 or (as the case may be) 10.

(4) A public authority is a qualifying public authority, in relation to a particular significant impairment of the environment, if it may in the exercise of its functions—

- (a) take, or arrange for the taking of, measures of reinstatement in relation to that impairment of the environment, or
- (b) pay (otherwise than under this Act) costs incurred by another public authority in taking, or arranging for the taking of, measures of reinstatement in relation to that impairment.

(5) A relevant measure of reinstatement, in relation to significant impairment of the environment, is a measure reasonably taken for the purpose of—

- (a) reinstating or restoring what has been destroyed or damaged as part of that impairment, or
- (b) establishing the equivalent of what has been destroyed or damaged as part of that impairment.

(6) A measure of reinstatement is reasonably taken for the purposes of this section if taking that measure is appropriate and proportionate in the circumstances.

(7) In this section—

“holder of a public office” means—

- (a) a person holding an office under the Crown,
- (b) a person holding an office created or continued in existence by a public general Act or by legislation passed by the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, or
- (c) a person holding an office the remuneration in respect of which is paid out of money provided by Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly;

“local authority” means—

- (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in relation to Scotland, a council for any local government area constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994;

(c) in relation to Wales, a county council, a county borough council or a community council;

(d) in relation to Northern Ireland, a district council.

“public authority” means a holder of a public office or a public body;

“public body” includes a government department (including the Welsh Assembly Government, any part of the Scottish Administration and a Northern Ireland department) and a local authority.

11B Approval of measures of reinstatement

(1) Compensation under this Act is payable by virtue of a claim under section 11A(1) only if the claim relates to measures of reinstatement approved by—

- (a) the Secretary of State under this section, or
- (b) if a decision under this section is appealed under section 11D, the court that determines the appeal under section 11D.

(2) A public authority may apply to the Secretary of State for approval under this section before or after the measures of reinstatement are taken.

(3) The public authority must publish a notice of its application.

(4) The notice must be published in a manner that appears to the authority to be appropriate for bringing it to the attention of—

- (a) the person whose breach, or alleged breach, of a duty imposed by section 7, 7B, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment;
- (b) the owner of land that is or would be affected by the measures of reinstatement;
- (c) any person who appears to the authority to be in occupation of all or part of such land.

(5) A notice of an application for approval must specify the measures of reinstatement for which approval is sought.

(6) The Secretary of State may approve a measure of reinstatement under this section only if satisfied that—

- (a) there is significant impairment of the environment;
- (b) the measure is, in relation to that impairment, a relevant measure of reinstatement within the meaning of section 11A;
- (c) the amount claimed in respect of the cost of the measure is reasonable;
- (d) the public authority applying for approval in relation to a measure of reinstatement is a qualifying public authority within the meaning of section 11A as regards that measure.

(7) The Secretary of State may refuse to approve measures of reinstatement on the ground that the applicant, or the public authority whose costs the applicant has paid or proposes to pay, is or was not the appropriate public authority to take the measures or to arrange for them to be taken.

(8) The Secretary of State may approve some but not others of the measures to which the application relates.

(9) A decision by the Secretary of State under this section is not to be taken as determining—

- (a) whether or not there was a breach of a duty under section 7, 7B, 8, 9 or 10, or
- (b) whether or not the impairment of the environment arises out of or results from a breach of such a duty.

(10) The Secretary of State must publish a notice of a decision made under this section.

(11) For each of the measures of reinstatement to which the application relates, the notice of decision must—

- (a) state whether or not approval is refused on the ground referred to in subsection (7), and
- (b) in a case where approval is not refused on that ground, specify the reasons why the Secretary of State is or is not satisfied as to the matters in subsection (6).

(12) If the Secretary of State makes a claim for compensation under section 11A(1), the Secretary of State must appoint a person to carry out the functions of the Secretary of State under this section in respect of an application for approval.

(13) Approval by the appointed person is to be treated as approval by the Secretary of State for the purposes of subsection (1).

(14) In this section—

“creditor” and “heritable security” have the same meaning as in the Conveyancing and Feudal Reform (Scotland) Act 1970;

“owner”, in relation to land in England and Wales or Northern Ireland, means a person (other than a mortgagee in possession) who, whether in the person’s own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rate, would be so entitled if the land were so let;

“owner”, in relation to land in Scotland, means a person (other than the creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted.

11C Representations

(1) Persons who satisfy the requirements of subsection (2) may make representations to the Secretary of State as regards the measures of reinstatement for which approval is sought by an application under section 11B.

(2) A person satisfies the requirements of this subsection if the person is—

- (a) the person whose breach, or alleged breach, of a duty imposed by section 7, 7B, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment;
- (b) the owner of land that is or would be affected by the measures of reinstatement;
- (c) a person who is in occupation of all or part of such land.

(3) The Secretary of State may invite other persons to make representations as regards the measures of reinstatement.

(4) The Secretary of State must publish a notice of the arrangements for making representations under this section in respect of an application under section 11B.

(5) “Owner”, in relation to land, has the meaning given by section 11B.

11D Appeals against decisions

(1) The following persons may appeal to the appropriate court against a decision of the Secretary of State on an application under section 11B—

- (a) where approval of a measure of reinstatement is refused, the public authority that applied for approval of the measure;
- (b) where approval of a measure of reinstatement is granted, the person whose breach, or alleged breach, of a duty imposed by section 7, 7B, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment.

(2) A decision of the Secretary of State to refuse approval on the ground referred to in section 11B(7) may not be appealed under this section.

(3) Subject to subsection (2), the court may on an appeal under this section determine whether or not to approve the measures of reinstatement to which the appeal relates.

(4) Section 11B(6) applies in relation to a determination of the court as it applies in relation to a decision of the Secretary of State under section 11B.

(5) The appropriate court is the court that has, or but for section 16(3E) would have had, jurisdiction in accordance with section 16C to determine a claim by virtue of section 7, 7B, 8, 9 or 10 for compensation under this Act in respect of the cost of the measures of reinstatement in question.

(6) A decision of a person appointed under section 11B(12) may be appealed in the same way as a decision of the Secretary of State.

11E Measures of reinstatement and relevant foreign law

(1) Where approval of measures of reinstatement relating to significant impairment of the environment is required by any relevant foreign law made for purposes corresponding to section 11B(1), sections 11B to 11D are to apply to applications for such approval as they apply to applications for the approval required by section 11B(1).

(2) Where sections 11B to 11D apply by virtue of subsection (1)—

- (a) references to a breach of duty under section 7, 7B, 8, 9 or 10 are to be treated as references to the corresponding occasion of compensation under the relevant foreign law, and
- (b) references to the appropriate court are to be treated as references to the High Court of Justice.

11F Measures of reinstatement outside the United Kingdom

Schedule 1A (approval of measures of reinstatement in places outside the United Kingdom) has effect.”

(2) After Schedule 1 to the 1965 Act there is inserted the Schedule 1A set out in the Schedule to this Order.

Loss of income derived from the environment

9. After section 11F of the 1965 Act (inserted by article 8) insert—

“Loss of income derived from the environment

11G Loss of income derived from the environment

(1) Where as a result of a breach of a duty imposed by section 7, 7B, 8, 9 or 10 there is significant impairment of the environment, a claim may be made under this Act for compensation in respect of a person’s loss of profits if the circumstances of that loss satisfy the requirements in subsection (2).

(2) The requirements are that—

- (a) the profits are from income that the person generates, or but for the impairment would generate, by directly exploiting the resources in a part of the environment,
- (b) the activity by which the person generates that income is an activity that the person may lawfully carry on, or but for the impairment would be able lawfully to carry on, in that part of the environment,
- (c) some or all of that part of the environment is significantly impaired as a result of the breach of duty, and
- (d) as a direct consequence of that significant impairment, the person is not able to carry on the activity in question in so much of that part of the environment as is significantly impaired or profits less from carrying on the activity there.

(3) Compensation is not payable to a person by virtue of a claim under subsection (1) if the activity in question is an activity carried on by the person as an employee.

(4) Compensation is not payable to a person by virtue of a claim under subsection (1) if the loss of profits is—

- (a) a loss for which that person may claim compensation under this Act by way of compensation for damage to property, or
- (b) a loss for which that person could make such a claim but for the property being such that damage to it would not constitute damage in breach of a duty imposed by section 7, 7B, 8, 9 or (as the case may be) 10.

(5) Compensation under this Act is not payable by virtue of a claim under subsection (1) if the part of the environment where the activity in question is carried on is the relevant site of the person in breach of duty or part of it.”

Cost of preventive measures

10. After section 11G of the 1965 Act (inserted by article 9) insert—

“Cost of preventive measures

11H Cost of preventive measures

(1) Where there is a breach of a duty imposed by section 7, 7B, 8, 9 or 10, a claim may be made for compensation under this Act in respect of the reasonable cost of preventive measures reasonably taken after the breach of duty.

(2) Subject to subsections (3) and (4), where there is a breach of a duty imposed by section 7, 7B, 8, 9 or 10, a claim may be made for compensation under this Act in respect of injury to a person or damage to property caused by—

- (a) preventive measures reasonably taken after the breach of duty by a person other than the person whose breach of duty it is, or
- (b) preventive measures taken after the breach of duty by the person whose breach of duty it is.

(3) The compensation that may be claimed under subsection (2)(a) does not include compensation in respect of so much of any injury or damage as is caused by an act or omission done maliciously or negligently.

(4) The compensation that may be claimed under subsection (2) does not include compensation in respect of damage to property where the property is such that damage to it would not constitute damage in breach of a duty imposed by section 7, 7B, 8, 9 or (as the case may be) 10.

(5) The payment of compensation in respect of injury to a person or damage to property otherwise than under this Act by or on behalf of a person who takes preventive measures does not prevent the making of a claim under subsection (2) (subject to the exceptions in subsections (3) and (4)) if and to the extent that that payment does not make full compensation in respect of the injury or damage in question.

(6) A reference in subsection (1) or (2) to a preventive measure reasonably taken after a breach of duty includes a reference to such part of a preventive measure as is so taken.

(7) A preventive measure is a measure taken in order to minimise or prevent—

- (a) injury to a person or damage to property constituting a breach of a duty imposed by section 7, 7B, 8, 9 or 10, or
- (b) significant impairment of the environment occasioning costs or losses in respect of which a claim under section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A may be made.

(8) A preventive measure is reasonably taken for the purposes of this section if taking that measure is appropriate and proportionate in the circumstances.

(9) Where the breach of duty under section 7(1E), 7B, 8, 9 or 10(1A) is constituted by an event that creates a grave and imminent threat of a breach of duty, no preventive measure

may be considered appropriate and proportionate unless it is possible for there to be at least one person, not being a person involved in the event, whose likely exposure if the threatened breach of duty were to happen would be in excess of one of the following—

- (a) an effective dose of 5 mSv in the period of one year beginning with the day on which the breach of duty or the beginning of the breach of duty happens;
- (b) an equivalent dose for the lens of the eye of 15 mSv in that period;
- (c) an equivalent dose for the skin of 50 mSv in that period over 1cm² area of skin, regardless of the area exposed.

(10) In quantifying a person's likely exposure, the effect of health protection measures taken within 24 hours of the time when the event created the grave and imminent threat is to be disregarded.

(11) In subsection (9)—

- (a) an effective dose is the sum of the effective dose to the whole body from external radiation and the committed effective dose from internal radiation;
- (b) an equivalent dose for a particular human tissue or organ includes the committed equivalent dose to that tissue or organ from internal radiation;
- (c) “external radiation”, in relation to a person, means ionising radiation coming from outside the body of that person;
- (d) “internal radiation”, in relation to a person, means ionising radiation coming from inside the body of that person.

(12) Subsection (9) does not apply in the case of—

- (a) preventive measures taken as regards a person involved in the event;
- (b) preventive measures relating to the food supply.

(13) For the purposes of subsections (9) and (12), a person is involved in such an event if—

- (a) the person is on the site in question or concerned with the carriage of nuclear matter in question when the event happened, or
- (b) the person is, after the event happens, on the site in question or at the place where the event happened for the purpose of taking preventive measures or taking part in an emergency response to the event.”

SCHEDULE

Article 8

Measures of reinstatement outside the United Kingdom

The following is the Schedule to be inserted as Schedule 1A to the 1965 Act—

“SCHEDULE 1A

MEASURES OF REINSTATEMENT OUTSIDE THE UNITED KINGDOM

Measures of reinstatement

1.—(1) Where as a result of a breach of a duty imposed by section 7, 7B, 8, 9 or 10 there is significant impairment of the environment within the territorial limits, in or above the exclusive economic zone, or on the continental shelf of a qualifying territory other than the United Kingdom, a person may make a claim under this Act for compensation in respect of the reasonable cost of measures of reinstatement relating to that impairment, to the extent that they are relevant measures of reinstatement.

(2) Sub-paragraph (1) is subject to paragraphs 2 to 4.

(3) A relevant measure of reinstatement, in relation to significant impairment of the environment, is a measure reasonably taken for the purpose of—

- (a) reinstating or restoring what has been destroyed or damaged as part of that impairment, or
- (b) establishing the equivalent of what has been destroyed or damaged as part of that impairment.

(4) A measure of reinstatement is reasonably taken for the purposes of this paragraph if taking that measure is appropriate and proportionate in the circumstances.

Persons able to take measures

2. No compensation under this Act is payable by virtue of a claim under paragraph 1 unless the person taking the relevant measures of reinstatement is entitled to take the measures in question under the law of the qualifying territory.

Approval of measures of reinstatement

3. Compensation under this Act is payable by virtue of a claim under paragraph 1 only if the claim relates to measures of reinstatement approved by—

- (a) a person who is competent to do so under such law of the qualifying territory as is made for purposes corresponding to section 11B (a “competent authority”), or
- (b) if the decision of the competent authority is appealed under paragraph 4, the appropriate court.

Appeals against decisions

4.—(1) The following persons may appeal to the appropriate court against a decision of a competent authority to approve or not to approve a measure of reinstatement—

- (a) the person who requires the approval of the competent authority for the measure;
- (b) the person whose breach or alleged breach of a duty imposed by section 7, 7B, 8, 9 or 10 caused or is alleged to have caused the impairment of the environment.

(2) Where an appeal is made under this paragraph, the competent authority concerned is entitled to appear and be heard.

(3) The court may on an appeal under this paragraph determine whether or not to approve the measure in question.

(4) The court may not approve a measure unless it is satisfied that—

- (a) there is within the territorial limits, in or above the exclusive economic zone, or on the continental shelf of the qualifying territory a significant impairment of the environment that falls to be compensated under a relevant international agreement,
- (b) the measure is, in relation to that impairment of the environment, a relevant measure of reinstatement within the meaning of paragraph 1,
- (c) the amount claimed in respect of the cost of the measure is reasonable, and
- (d) the payment of compensation under this Act by virtue of a claim under paragraph 1 is not prevented by paragraph 2.

The appropriate court

5. For the purposes of this Schedule, the appropriate court in the case of a particular measure of reinstatement is the court in the United Kingdom that has, or but for section 16(3E) would have had, jurisdiction in accordance with section 16C to determine any claim made under paragraph 1 in respect of that measure.”