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NUCLEAR SAFEGUARDS BILL 2017-19

“KEELING” SCHEDULE

This Schedule shows Part 3 of, and Schedule 8 and Schedule 9 to, the Energy Act 2013, including all previous amendments, as it would look when amended by the Nuclear Safeguards Bill 2017-19, were the Bill to be enacted in the state in which it was introduced to the House of Commons (HC Bill 109).

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BEIS - January 2018

PART 3

NUCLEAR REGULATION

CHAPTER 1

THE ONR’S PURPOSES

67 The ONR’s purposes

In this Part, “the ONR’s purposes” means—

- (a) the nuclear safety purposes (see section 68),
- (b) the nuclear site health and safety purposes (see section 69),
- (c) the nuclear security purposes (see section 70),
- (d) the nuclear safeguards purposes (see section 72), and
- (e) the transport purposes (see section 73).

68 Nuclear safety purposes

(1) In this Part, the “nuclear safety purposes” means the purposes of protecting persons against risks of harm from ionising radiations from GB nuclear sites, including through—

- (a) the design and construction of relevant nuclear installations and their associated sites,
- (b) arrangements for the operation and decommissioning of, and other processes connected with, relevant nuclear installations,
- (c) arrangements for the storage and use of nuclear matter on GB nuclear sites, and
- (d) arrangements to minimise those risks in the event of an escape or release of such ionising radiations.

(2) For this purpose, ionising radiations from GB nuclear sites are ionising radiations from—

(a) relevant nuclear installations, or

(b) nuclear matter stored or used on a GB nuclear site;

and an escape or release of ionising radiations from a GB nuclear site includes ionising radiations from nuclear matter that has escaped or been released on or from a GB nuclear site.

(3) In this section—

“GB nuclear site” means a nuclear site in England, Wales or Scotland;

“nuclear installation” has the same meaning as in the Nuclear Installations Act 1965 (see section 26 of that Act);

“nuclear matter” has the same meaning as in that Act (see section 26 of that Act);

“relevant nuclear installation” means a nuclear installation on a site (its “associated site”) in England, Wales or Scotland for which a nuclear site licence is required by virtue of the installation (and includes a proposed or former nuclear installation in respect of which such a licence would be or has ever been so required).

69 Nuclear site health and safety purposes

(1) In this Part, the “nuclear site health and safety purposes” means so much of the general purposes of Part 1 of the 1974 Act as consists of the following purposes—

(a) securing the health, safety and welfare of persons at work on GB nuclear sites;

(b) protecting persons, other than persons at work on GB nuclear sites, against risks to health or safety arising out of or in connection with the activities of persons at work on GB nuclear sites;

(c) controlling the storage and use on GB nuclear sites of dangerous substances and generally preventing the unlawful acquisition, possession and use of such substances on or from such sites.

(2) In this section—

(a) “dangerous substances” means radioactive, explosive, highly flammable or otherwise dangerous substances, other than nuclear matter;

(b) “GB nuclear site” and “nuclear matter” have the same meanings as in section 68.

(3) Section 1(3) of the 1974 Act (interpretation of references to risks relating to persons at work) applies for the purposes of this section as it applies for the purposes of Part 1 of the 1974 Act.

70 Nuclear security purposes

(1) In this Part, the “nuclear security purposes” means the purposes of ensuring the security of—

(a) civil nuclear premises;

(b) nuclear material used or stored on civil nuclear premises and equipment or software used or stored on such premises in connection with activities involving nuclear material;

(c) other radioactive material used or stored on civil nuclear sites and equipment or software used or stored on civil nuclear sites in connection with activities involving such other radioactive material;

(d) civil nuclear construction sites and equipment used or stored on civil nuclear construction sites;

(e) equipment or software in the United Kingdom which—

(i) is capable of being used in, or in connection with, the enrichment of uranium, and

(ii) is in the possession or control of a person involved in uranium enrichment activities;

(f) sensitive nuclear information which is in the United Kingdom in the possession or control of—

(i) a person who is involved in activities on or in relation to civil nuclear premises or who is proposing or likely to become so involved;

(ii) a person involved in uranium enrichment activities; or

(iii) a person who is storing, transporting or transmitting the information for or on behalf of a person falling within sub-paragraph (i) or (ii);

(g) nuclear material which is being (or is expected to be)—

(i) transported within the United Kingdom or its territorial sea,

(ii) transported (outside the United Kingdom and its territorial sea) to or from any civil nuclear premises in the United Kingdom, or

(iii) carried on board a United Kingdom ship,

other than material being (or expected to be) so transported or carried for defence purposes;

(h) information relating to the security of anything mentioned in paragraphs (a) to (g).

(2) For the purposes of subsection (1), ensuring the security of any site or premises includes doing so by means of the design of, or of anything on, the site or premises.

(3) In this section—

“civil nuclear construction site” means a site—

(a) on which works are being carried out with a view to its becoming a civil nuclear site, and

(b) which is situated within 5 kilometres of an existing nuclear site;

“civil nuclear premises” means—

(a) a civil nuclear site, or

(b) other premises on which nuclear material is used or stored which are not controlled or operated wholly or mainly for defence purposes;

“civil nuclear site” means a nuclear site other than one controlled or operated wholly or mainly for defence purposes;

“defence purposes” means the purposes of the department of the Secretary of State with responsibility for defence;

“enrichment of uranium” means a treatment of uranium that increases the proportion of isotope 235 contained in the uranium;

“equipment” includes equipment that has not been assembled and its components;

“nuclear material” means any fissile material in the form of—

- (a) uranium metal, alloy or compound, or
- (b) plutonium metal, alloy or compound,
- (c) or any other fissile material prescribed by regulations made by the Secretary of State;

“sensitive nuclear information” means—

- (a) information relating to, or capable of use in connection with, the enrichment of uranium, or
- (b) information of a description for the time being specified in a notice under section 71;

“United Kingdom ship” means a ship registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995.

71 Notice by Secretary of State to ONR specifying sensitive nuclear information

(1) This section applies where the Secretary of State considers that information of any description relating to activities carried out on or in relation to civil nuclear premises is information which needs to be protected in the interests of national security.

(2) The Secretary of State may give a notice to the ONR under this section specifying that description of information.

(3) The Secretary of State may vary or revoke any notice given under this section by giving a further notice to the ONR.

(4) Before giving a notice under this section, the Secretary of State must consult the ONR.

(5) In this section “civil nuclear premises” has the same meaning as in section 70.

~~72 Nuclear safeguards purposes~~

~~(1) In this Part, the “nuclear safeguards purposes” means the purposes of—~~

~~(a) ensuring compliance by the United Kingdom or, as the case may be, enabling or facilitating compliance by a Minister of the Crown, with the safeguards obligations, and~~

~~(b) the development of any future safeguards obligations.~~

~~(2) In subsection (1)(a) “the safeguards obligations” has the meaning given by section 93.~~

72 Nuclear safeguards purposes

In this Part, the “nuclear safeguards purposes” means the purposes of—

- (a) ensuring compliance with nuclear safeguards regulations (see section 76A),
- (b) ensuring compliance by the United Kingdom or, as the case may be, enabling or facilitating compliance by a Minister of the Crown, with a relevant international agreement, and
- (c) the development of any future obligations relating to nuclear safeguards.

73 Transport purposes

(1) In this Part, the “transport purposes” means the purposes of—

- (a) protecting against risks relating to the civil transport of radioactive material in Great Britain by road, rail or inland waterway which arise out of, or in connection with, the radioactive nature of the material, and
- (b) ensuring the security of radioactive material during civil transport in Great Britain by road, rail or inland waterway.

(2) For this purpose—

- (a) “civil transport” means transport otherwise than for the purposes of the department of the Secretary of State with responsibility for defence;
- (b) “radioactive material”—
 - (i) in relation to transport by road, has the same meaning as in ADR,
 - (ii) in relation to transport by rail, has the same meaning as in RID, and
 - (iii) in relation to transport by inland waterway, has the same meaning as in ADN;
- (c) the transport of material begins with any preparatory process (such as packaging) and continues until the material has been unloaded at its destination.

(3) In subsection (2)(b)—

“ADN” means the Regulations annexed to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway (signed at Geneva on 26 May 2000);

“ADR” means Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road (signed at Geneva on 30 September 1957);

“RID” means the Annex to Appendix C to the Convention concerning International Carriage by Rail (signed at Berne on 9 May 1980) (the Regulation concerning the International Carriage of Dangerous Goods by Rail);

and any reference to, or to an appendix to, an Agreement, a Convention or a Treaty, or to an annex to any of them, is to it as it has effect for the time being.

(4) The Secretary of State may by regulations modify the definition of “radioactive material”.

CHAPTER 2

NUCLEAR REGULATIONS

74 Nuclear regulations

(1) The Secretary of State may make regulations (to be known as “nuclear regulations”) for any of the following purposes—

- (a) the nuclear safety purposes;
- (b) the nuclear security purposes;
- ~~(c) the nuclear safeguards purposes;~~

- (d) the transport purposes.
- (2) Schedule 6 (which gives examples of particular kinds of provision that may be made by nuclear regulations) has effect.
- (3) Nuclear regulations may—
- (a) confer functions on the ONR;
 - (b) create powers which inspectors may be authorised to exercise by their instruments of appointment under paragraph 2 of Schedule 8;
 - (c) create offences (as to which see section 75);
 - (d) modify—
 - (i) any of the provisions of the Nuclear Installations Act 1965 that are relevant statutory provisions;
 - (ii) any provision of the Nuclear Safeguards Act 2000;
 - (e) provide for exemptions (including conditional exemptions) from any prohibition or requirement imposed by or under any of the relevant statutory provisions;
 - (f) provide for defences in relation to offences under any of the relevant statutory provisions;
 - (g) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.
- (4) Provision that may be included by virtue of subsection (3)(a) includes, in particular,—
- (a) provision requiring compliance with directions by the ONR;
 - (b) provision conferring power for the ONR to authorise other persons to exercise functions relating to the grant of exemptions of a kind mentioned in subsection (3)(e).
- (5) Nuclear regulations may make provision—
- (a) applying to acts done outside the United Kingdom by United Kingdom persons;
 - (b) for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of conferring jurisdiction on any court in relation to any such offence.
- (6) In subsection (5) “United Kingdom person” means—
- (a) an individual who is—
 - (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (ii) a person who under the British Nationality Act 1981 is a British subject, or
 - (iii) a British protected person within the meaning of that Act,
 - (b) a Scottish partnership, or
 - (c) a body incorporated under the law of any part of the United Kingdom.
- (7) Before making nuclear regulations, the Secretary of State must consult—
- (a) the ONR,
 - (b) if the regulations would modify any provision of health and safety regulations (within the meaning of Part 1 of the 1974 Act), the Health and Safety Executive, and
 - (c) such other persons (if any) as the Secretary of State considers it appropriate to consult.

(8) Subsection (7)(a) does not apply if the regulations give effect, without modification, to proposals submitted by the ONR under section 81(1)(a)(i).

(9) Nuclear regulations which include any provisions to which ~~any paragraph of~~ subsection (10) applies must identify those provisions as such.

(10) This subsection applies to any provisions of nuclear regulations which are made for—

(a) the nuclear security purposes,

~~(b) the nuclear safeguards purposes, or~~

~~(c) both of those purposes,~~

and for no other purpose.

(11) In this section (and Schedule 6) “specified” means specified in nuclear regulations.

75 Nuclear regulations: offences

(1) Nuclear regulations may provide for an offence under the regulations to be triable—

(a) only summarily, or

(b) either summarily or on indictment.

(2) Nuclear regulations may provide for an offence under the regulations that is triable either way to be punishable—

(a) on conviction on indictment—

(i) with imprisonment for a term not exceeding the period specified, which may not exceed 2 years,

(ii) with a fine, or

(iii) with both,

(b) on summary conviction—

(i) with imprisonment for a term not exceeding the period specified,

(ii) with, in England and Wales, a fine or, in Scotland or Northern Ireland, a fine not exceeding the amount specified (which must not exceed £20,000), or

(iii) with both.

(3) A period specified under subsection (2)(b)(i) may not exceed—

(a) in relation to England and Wales—

(i) 6 months, in relation to offences committed before the date on which section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s power to imprison) comes into force,

(ii) 12 months, in relation to offences committed after that date,

(b) in relation to Scotland, 12 months,

(c) in relation to Northern Ireland, 6 months.

(4) Nuclear regulations may provide for a summary offence under the regulations to be punishable—

(a) with imprisonment for a term not exceeding the period specified,

(b) with—

- (i) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
- (ii) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale, or

(c) with both.

(5) A period specified under subsection (4)(a) may not exceed—

(a) in relation to England and Wales—

(i) 6 months, in relation to offences committed before the date on which section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences) comes into force, or

(ii) 51 weeks, in relation to offences committed after that date,

(b) in relation to Scotland, 12 months,

(c) in relation to Northern Ireland, 6 months.

(6) In this section “specified” means specified in nuclear regulations.

76 Nuclear regulations: civil liability

(1) Nuclear regulations may provide for breach of a relevant nuclear duty to be actionable (whether or not they also provide for it to be an offence).

(2) Except so far as nuclear regulations provide, any such breach does not give rise to a claim for breach of statutory duty.

(3) Nuclear regulations may provide for—

(a) defences in relation to any action for breach of a relevant nuclear duty;

(b) any term of an agreement which purports to exclude or restrict liability for breach of a relevant nuclear duty to be void.

(4) For this purpose “relevant nuclear duty” means a duty imposed by—

(a) nuclear regulations, or

(b) any provision of, or made under, the Nuclear Installations Act 1965 that is a relevant statutory provision.

(5) Nothing in this section affects any right of action or defence which otherwise exists or may be available.

CHAPTER 2A NUCLEAR SAFEGUARDS

76A Nuclear safeguards regulations

(1) The Secretary of State may by regulations (“nuclear safeguards regulations”) make provision for the purpose of —

(a) ensuring that qualifying nuclear material, facilities or equipment are only available for use for civil activities (whether in the United Kingdom or elsewhere), or

(b) giving effect to provisions of a relevant international agreement.

- (2) The regulations may, for example, make provision relating to —
- (a) record-keeping or accounting;
 - (b) the provision or publication of information;
 - (c) inspection or monitoring;
 - (d) imports or exports;
 - (e) the design of qualifying nuclear facilities or equipment;
 - (f) the production, processing, use, handling, storage or disposal of qualifying nuclear material or equipment.
- (3) The following apply in relation to nuclear safeguards regulations as they apply in relation to nuclear regulations —
- section 74(3) to (5) (nuclear regulations),
 - section 75 (offences),
 - section 76 (civil liability), and
 - paragraphs 2 to 16 of Schedule 6 (examples of provision that may be made by nuclear regulations).
- (4) Nothing in nuclear safeguards regulations applies in relation to anything done for defence purposes (within the meaning of section 70).
- (5) The Secretary of State may by regulations specify activities that are, or are not, to be treated for the purposes of subsection (1) as civil activities.
- (6) The provision that may be made by nuclear safeguards regulations by virtue of section 113(7) includes provision modifying retained EU law (within the meaning of the European Union (Withdrawal) Act 2017).
- (7) In this section —
- “equipment” has the meaning given by section 70(3);
 - “qualifying nuclear equipment” means equipment designed or adapted for use in connection with qualifying nuclear material or a qualifying nuclear facility;
 - “qualifying nuclear facility” means a facility (including associated buildings) in which qualifying nuclear material is produced, processed, used, handled, stored or disposed of;
 - “qualifying nuclear material” means —
 - (a) fissionable material specified in regulations under subsection (8),
 - (b) source material in the form of —
 - (i) uranium metal, alloy or compound, or
 - (ii) thorium metal, alloy or compound, or
 - (c) ore containing a substance from which a source material falling within paragraph (b) is capable of being derived.
- (8) The Secretary of State may by regulations specify fissionable material for the purposes of the definition of “qualifying nuclear material”.
- (9) Before making any regulations under this section, the Secretary of State must consult —
- (a) the ONR, and

(b) such other persons (if any) as the Secretary of State considers it appropriate to consult.

(10) Subsection (9)(a) does not apply if the regulations give effect, without modification, to proposals submitted by the ONR under section 81(1)(a)(ia).

76B Payments in respect of compliance costs

(1) The Secretary of State may by regulations authorise or require the ONR to make payments towards compliance costs.

(2) “Compliance costs” means costs of complying with nuclear safeguards regulations or with specified provisions of nuclear safeguards regulations.

(3) Regulations under subsection (1) may provide that payments are authorised or required to be made only in specified circumstances.

(4) The ONR is responsible for determining the amounts of payments in accordance with any provision made by regulations under subsection (1).

(5) In this section, specified means specified in regulations under subsection (1).

CHAPTER 3

OFFICE FOR NUCLEAR REGULATION

77 The Office for Nuclear Regulation

(1) There is to be a body corporate known as the Office for Nuclear Regulation.

(2) In this Part that body is referred to as “the ONR”.

(3) Schedule 7 makes further provision about the ONR.

CHAPTER 4

FUNCTIONS OF THE ONR

Functions of ONR: general

78 Principal function

(1) The ONR must do whatever it considers appropriate for the ONR’s purposes.

(2) That includes, so far as it considers appropriate, assisting and encouraging others to further those purposes.

79 Codes of practice

(1) The ONR may, in accordance with section 80—

(a) issue codes of practice giving practical guidance as to the requirements of any provision of the relevant statutory provisions;

(b) revise or withdraw a code of practice issued under this section.

- (2) A code of practice (including a revised code) must specify the relevant statutory provisions to which it relates.
- (3) References in this Part to an approved code of practice are references to a code issued under this section as it has effect for the time being.
- (4) A person's failure to observe any provision of an approved code of practice does not of itself make the person liable to any civil or criminal proceedings.
- (5) But subsections (6) to (8) apply to any proceedings for an offence where—
- (a) the offence consists of failing to comply with any requirement or prohibition imposed by or under any of the relevant statutory provisions, and
 - (b) at the time of the alleged failure, there was an approved code of practice relating to the provision.
- (6) Any provision of the code of practice which appears to the court to be relevant to the alleged offence is admissible in evidence in the proceedings.
- (7) Where—
- (a) in order to establish that the defendant failed to comply with the requirement or prohibition, the prosecution must prove any matter,
 - (b) the court is satisfied that a provision of the code of practice is relevant to that matter, and
 - (c) the prosecution prove that, at a material time, the defendant failed to observe that provision of the code of practice,
- that matter is to be taken as proved unless the defendant proves that the requirement or prohibition was complied with in some other way.
- (8) A document purporting to be an approved code of practice is to be taken to be such an approved code unless the contrary is proved.

80 Procedure for issue, revision or withdrawal of codes of practice

- (1) The ONR may—
- (a) issue or revise a code of practice under section 79 only in accordance with subsection (8);
 - (b) withdraw a code of practice under that section only in accordance with subsection (11).
- (2) Before issuing, or revising or withdrawing, a code of practice, the ONR must submit a proposal to the Secretary of State.
- (3) Before submitting a proposal to the Secretary of State the ONR must consult—
- (a) any government department or other person that the Secretary of State has directed the ONR to consult, and
 - (b) any other government department or other person that the ONR considers it appropriate to consult,
- about the proposal.
- (4) A direction under subsection (3)(a) may be general or may relate to a particular code, or codes of a particular kind.
- (5) A proposal for issuing or revising a code of practice must include a draft code of practice or, as the case may be, proposed revisions of a code of practice.

(6) Where the ONR submits a proposal for issuing or revising a code of practice to the Secretary of State, the Secretary of State may approve the draft code of practice, or proposed revisions, as the case may be—

- (a) without modification, or
- (b) with the consent of the ONR, with modifications.

(7) If the Secretary of State approves the draft code or proposed revisions, the Secretary of State must lay before Parliament the draft code or proposed revisions in the form approved.

(8) Where—

- (a) the Secretary of State has laid a draft code or proposed revisions of a code before Parliament, and
 - (b) no negative resolution is made within the 40-day period,
- the ONR may issue the code in the form of the draft laid before Parliament or, as the case may be, make the proposed revisions in the form so laid.

(9) For the purpose of subsection (8)—

- (a) a “negative resolution”, in relation to a draft code or proposed revisions, means a resolution of either House of Parliament not to approve the draft code or proposed revisions;
- (b) the “40-day period”, in relation to a draft of a code or proposed revisions, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).

(10) For the purposes of calculating the 40-day period, no account is to be taken of any period during which—

- (a) Parliament is dissolved or prorogued, or
- (b) both Houses are adjourned for more than 4 days.

(11) Where—

- (a) the ONR submits to the Secretary of State a proposal for the withdrawal of a code of practice, and
- (b) the Secretary of State approves the proposal,

it may withdraw the code.

(12) The ONR must—

- (a) publish any code of practice issued under section 79;
- (b) when it revises such a code, publish—
 - (i) a notice to that effect, and
 - (ii) a copy of the revised code;
- (d) when it withdraws such a code, publish a notice to that effect.

81 Proposals about orders and regulations

(1) The ONR may from time to time—

- (a) submit proposals to the Secretary of State for—
 - (i) nuclear regulations,

- (ia) regulations under section 76A (nuclear safeguards regulations etc),
- (ii) regulations under section 85,
- (iii) regulations under section 101,
- (iiia) regulations under section 112(1B) (definition of “relevant international agreement”),
- (iv) health and safety fees regulations, or
- (v) orders or regulations under a relevant enactment;

(b) submit proposals to the Health and Safety Executive for relevant health and safety regulations.

(2) In this section—

“health and safety fees regulations” means regulations under section 43(2) of the 1974 Act in relation to fees payable for or in connection with the performance of a function by or on behalf of—

- (a) the ONR, or
- (b) a health and safety inspector;

“relevant enactment” means—

- (a) section 3 of the Nuclear Safeguards and Electricity (Finance) Act 1978 (regulations for giving effect to certain provisions of Safeguards Agreement);
- (b) section 3 of the Nuclear Safeguards Act 2000 (identifying persons who have information);
- (c) section 5(3) of that Act (rights of access for Agency inspectors);
- (d) section 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition of disclosures of uranium enrichment technology);

“relevant health and safety regulations” means regulations under section 15 of the 1974 Act so far as they can be made for the nuclear site health and safety purposes.

(3) Before submitting any such proposal, the ONR must consult—

- (a) any government department or other person that the Secretary of State has directed the ONR to consult, and
- (b) any other government department or other person that the ONR considers it appropriate to consult.

(4) A direction under subsection (3)(a) may be general or may relate to a particular proposal, or to proposals of a particular kind.

82 Enforcement of relevant statutory provisions

(1) The ONR must make adequate arrangements for the enforcement of the relevant statutory provisions.

(2) In this Part, “relevant statutory provisions” means—

- (a) the provisions of this Part, nuclear regulations and nuclear safeguards regulations;

~~of—~~

~~this Part, and~~

~~nuclear regulations;~~

(b) the provisions made by or under the following sections of the Nuclear Installations Act 1965, so far as they have effect in England and Wales or Scotland—

section 1;

sections 3 to 6;

section 22;

section 24A; and

(c) the provisions of the Nuclear Safeguards Act 2000.

83 Inspectors

Schedule 8 (appointment and powers of inspectors) has effect.

84 Investigations

(1) The ONR may—

(a) investigate and make a report (“a special report”) on any relevant matter, or

(b) authorise another person to do so.

(2) The ONR may publish or arrange for the publication of—

(a) a special report, or

(b) so much of a special report as the ONR considers appropriate.

(3) In this section “relevant matter” means any accident, occurrence, situation or other matter which the ONR considers it necessary or desirable to investigate—

(a) for any of the ONR’s purposes, or

(b) with a view to the making of—

(i) nuclear regulations,

(ia) regulations under section 76A (nuclear safeguards regulations etc),

(ib) regulations under section 112(1B) (definition of “relevant international agreement”), or

(ii) regulations under section 15 of the 1974 Act (health and safety regulations) so far as they can be made for the nuclear site health and safety purposes.

(4) The ONR may pay such remuneration, expenses and allowances as it may determine to a person who—

(a) is not a member or member of staff of the ONR, and

(b) investigates a relevant matter or makes a special report under subsection (1), or assists in doing so.

(5) The ONR may make such payments as it may determine to meet the other costs (if any) of an investigation or special report under subsection (1).

(6) The ONR must consult the Office of Rail Regulation before taking any step under subsection (1) in relation to a matter which appears to the ONR to be, or likely to be, relevant to the railway safety purposes (within the meaning given in paragraph 1 of Schedule 3 to the Railways Act 2005).

(7) Subsection (2) is subject to section 94.

85 Inquiries

- (1) The ONR may, with the consent of the Secretary of State, direct an inquiry to be held into any matter if it considers the inquiry necessary or desirable for any of the ONR's purposes.
- (2) In this Part "ONR inquiry" means an inquiry under this section.
- (3) An ONR inquiry must be held in accordance with regulations made by the Secretary of State.
- (4) Except as provided by the regulations—
 - (a) an ONR inquiry is to be held in public; and
 - (b) any report made by the person holding an ONR inquiry is to be published.
- (5) The regulations may in particular make provision—
 - (a) conferring on the person holding an ONR inquiry and any person assisting that person—
 - (i) powers of entry and inspection;
 - (ii) powers of summoning witnesses to give evidence or produce documents;
 - (iii) power to take evidence on oath and to administer oaths;
 - (iv) power to require the making of declarations;
 - (b) as to circumstances in which—
 - (i) an ONR inquiry or any part of it is to be held in private;
 - (ii) any report, or part of a report, made by the person holding an ONR inquiry is not to be published;
 - (c) conferring functions on the ONR or the Secretary of State;
 - (d) creating summary offences.
- (6) An offence under the regulations may be made punishable with—
 - (a) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
 - (b) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale.
- (7) Subsection (8) applies where—
 - (a) the ONR directs an ONR inquiry to be held into a matter arising in Scotland, and
 - (b) the matter in question causes the death of a person.
- (8) Unless the Lord Advocate otherwise directs, no inquiry is to be held with regard to the death of that person under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

86 Inquiries: payments and charges

- (1) The ONR may pay such remuneration, expenses and allowances as it may determine to—
 - (a) a person holding an ONR inquiry;
 - (b) any assessor appointed to assist a person holding an ONR inquiry.

- (2) The ONR may pay to persons attending an ONR inquiry as witnesses such expenses as it may determine.
- (3) The ONR may make such payments as it may determine to meet the other costs (if any) of an ONR inquiry.
- (4) The ONR may require such person or persons to make such payments to it as it considers appropriate in connection with an ONR inquiry.
- (5) The aggregate of the payments required under subsection (4) must not exceed the ONR's costs that are attributable to the ONR inquiry.
- (6) No payment may be required under subsection (4) except with the consent of the Secretary of State.

Other functions

87 Provision of information

- (1) The ONR must make such arrangements as it considers appropriate for providing information that it holds that is relevant to the ONR's purposes.
- (2) Arrangements that may be made under subsection (1) are arrangements of any description, including arrangements—
 - (a) for providing information to any person or category of persons (whether or not concerned with matters relevant to the ONR's purposes);
 - (b) for providing information on request or on the ONR's initiative;
 - (c) for providing only such information as the ONR considers appropriate.
- (3) This section is subject to section 94.

88 Research, training etc

- (1) The ONR—
 - (a) may carry out research in connection with the ONR's purposes, or arrange for such research to be carried out on its behalf, and
 - (b) must, if it considers it appropriate to do so, publish the results of any such research or arrange for them to be published.
- (2) The ONR may make payments for research to be carried out in connection with the ONR's purposes and for the dissemination of information derived from such research.
- (3) The ONR may provide, or make arrangements for the provision of, training to any person in connection with the ONR's purposes.
- (4) Arrangements under subsection (3) may include provision for payments to be made to the ONR by or on behalf of—
 - (a) other parties to the arrangements,
 - (b) persons to whom the training is provided.

89 Provision of information or advice to relevant authorities

- (1) The ONR must, on request, provide a relevant authority with relevant information or relevant advice.
- (2) Relevant information is information about the ONR's activities which is requested—

- (a) in the case of information requested by a Minister of the Crown—
 - (i) for the purpose of monitoring the ONR's performance of its functions, or
 - (ii) for the purpose of any proceedings in Parliament,
 - (b) in any case, in connection with any matter with which the relevant authority requesting it is concerned.
- (3) The reference in subsection (2) to the ONR's activities includes a reference to—
- (a) the activities of inspectors appointed by the ONR under—
 - (i) Schedule 8,
 - (ii) section 19 of the 1974 Act, or
 - (iii) Article 26 of the Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541),in their capacity as such inspectors, and
 - (b) the activities of enforcing officers appointed by the ONR under section 61(3) of the Fire (Scotland) Act 2005 (asp. 5) in their capacity as such enforcing officers.
- (4) Relevant advice is advice on a matter with which the relevant authority requesting it is concerned where the matter—
- (a) is relevant to the ONR's purposes, or
 - (b) is one on which expert advice is obtainable from any member or member of staff of the ONR.
- (5) The ONR may require a relevant authority to whom information or advice is provided under subsection (1) to pay a fee in respect of the ONR's costs reasonably incurred in providing the authority with—
- (a) relevant information requested under subsection (2)(b), or
 - (b) relevant advice.
- (6) The Secretary of State may by regulations provide that subsection (5) is not to apply in particular cases or classes of case or in particular circumstances.
- (7) The duty under subsection (1) is in addition to any other duty or power of the ONR to provide information or advice.
- (8) In this section "relevant authority" means any of the following—
- (a) a Minister of the Crown;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers;
 - (d) a Northern Ireland Department;
 - (e) the Health and Safety Executive;
 - (f) the Health and Safety Executive for Northern Ireland;
 - (g) the Civil Aviation Authority;
 - (h) the Office of Rail Regulation.

90 Arrangements with government departments etc

(1) If the condition in subsection (2) is met, the ONR may enter into an agreement with a Minister of the Crown, a government department or a public authority for the ONR to perform any function exercisable by the Minister, department or authority.

(2) The condition is that—

(a) the function is—

(i) a function of the Health and Safety Executive of investigating or making a special report under section 14 of the 1974 Act, or

(ii) a function of the Office of Rail Regulation of investigating or making a special report under paragraph 4 of Schedule 3 to the Railways Act 2005, or

(b) the Secretary of State considers that the function in question can appropriately be performed by the ONR.

(3) The functions to which an agreement under subsection (1) may relate—

(a) in the case of an agreement with a Minister of the Crown, include a function not conferred by an enactment;

(b) do not include any power to make regulations or other instruments of a legislative character.

(4) An agreement under subsection (1) may provide for functions to be performed with or without payment.

(5) The ONR may provide services or facilities, with or without payment, otherwise than for the ONR's purposes, to a government department or public authority in connection with the exercise of that department's or authority's functions.

91 Provision of services or facilities

(1) The ONR may provide services and facilities for the ONR's purposes to any person.

(2) The ONR may, with the consent of the Secretary of State, provide any relevant services to any person, whether or not in the United Kingdom.

(3) In subsection (2), "relevant services" means services which—

(a) are not relevant to the ONR's purposes, but

(b) are in a field in which any member or member of staff of the ONR has particular expertise.

(4) The Secretary of State may give consent for the purposes of subsection (2)—

(a) in relation to particular arrangements for the provision of services, or

(b) generally in relation to such arrangements of a particular description.

(5) Arrangements for the provision of services to a person under subsection (2) are to be on such terms as to payment as that person and the ONR may agree.

Exercise of functions: general

92 Directions from Secretary of State

(1) The Secretary of State may give the ONR a direction as to the exercise by it of—

(a) its functions generally, or

- (b) any of its functions specifically.
- (2) A direction given by the Secretary of State under subsection (1)—
- (a) may modify a function of the ONR, but
 - (b) must not confer functions on the ONR (other than a function of which it was deprived by a previous direction given under this section).
- (3) The Secretary of State may give the ONR such directions as appear to the Secretary of State to be necessary or desirable in the interests of national security.
- (4) A direction given by the Secretary of State under subsection (3) may—
- (a) modify a function of the ONR,
 - (b) confer a function on the ONR.
- (5) A direction under subsection (1) or (3) must not be given in relation to the exercise of a regulatory function in a particular case.
- (6) If the Secretary of State is satisfied that there are exceptional circumstances relating to national security which justify giving a direction under this subsection, the Secretary of State may give the ONR a direction as to the exercise by the ONR of a regulatory function in a particular case.
- (7) A direction given under subsection (6) must be for the nuclear security purposes.
- (8) The Secretary of State must lay before Parliament a copy of any direction given under this section.
- (9) Subsection (8) does not apply to a direction under subsection (6) if the Secretary of State considers that publishing the direction would be contrary to the interests of national security; but, in that event, the Secretary of State must lay before Parliament a memorandum stating that such a direction has been given and the date on which it was given.

93 Compliance with nuclear safeguards obligations

~~(1) The ONR must do such things as it considers best calculated to secure compliance by the United Kingdom or, as the case may be, to enable or facilitate compliance by a Minister of the Crown, with the safeguards obligations.~~

~~(2) For the purposes of this Part “the safeguards obligations” are—~~

~~(a) Articles 77 to 85 of the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957,~~

~~(b) the agreement made on 6 September 1976 between the United Kingdom, the European Atomic Energy Community and the International Atomic Energy Agency for the application of safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons,~~

~~(c) the protocol signed at Vienna on 22 September 1998 additional to the agreement mentioned in paragraph (b), and~~

~~(d) such other obligations, agreements or arrangements relating to nuclear safeguards as may be specified in a notice given to the ONR by the Secretary of State;~~

~~and any reference in paragraphs (a) to (c) to a treaty, agreement or protocol is to it as it has effect for the time being.~~

~~(3) The Secretary of State may vary or revoke a notice given under subsection (2)(d) by giving a further notice to the ONR.~~

~~(4) Before giving a notice under this section, the Secretary of State must consult the ONR.~~

~~(5) The ONR must publish any notice given under this section.~~

~~(6) Subsection (1) is not to be taken to affect the generality of section 78.~~

94 Consent of Secretary of State for certain communications

(1) The ONR must not issue any communication to which this section applies except with the consent of the Secretary of State.

(2) This section applies to—

(a) any—

(i) security guidance, or

(ii) statement of the ONR's nuclear security policy,

that the ONR considers concerns any matter to which any government policy on national security relates;

(a) any other communication of a description that the Secretary of State has directed should be submitted to the Secretary of State before being issued.

This is subject to subsection (3).

(3) This section does not apply to—

(a) a code of practice issued under section 79;

(b) the ONR's strategy or annual plan or a report under paragraph 24 of Schedule 7;

(c) advice given in a particular case.

(4) In this section—

“government policy on national security” means any current policy which relates to national security and—

(a) has been published by or on behalf of Her Majesty's Government, or

(b) has been notified to the ONR by the Secretary of State;

“security guidance” means any guidance to which the ONR's nuclear security policy is relevant;

“the ONR's nuclear security policy” means the ONR's policy with respect to the exercise of its functions, or the functions of inspectors, so far as relevant to the nuclear security purposes.

(5) The Secretary of State may give a direction under subsection (2)(b) in relation to a description of communication only if it appears to the Secretary of State—

(a) that—

(i) a communication of that description might contain security guidance or information about the ONR's nuclear security policy, or

(ii) the ONR's nuclear security policy might otherwise be relevant to such a communication, and

(b) that such a communication might concern any matter to which any government policy on national security relates.

(6) The Secretary of State may give the ONR a general consent in relation to the issue of a particular description of communication which would otherwise fall within subsection (2)(a).

(7) If the Secretary of State has given such a general consent, the ONR need not seek the Secretary of State's particular consent in relation to the issue of a communication of that description unless directed by the Secretary of State to do so.

95 Power to arrange for exercise of functions by others

(1) If the condition in subsection (2) is satisfied, the ONR may make arrangements with a government department or other person for that department or person to perform any of the ONR's functions, with or without payment.

(2) That condition is that the Secretary of State considers that the function or functions in question can appropriately be performed by the government department or other person.

96 Co-operation between ONR and Health and Safety Executive

(1) The Health and Safety Executive and the ONR must enter into and maintain arrangements with each other for securing co-operation and the exchange of information in connection with the carrying out of any of their functions.

(2) The Health and Safety Executive and the ONR must—

- (a) review the arrangements from time to time, and
- (b) revise them when they consider it appropriate to do so.

Information etc

97 Power to obtain information

(1) The ONR may by notice require a person to provide information which the ONR needs for carrying out its functions.

This is subject to subsection (4).

(2) A notice may require information to be provided—

- (a) in a specified form or manner;
- (b) at a specified time;
- (c) in respect of a specified period.

(3) In particular, a notice may require the person to whom it is given to make returns to the ONR containing information about matters specified in the notice at times or intervals so specified.

(4) No notice may be given under this section which imposes a requirement which could be imposed by a notice served by the ONR under section 2 of the Nuclear Safeguards Act 2000 (information and records for purposes of the Additional Protocol).

(5) It is an offence to refuse or fail to comply with a notice under this section.

(6) A person who commits an offence under this section is liable—

- (a) on summary conviction, to—
 - (i) in England and Wales, a fine, or
 - (ii) in Scotland or Northern Ireland, a fine not exceeding the statutory maximum, or
- (a) on conviction on indictment, to a fine.

98 Powers of HMRC in relation to information

(1) The Commissioners for Her Majesty's Revenue and Customs may disclose information about imports to—

- (a) the ONR,
- (b) an inspector, or
- (c) a health and safety inspector,

for the purpose of facilitating the ONR, inspector or health and safety inspector to carry out any function.

(2) For this purpose, "information about imports" means information obtained or held by the Commissioners for the purposes of the exercise of their functions in relation to imports.

(3) Information may be disclosed to the ONR, an inspector or a health and safety inspector under subsection (1) whether or not the disclosure of the information has been requested by or on behalf of the ONR, inspector or health and safety inspector.

99 HMRC power to seize articles etc to facilitate ONR and inspectors

(1) An officer of Revenue and Customs may seize any imported article or substance and detain it for the purpose of facilitating the ONR or an inspector to carry out any function under the relevant statutory provisions.

(2) It is an offence for a person intentionally to obstruct an officer of Revenue and Customs in the exercise of powers under subsection (1).

(3) A person who commits an offence under subsection (2) 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
- (ii) in Scotland or Northern Ireland, a fine not exceeding level 5 on the standard scale, or

(c) to both.

(4) 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 subsection (3)(a), as it has effect in England and Wales, to 51 weeks is to be read as a reference to 6 months.

(5) Anything seized and detained under subsection (1)—

(a) must not be detained for more than 2 working days, and

(b) must be dealt with during the period of detention in such manner as the Commissioners for Her Majesty's Revenue and Customs may direct.

(6) In subsection (5), the reference to 2 working days is a reference to the period of 48 hours beginning when the article or substance in question is seized but disregarding any time falling on a Saturday or Sunday, or on Good Friday or Christmas Day or on a day which is a bank holiday in the part of the United Kingdom where it is seized.

100 Disclosure of information

Schedule 9 (disclosure of information) has effect.

Fees

101 Fees

- (1) The Secretary of State may by regulations provide for fees to be payable for, or in connection with, the performance of any of the following functions (whenever conferred)—
- (a) any function of the ONR or an inspector under any of the relevant statutory provisions;
 - (b) any function of the ONR under regulations under section 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition of disclosures of uranium enrichment technology);
 - (c) any function of any other person under any of the relevant statutory provisions.
- (2) The amount of any fee under regulations under this section must be—
- (a) specified in the regulations, or
 - (b) determined by or in accordance with the regulations.
- (3) Regulations under this section may provide for the amounts of fees to be different in different cases and, in particular, for fees in respect of the same function to be of different amounts in different circumstances.
- (4) Regulations under this section may not provide for a fee to be payable by anyone in the capacity of—
- an employee,
 - a person seeking employment,
 - a person training for employment, or
 - a person seeking training for employment.
- (5) For the purposes of subsection (4)—
- (a) “employee” and “employment” have the same meanings as in Part 1 of the 1974 Act, and
 - (b) an industrial rehabilitation course provided by virtue of the Employment and Training Act 1973 is to be treated as training for employment.
- (6) Before making regulations under subsection (1), the Secretary of State must consult—
- (a) the ONR, and
 - (b) such other persons (if any) as the Secretary of State considers it appropriate to consult.
- (7) Subsection (6)(a) does not apply if the regulations give effect, without modification, to any proposals submitted by the ONR under section 81(1)(a)(iii).

CHAPTER 5

SUPPLEMENTARY

General duties of employers, employees and others

102 General duty of employees at work in relation to requirements imposed on others

(1) Every employee, while at work, must co-operate with any person (whether or not the employer) on whom a requirement is imposed by or under any ~~relevant provision of the relevant statutory provisions~~ so far as necessary to enable the requirement to be complied with.

(2) Failure to comply with the duty in subsection (1) is an offence.

(3) A person who commits an offence under subsection (2) 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 the statutory maximum (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 the application of subsection (3) to England and Wales 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 power to imprison), the reference in subsection (3)(a)(i) to 12 months is to be read as a reference to 6 months.

(5) In this section—

(a) "employee" and "employer" have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act), ~~and~~

~~(b) "relevant provision" means any of the relevant statutory provisions other than—~~

~~(i) any provision of the Nuclear Safeguards Act 2000,~~

~~(ii) any provision of nuclear regulations which is identified under section 74(9) as having been made solely for the nuclear safeguards purposes.~~

103 Duty not to interfere with or misuse certain things provided under statutory requirements

(1) It is an offence intentionally or recklessly to interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.

(2) A person who commits an offence under this section 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.

(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 subsection (2)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

104 Duty not to charge employees for certain things

(1) It is an offence for an employer to impose a charge, or allow a charge to be imposed, on an employee in respect of anything done or provided in pursuance of a specific requirement imposed by or under any **relevant provision of the relevant statutory provisions**.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction to—

(i) in England and Wales, a fine, or

(ii) in Scotland or Northern Ireland, a fine not exceeding £20,000;

(b) on conviction on indictment, to a fine.

(3) In this section—

(a) "employer" and "employee" have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act), **and**

~~(b) "relevant provision" has the same meaning as in section 102.~~

Offences

105 Offences relating to false information and deception

(1) It is an offence for a person—

(a) to make a statement which the person knows to be false, or

(b) recklessly to make a statement which is false,

in the circumstances mentioned in subsection (2).

(2) Those circumstances are where the statement is made—

(a) in purported compliance with any requirement to provide information imposed by or under any of the relevant statutory provisions, or

(b) for the purposes of obtaining the issue of a document under any of the relevant statutory provisions (whether for the person making the statement or anyone else).

(3) It is an offence for a person—

- (a) intentionally to make a false entry in a relevant document, or
 - (b) with intent to deceive, to make use of any such entry which the person knows to be false.
- (4) In subsection (3) “relevant document” means any register, record, notice or other document which is required to be kept or given by or under any of the relevant statutory provisions.
- (5) It is an offence for a person, with intent to deceive—
- (a) to use a relevant document,
 - (b) to make or have possession of a document so closely resembling a relevant document as to be calculated to deceive.
- (6) In subsection (5) “relevant document” means a document—
- (a) issued or authorised to be issued under any of the relevant statutory provisions, or
 - (b) required for the purpose of any of those provisions.
- (7) A person who commits an offence under this section 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.
- (8) 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 subsection (7)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

106 Provision relating to offences under certain relevant statutory provisions

- (1) Schedule 10 (provision relating to offences under certain relevant statutory provisions) has effect.
- (2) That Schedule contains provision about the following matters—
- (a) the place where an offence involving plant or a substance may be treated as having been committed;
 - (b) the extension of time for bringing summary proceedings in certain cases;
 - (c) the continuation of offences;
 - (d) where an offence committed by one person is due to the act or default of another person, the liability of that other person;
 - (e) offences by bodies corporate or partnerships;

- (f) restrictions on the persons who may institute proceedings in England and Wales;
- (g) powers of inspectors to prosecute offences;
- (h) the burden of proof in certain cases relating to what is practicable or what are the best means for doing something;
- (i) reliance on entries in a register or other document as evidence;
- (j) power of the court to order a defendant to take remedial action.

Civil liability

107 Civil liability: saving for section 12 of the Nuclear Installations Act 1965

Nothing in this Part affects the operation of section 12 of the Nuclear Installations Act 1965 (right to compensation by virtue of certain provisions of that Act).

Supplementary

108 Reporting requirements of Secretary of State

(1) As soon as reasonably practicable after the end of the financial year, the Secretary of State must make a report to each House of Parliament on the use of the Secretary of State's powers under this Part during the year.

(2) The Secretary of State must lay a copy of any such report before Parliament.

109 Notices etc

(1) In this section references to a notice are to a notice or other document that is required or authorised to be given to any person under a relevant provision.

(2) A notice to the person must be in writing.

(3) A notice may be given by—

- (a) delivering it to the person,
- (b) leaving it at the person's proper address,
- (c) sending it by post to the person at that address, or
- (d) in the case of a notice to be given to the owner or occupier of any premises (whether or not a body corporate), in accordance with subsection (9), (10) or (11).

(4) A notice may—

(a) in the case of a body corporate, be given in accordance with subsection (3) to a director, manager, secretary or other similar officer of the body corporate, and

(b) in the case of a partnership, be given in accordance with subsection (3) to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.

(5) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the "proper address" is—

- (a) in the case of a notice to be given to a body corporate or an officer of the body, the address of the registered or principal office of the body;

(b) in the case of a notice to be given to a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership;

(c) in any other case, the last known address of the person to whom the notice is to be given.

(6) For the purposes of subsection (5), the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

(7) Subsection (8) applies if—

(a) a person has specified an address in the United Kingdom as one at which the person, or someone on the person's behalf, will accept documents of the same description as a notice, and

(b) the address so specified is not the person's proper address (as determined under subsection (5)).

(8) The specified address is also to be treated as the person's proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section.

(9) A notice that is to be given to the owner or occupier of any premises may be given by—

(a) sending it by post to the person at those premises, or

(b) addressing it by name to the person and delivering it to some responsible person who is or appears to be resident or employed at the premises.

(10) If the name or address of an owner or occupier of premises cannot be ascertained after reasonable inquiry, a notice to the owner or occupier may be given by—

(a) addressing it by the description "owner" or "occupier" of the premises to which the notice relates (and describing the premises), and

(b) delivering it to some responsible person who is or appears to be resident or employed there.

(11) If there is no person as mentioned in subsection (10)(b), then the notice may be given by fixing it, or a copy of it, to some conspicuous part of the premises.

(12) This section is subject to provision made in regulations under this Part in respect of notices given under the regulations.

(13) In this section—

"director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

"employed" has the same meaning as in the 1974 Act;

"relevant provision" means any of the relevant statutory provisions other than a provision of the Nuclear Safeguards Act 2000;

and references to giving a notice include similar expressions (such as serving or sending).

110 Electronic delivery of notices etc

(1) This section applies where—

(a) section 109 authorises the giving of a notice or other document by its delivery to a particular person ("the recipient"), and

- (b) the notice or other document is transmitted to the recipient—
 - (i) by means of an electronic communications network, or
 - (ii) by other means but in a form that requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of section 109 as a delivery of the notice or other document to the recipient, but only if the recipient has indicated to the person making the transmission (“the sender”) a willingness to receive the notice or other document in the form and manner used.

(3) An indication to the sender for the purposes of subsection (2)—

- (a) must be given to the sender in such manner as the sender may require,
- (b) may be a general indication or an indication that is limited to notices or other documents of a particular description,
- (c) must state the address to be used,
- (d) must be accompanied by such other information as the sender requires for the making of the transmission, and
- (e) may be modified or withdrawn at any time by a notice given to the sender in such manner as the sender may require.

(4) In this section “electronic communications network” has the same meaning as in the Communications Act 2003; and the reference to giving a notice is to be read in accordance with section 109.

111 Crown application: Part 3

(1) Subject as follows, this Part, and regulations made under it, bind the Crown.

(2) Part 2 of Schedule 8 (inspectors: improvement and prohibition notices) does not bind the Crown.

(3) Any other provision of, or of regulations under, this Part under which a person may be prosecuted for an offence—

- (a) does not bind the Crown, but
- (b) applies to persons in the public service of the Crown as it applies to other persons.

(4) So far as it applies to nuclear regulations, subsection (3) is subject to any provision made by those regulations.

(5) For the purposes of this Part and regulations made under this Part, persons in the service of the Crown are to be treated as employees of the Crown (whether or not they would be so treated apart from this subsection).

(6) The Secretary of State may, by order—

- (a) amend this section so as to provide for any provision made by or under this Part to apply to the Crown, or not to apply to the Crown, to any extent;
- (b) amend any provision of sections 68 to 73 so far as it affects the extent to which any of the ONR’s purposes relates to the Crown or any of the purposes of the Crown.

(7) Provision that may be made under subsection (6) includes in particular provision altering whether, or the extent to which, any of the ONR’s purposes relates to—

- (a) sites or premises used or occupied by the Crown,

(b) sites controlled or occupied to any extent for defence purposes (within the meaning of section 70), or

(c) transport for those purposes.

(8) Nothing in this section authorises proceedings to be brought against Her Majesty in her private capacity (within the meaning of the Crown Proceedings Act 1947).

112 Interpretation of Part 3

(1) In this Part —

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“approved code of practice” has the meaning given by section 79(3);

“financial year”, in relation to the ONR, has the meaning given by paragraph 28 of Schedule 7;

“health and safety inspector” means a person appointed by the ONR under section 19 of the 1974 Act;

“improvement notice” has the meaning given by paragraph 3(2) of Schedule 8;

“inspector” means an inspector appointed under Part 1 of Schedule 8 (unless otherwise specified);

“member of staff”, in relation to the ONR, is to be read in accordance with paragraph 2(2) of Schedule 7;

“modify” includes amend, repeal or revoke (and “modification” is to be read accordingly);

“nuclear regulations” has the meaning given by section 74(1);

“nuclear safeguards regulations” means regulations under section 76A(1);

“nuclear site” means—

a site in respect of which a nuclear site licence is in force, or

a site in respect of which a period of responsibility has not ended;

“nuclear site licence” has the same meaning as in the Nuclear Installations Act 1965 (see section 1 of that Act);

“ONR” means the Office for Nuclear Regulation;

“ONR inquiry” has the meaning given by section 85(2);

“period of responsibility”, in relation to a site, means the period of responsibility (within the meaning given in section 5 of the Nuclear Installations Act 1965 (revocation and surrender of licences)) in respect of a nuclear site licence granted at any time in respect of the site;

“personal injury” includes—

any disease, and

any impairment of a person’s physical or mental condition;

“prohibition notice” has the meaning given by paragraph 4(2) of Schedule 8;

“regulatory function”, in relation to the ONR, means—

a function of giving or revoking permission or approval in relation to any material, premises or activity;

a function of imposing conditions or requirements in relation to any material, premises or activity;

a function, other than a function under section 84 (investigations), which relates to securing, monitoring or investigating compliance with conditions or requirements (however imposed) in relation to any material, premises or activity;

a function which relates to the enforcement of such requirements;

“relevant international agreement” has the meaning given by subsection (1A);

“relevant power” has the meaning given by paragraph 2 of Schedule 8;

“relevant statutory provisions” has the meaning given by section 82(2) (unless otherwise specified).

(1A) “Relevant international agreement” means an agreement (whether or not ratified) to which the United Kingdom is a party and which —

(a) relates to nuclear safeguards, and

(b) is specified in regulations under subsection (1B),

and a reference in this Part to a relevant international agreement is to the agreement as it has effect for the time being.

(1B) The Secretary of State may by regulations specify agreements for the purposes of subsection (1A)(b).

(1C) References in subsection (1A) to an agreement to which the United Kingdom is a party include an undertaking given by the United Kingdom which —

(a) relates to guidance or any other document issued by the International Atomic Energy Agency, and

(b) is notified to the Agency by the United Kingdom,

(and the reference in subsection (1B) to an agreement is to be read accordingly).

(1D) Before making regulations under subsection (1B), the Secretary of State must consult —

(a) the ONR, and

(b) such other persons (if any) as the Secretary of State considers it appropriate to consult.

(1E) Subsection (1D)(a) does not apply if the regulations give effect, without modification, to proposals submitted by the ONR under section 81(1)(a)(iiia).

(2) The following apply for the purposes of this Part as they apply for the purposes of Part 1 of the 1974 Act—

(a) section 52(1) of that Act (meaning of “work” and “at work”);

(b) the power conferred by section 52(2)(a) of that Act to extend the meaning of “work” and “at work”.

113 Subordinate legislation under Part 3

(1) Any power to make subordinate legislation under this Part is exercisable by statutory instrument.

(2) An instrument containing (whether alone or with other provision)—

(a) nuclear regulations, or nuclear safeguards regulations, which fall within subsection (3), ~~or~~

(aa) regulations under section 76A(5) or (8),

(b) an order under section 111, or

(c) regulations under section 112(1B),

may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Nuclear regulations or nuclear safeguards regulations fall within this subsection if—

(a) they are the first nuclear regulations or nuclear safeguards regulations to be made,

(b) they include provision amending or repealing any provision of—

(i) the Nuclear Installations Act 1965, or

(ii) the Nuclear Safeguards Act 2000, or

(c) they include provision creating a new offence by virtue of section 75;

and for this purpose nuclear regulations or nuclear safeguards regulations which revoke and re-enact an offence are not to be regarded as creating a new offence.

(4) An instrument containing an order under paragraph 26 of Schedule 7 (payments and borrowing) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(5) An instrument containing any other subordinate legislation under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Any power to make subordinate legislation under this Part includes power—

(a) to make different provision for different cases;

(b) to make provision for some cases only or subject to exceptions;

(c) to make provision generally or only in particular respects.

(7) Any subordinate legislation under this Part may include—

(a) consequential, incidental or supplementary provision;

(b) transitional, transitory or saving provision.

(8) In this section “subordinate legislation” means an Order in Council, an order or regulations.

(9) In relation to any modification of a provision of, or made under, any of the provisions of the Nuclear Installations Act 1965 that are relevant statutory provisions, the power conferred by subsection (7)(a) includes power to extend the modification to Northern Ireland for the purpose of ensuring that the text of the provision is uniform throughout the United Kingdom (but does not include power to alter the effect of the provision in relation to a site in Northern Ireland).

114 Transitional provision etc

(1) The Secretary of State may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, this Part.

(2) The provision which may be made by virtue of subsection (1) includes, in particular—

(a) provision modifying any provision made by—

(i) primary legislation passed before the end of the session in which this Act was passed, or

- (ii) an instrument made before the end of that session;
- (b) provision for treating any regulations within subsection (3) as—
 - (i) relevant statutory provisions (or as relevant statutory provisions of a particular description),
 - (ii) regulations under section 85, or
 - (iii) regulations under section 101.
- (3) The regulations mentioned in subsection (2)(b) are regulations made under a provision within subsection (4) so far as they relate to, or to fees payable in respect of functions which relate to, any of the following purposes—
 - (a) the nuclear safety purposes;
 - (b) the nuclear security purposes;
 - (c) the nuclear safeguards purposes;
 - (d) the transport purposes.
- (4) The provisions mentioned in subsection (3) are—
 - (a) section 2(2) of the European Communities Act 1972 (general implementation of Treaties);
 - (b) section 14 of the 1974 Act (power to direct investigations and inquiries);
 - (c) section 15 of that Act (health and safety regulations);
 - (d) section 43 of that Act (fees);
 - (e) section 3 of the Nuclear Safeguards Act 2000 (identifying persons who have information);
 - (f) section 77 of the Anti-terrorism, Crime and Security Act 2001 (regulation of security of civil nuclear industry).
- (5) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

115 Transfer of staff etc

Schedule 11 (which makes provision about schemes to transfer staff etc to the ONR) has effect.

116 Minor and consequential amendments

- (1) Schedule 12 (minor and consequential amendments related to Part 3) has effect.
- (2) The Secretary of State may by order make such modifications of—
 - (a) primary legislation passed before the end of the session in which this Act is passed, or
 - (b) an instrument made before the end of that session,as the Secretary of State considers appropriate in consequence of this Part.
- (3) The power in subsection (2) includes power to make modifications of—
 - (a) paragraphs 17 to 30 of Schedule 12 (amendments of the Nuclear Installations Act 1965), or

(b) the provisions of the Nuclear Installations Act 1965 that are amended by those paragraphs.

(4) The power conferred by virtue of subsection (3) is exercisable—

- (a) before or after the date on which those paragraphs come into force, and
- (b) only for the purpose of making provision corresponding to any amendments of the Nuclear Installations Act 1965 set out in an order made before that date (whether before or after this Act is passed) under section 76 of the Energy Act 2004 (amendments for giving effect to international obligations).

117 Application of Part 3

(1) Her Majesty may by Order in Council provide that the provisions of this Part apply, so far as specified, in relation to persons, premises, activities, articles, substances or other matters, outside the United Kingdom as they apply within the United Kingdom or a specified part of the United Kingdom.

(2) Such an Order in Council may—

- (a) provide for any provisions of this Part to apply subject to modifications;
- (b) provide for any of those provisions, as applied by the Order, to apply—
 - (i) in relation to individuals, whether or not they are British citizens, and
 - (ii) in relation to bodies corporate, whether or not they are incorporated under the law of a part of the United Kingdom;
- (c) make provision for conferring jurisdiction on a specified court or courts of a specified description in respect of—
 - (i) offences under this Part committed outside the United Kingdom, or
 - (ii) causes of action under section 76 in respect of acts or omissions that occur outside the United Kingdom;
- (d) make provision for questions arising out of any acts or omissions mentioned in paragraph (c)(ii) to be determined in accordance with the law in force in any specified part of the United Kingdom;
- (e) exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under any provision of this Part committed outside the United Kingdom.

(3) In this section “specified”, in relation to an Order in Council, means specified in the Order.

(4) Nothing in this section affects the application outside the United Kingdom of any provision of, or made under, this Part which so applies otherwise than by virtue of an Order in Council under this section.

118 Review of Part 3

(1) As soon as reasonably practicable after the end of the period of ~~5 years~~ 7 years beginning with the day on which section 77 comes into force, the Secretary of State must carry out a review of the provisions of this Part.

(2) The Secretary of State must set out the conclusions of the review in a report.

(3) The report must, in particular—

- (a) set out the objectives of the provisions of this Part,

(b) assess the extent to which those objectives have been achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.

(4) The Secretary of State must lay the report before Parliament.

SCHEDULE 8

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.
- (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),~~
 - (a) any of the relevant statutory provisions other than any provision of nuclear regulations which is identified in accordance with section 74(9) (provision made for nuclear security purposes), 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—
- (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 but does not include nuclear safeguards regulations or a provision of the Nuclear Safeguards Act 2000;

“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 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),

(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—

- (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;
 - (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—
- (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

(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 subparagraph (1), the inspector must provide the same information to their employer.

(3) For this purpose—

(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.

SCHEDULE 9

DISCLOSURE OF INFORMATION

PART 1

PROHIBITION ON DISCLOSURE OF PROTECTED INFORMATION

Meaning of “protected information” and related terms

- 1(1) In this Schedule “protected information” means information which has been—
- (a) obtained by the ONR under section 97,
 - (b) provided to the ONR, an inspector or a health and safety inspector under section 98,
 - (c) obtained by an inspector as a result of the exercise of any relevant power,
 - (d) obtained by a health and safety inspector in the exercise of any power under section 20 of the 1974 Act (powers of persons appointed under section 19 of that Act),
 - (e) obtained by an ONR inquiry official as a result of the exercise of an ONR inquiry power,
 - (f) provided to a person pursuant to a requirement imposed by any of the relevant statutory provisions, or
 - (g) provided to the ONR or a health and safety inspector pursuant to a requirement imposed by any provision which is one of the relevant statutory provisions for the purposes of Part 1 of the 1974 Act.
- (2) Information is not protected information for the purposes of this Schedule if it has been—
- (a) disclosed as mentioned in paragraph 16, or
 - (b) otherwise made available to the public—
 - (i) by virtue of a disclosure in accordance with Part 3 of this Schedule, or
 - (ii) lawfully from other sources.
- (3) Information received by virtue of a disclosure under paragraph 21 (anonymised information) is not protected information.
- (4) Protected information includes, in particular, information with respect to a trade secret which an inspector, a health and safety inspector or an ONR inquiry official has obtained as a result of entering premises in exercise of a relevant power, a power conferred under section 20 of the 1974 Act or an ONR inquiry power.
- (5) In this Schedule—
- “ONR inquiry official” means a person on whom functions are conferred under section 85(5)(a);
 - “ONR inquiry power” means a power conferred by regulations under section 85(5)(a);
 - “the original holder” of protected information means the person who obtained the information, or to whom it was provided, as mentioned in sub-paragraph (1).

PART 2

OFFENCES RELATING TO DISCLOSURE AND USE OF PROTECTED INFORMATION

Prohibition on disclosing protected information

2 Protected information must not be disclosed—

- (a) by the original holder of the information, or
- (b) by any other person holding it who has received it directly or indirectly from the original holder by virtue of a disclosure, or disclosures, in accordance with this Schedule,

except in accordance with Part 3 of this Schedule.

Offence of disclosing protected information in contravention of paragraph 2

3 It is an offence for a person to disclose information in contravention of paragraph 2.

Offence of using protected information in contravention of a restriction in Part 3

4 It is an offence for a person to use protected information in contravention of a restriction under paragraph 10(3), 11(2), 12(2), 13(2), 14(2) or 15(2).

Defence to offences under paragraphs 3 and 4

5 It is a defence for a person charged with an offence under paragraph 3 or 4 to prove—

- (a) that the person did not know and had no reason to suspect that the information was protected information, or
- (b) that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Penalty for offences under paragraphs 3 and 4

6(1) A person who commits an offence under paragraph 3 or 4 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 the statutory maximum (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.

(2) In the application of sub-paragraph (1) to England and Wales 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 power to imprison), the reference in sub-paragraph (1)(a)(i) to 12 months is to be read as a reference to 6 months.

PART 3

PROTECTED INFORMATION: PERMITTED DISCLOSURES AND RESTRICTIONS ON USE

Disclosure with appropriate consent

7(1) Paragraph 2 does not prohibit a disclosure of protected information if it is made with the appropriate consent.

(2) For this purpose “the appropriate consent” means—

(a) if the information was obtained as mentioned in paragraph 1(1) as a result of any premises being entered—

(i) by an inspector in exercise of a relevant power,

(ii) by a health and safety inspector in exercise of a power under section 20 of the 1974 Act, or

(iii) by an ONR inquiry official in exercise of an ONR inquiry power,

the consent of a person having responsibilities in relation to the premises;

(b) in any other case, the consent of the person from whom the information was obtained, or who provided it, as mentioned in paragraph 1(1).

Disclosure by ONR, inspectors etc

8 Paragraph 2 does not prohibit a disclosure of protected information by—

(a) the ONR,

(b) an inspector,

(c) a health and safety inspector, or

(d) an ONR inquiry official,

for the purposes of any of that person's functions.

Disclosure to the ONR, inspectors etc

9 Paragraph 2 does not prohibit a disclosure of protected information to—

(a) the ONR,

(b) an officer of the ONR,

(c) a person or body performing any functions of the ONR on its behalf by virtue of section 95,

(d) an officer of such a body,

(e) a person providing advice to the ONR,

(f) an inspector, or

(g) a health and safety inspector.

Ministers, government departments and certain authorities

10(1) Paragraph 2 does not prohibit the following disclosures of protected information—

- (a) a disclosure to—
 - (i) a relevant authority, or
 - (ii) an officer of a relevant authority, or
- (b) a disclosure by a person within paragraph (a) which is necessary for any of the purposes of the relevant authority in question.

(2) For this purpose, “relevant authority” means—

- (a) a Minister of the Crown,
- (b) the Scottish Ministers,
- (c) the Welsh Ministers,
- (d) a Northern Ireland Department,
- (e) the Environment Agency,
- (f) the Scottish Environment Protection Agency,
- (g) the Natural Resources Body for Wales,
- (h) the Office of Rail Regulation,
- (i) the Civil Aviation Authority, or
- (j) any other government department.

(3) A person within sub-paragraph (1)(a) to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for a purpose other than any of the purposes of the relevant authority in question.

Health and safety etc

11(1) Paragraph 2 does not prohibit the following disclosures of protected information—

- (a) a disclosure to a health and safety authority, or
- (b) a disclosure by a health and safety authority which is—
 - (i) made by or with the consent of the Health and Safety Executive, and
 - (ii) necessary for any of the purposes of the Health and Safety Executive.

(2) A health and safety authority to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for any purpose other than any of the purposes of the Health and Safety Executive.

(3) For this purpose, “health and safety authority” means—

- (a) the Health and Safety Executive,
- (b) an officer of the Health and Safety Executive,
- (c) a person or body performing any functions of the Health and Safety Executive on its behalf by virtue of section 13(3) of the 1974 Act,
- (d) an officer of such a body,
- (e) an adviser appointed by that Executive under section 13(7) of that Act, and

(f) a person appointed by that Executive under section 19 of that Act as an inspector within the meaning given in that section.

12(1) Paragraph 2 does not prohibit the following disclosures of protected information—

- (a) a disclosure to a person with enforcement responsibilities;
- (b) a disclosure by such a person which is—
 - (i) made by or with the consent of the enforcing authority in question, and
 - (ii) necessary for the purposes of any function which the enforcing authority in question has in its capacity as an enforcing authority.

(2) A person with enforcement responsibilities to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information otherwise than for the purposes of any function which the enforcing authority in question has in its capacity as such.

(3) For this purpose, “person with enforcement responsibilities” means—

- (a) an enforcing authority within the meaning of the 1974 Act, other than the ONR or the Health and Safety Executive;
- (b) an officer of an authority within paragraph (a);
- (c) a person appointed by such an authority under section 19 of that Act as an inspector within the meaning given in that section.

13(1) Paragraph 2 does not prohibit the following disclosures of protected information—

- (a) a disclosure to a Northern Ireland health and safety authority;
- (b) a disclosure by a Northern Ireland health and safety authority which is—
 - (i) made by or with the consent of the Health and Safety Executive for Northern Ireland, and
 - (ii) necessary for any of the purposes of the Health and Safety Executive for Northern Ireland.

(2) A Northern Ireland health and safety authority to whom protected information is disclosed by virtue of any provision of this Schedule may not use the information for any purpose other than any of the purposes of the Health and Safety Executive for Northern Ireland.

(3) For this purpose, Northern Ireland health and safety authority means—

- (a) the Health and Safety Executive for Northern Ireland,
- (b) an officer of the Health and Safety Executive for Northern Ireland,
- (c) a person or body performing any functions of the Health and Safety Executive for Northern Ireland on its behalf by virtue of Article 15(1)(a) of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)),
- (d) an officer of such a body,
- (e) an adviser appointed by that Executive under Article 15(1)(c) of that Order, and
- (f) a person appointed by that Executive under Article 21 of that Order as an inspector within the meaning of that Article.

Local authorities and water authorities etc

14(1) Paragraph 2 does not prohibit the following disclosures of protected information—

- (a) a disclosure by the original holder to an officer of a local authority or relevant water authority who is authorised by the authority to receive the information;
- (b) a disclosure by an officer of a local authority or relevant water authority to whom the information is disclosed by virtue of paragraph (a) which is necessary for a relevant purpose.

(2) A person to whom information is disclosed by virtue of sub-paragraph (1)(a) must not use the information for a purpose other than a relevant purpose.

(3) For the purposes of this paragraph—

“local authority” includes the following—

- (a) a joint authority established by Part 4 of the Local Government Act 1985;
- (b) an authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities);
- (c) an economic prosperity board established under section 88 of the Local Democracy, Economic Development and Construction Act 2009;
- (d) a combined authority established under section 103 of that Act;
- (e) the London Fire and Emergency Planning Authority;
- (f) the Broads Authority;
- (g) a National Park authority;

“relevant water authority” means—

- (a) a water undertaker,
- (b) a sewerage undertaker,
- (c) a water authority,
- (d) a water development board, or
- (e) Scottish Water;

“relevant purpose”, in relation to an officer of a local authority or relevant water authority, means any purpose of the authority in connection with—

- (a) any of the relevant statutory provisions or any of the provisions which are relevant statutory provisions for the purposes of Part 1 of the 1974 Act, or
- (b) any provision of, or made under, primary legislation which relates to public health, public safety or the protection of the environment.

Police

15(1) Paragraph 2 does not prohibit the following disclosures of protected information—

- (a) a disclosure by the original holder to a constable authorised by a chief officer of police to receive it;
- (b) a disclosure by a constable to whom it is disclosed by virtue of paragraph (a) which is necessary for any of the purposes of the police in connection with—
 - (i) the relevant statutory provisions, or

(ii) any provision of, or made under, primary legislation which relates to public health, public safety or national security.

(2) A constable to whom information is disclosed by virtue of sub-paragraph (1) must not use the information for a purpose other than a purpose of the police in connection with—

(a) any of the relevant statutory provisions or any of the provisions which are relevant statutory provisions for the purposes of Part 1 of the 1974 Act, or

(b) any provision of, or made under, primary legislation which relates to public health, public safety or national security.

Disclosure required under legislation

16 Paragraph 2 does not prohibit a disclosure of protected information which is made in accordance with an obligation under—

(a) the Freedom of Information Act 2000,

(b) the Freedom of Information (Scotland) Act 2002, or

(c) environmental information regulations within the meaning given in section 39(1A) of the Freedom of Information Act 2000.

Legal proceedings, inquiries and investigations

17 Paragraph 2 does not prohibit a disclosure of protected information for the purposes of—

(a) any legal proceedings,

(b) an ONR inquiry,

(c) an inquiry under section 14(2A) of the 1974 Act which is relevant to the ONR's purposes,

(d) an investigation held by virtue of section 84,

(e) any report of such proceedings, ONR inquiry or inquiry under section 14(2A) of the 1974 Act or any special report under section 84.

18 Paragraph 2 does not prohibit a disclosure of protected information which is made—

(a) by an inspector, a health and safety inspector or an ONR inquiry official,

(b) to a person who appears to the person making the disclosure to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, and

(c) in the form of a written statement of relevant facts observed by the person making the disclosure in the course of exercising a relevant power, a power under section 20 of the 1974 Act or an ONR inquiry power.

19(1) Paragraph 2 does not prohibit a disclosure of protected information which is made—

(a) by the ONR, an inspector, a health and safety inspector or an ONR inquiry official, and

(b) for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (criminal proceedings and investigations).

(2) Section 18 of that Act (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by sub-paragraph (1) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

Disclosure for safeguards purposes

20 Paragraph 2 does not prohibit a disclosure of protected information which is made for the purposes of ~~any of the safeguards obligations~~ a relevant international agreement.

Anonymised information.

21 Paragraph 2 does not prohibit a disclosure of protected information which is made in a form calculated to prevent the information from being identified as relating to a particular person or case.

PART 4 GENERAL

Interaction with other legislation.

22 The prohibition in paragraph 2 is to be disregarded for the purposes of—

- (a) section 44 of the Freedom of Information Act 2000, and
 - (b) section 26 of the Freedom of Information (Scotland) Act 2002,
- (which provide for exemptions from disclosure requirements under those Acts for information subject to statutory prohibitions on disclosure).

23 Nothing in this Part of this Act is to be taken to permit or require a disclosure of information which is prohibited by or under any provision of primary legislation (including, in particular, section 79 or 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition on disclosure of information relating to nuclear security)).