

Energy Act 2013

**Office for Nuclear Regulation:
Annual Report to Parliament on the
exercise of powers under Part 3 of
the Energy Act 2013 by the
Secretary of State for Work and
Pensions and the Secretary of State
for Energy and Climate Change for
10 March 2014 to 31 March 2015**

Report presented to Parliament pursuant to Section 108 of the Energy Act 2013.

June 2015

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Requirements under this part in the 2013 Act:

Section 108(1) of the Energy Act 2013 (the 2013 Act) requires the Secretary of State as soon as possible after the end of the financial year, to make a report to each House of Parliament; setting out the use of Secretary of State's powers exercised under Part 3 of the Act, during the year; and requires that the report is laid before Parliament.

The report covers the period 1 April 2014 to 31 March 2015. For completeness, the report also refers to the exercise of powers in the first short reporting period of the Office for Nuclear Regulation ("ONR") from 10 March 2014 to 31 March 2014. This is the first report to be laid under this power since the 2013 Act came into effect.

Part 3 of the Act (Nuclear Regulation) has five chapters covering nuclear regulations, the organisation and structure of the ONR, the purposes and functions of the ONR and other supplementary matters.

Responsibility for this part of the 2013 Act cuts across two departments, the Department of Energy and Climate Change and the Department for Work and Pensions. Agreed responsibilities are set out in the tables below.

The Secretary of State for the Department for Work and Pensions has specific responsibility for:

Pay	<ul style="list-style-type: none">▪ Set pay for the Chair and other non-executives▪ Approval of allowances etc to the Chair and non-executives▪ Sign-off of the ONR's pay remit
Financial control	<ul style="list-style-type: none">▪ Approval of the ONR's accounts▪ Approval of any borrowing by the ONR. Provision of the ONR with sufficient funds to enable it to carry out its functions
Non-executives (not including security non-executive)	<ul style="list-style-type: none">▪ Appointment and dismissal▪ Acceptance of resignation▪ Approval of terms of appointment
Other controls	<ul style="list-style-type: none">▪ Receipt of proposals for regulations made by the ONR▪ Approval of international work of the ONR (in consultation with DECC due to its interest in national security issues)▪ Approval of any Approved Code of Practice proposed by the ONR

The Secretary of State for the Department of Energy and Climate Change has specific responsibility for the following areas:

Security specific	<ul style="list-style-type: none"> ▪ Security non-executive: appointment and dismissal; acceptance of resignation; approval of terms of appointment ▪ In exceptional circumstances relating to national security, issuing a direction to the ONR as to the exercise of a regulatory function in a particular case
Sensitive information	<ul style="list-style-type: none"> ▪ Provide consent to issue certain communications which concern matters to which government policy on national security relates ▪ Give a notice to the ONR specifying the description of sensitive nuclear information in addition to those provided in the 2013 Act.
Safeguards obligations	<ul style="list-style-type: none"> ▪ Issuing a notice to the ONR specifying that certain obligations, agreements or arrangements are to be considered “safeguards obligations” in addition to those obligations already set out in the 2013 Act.

There is joint responsibility, but with the final decision resting with the Secretary of State for the Department for Work and Pensions in the following areas:

Key appointments	<ul style="list-style-type: none"> ▪ Agreement of appointment of the Chair ▪ Approval of the appointment of the Chief Nuclear Inspector (CNI) and Chief Executive Officer (CEO)
ONR Strategy and Plan	<ul style="list-style-type: none"> ▪ Approval of ONR’s Strategy and Annual Plan and laying them before Parliament
Annual Report and Accounts	<ul style="list-style-type: none"> ▪ Laying before Parliament ONR’s Annual Report and Accounts
Other controls	<ul style="list-style-type: none"> ▪ Approval of commercial work

2014-2015 powers exercised by Secretary of State for the Department for Work and Pensions:

In accordance with Section 108 of the 2013 Act, the following powers have been exercised by the Secretary of State for the Department for Work and Pensions.

Section 90:

Section 90 (2)(b) provides that ONR may enter into an agreement with a Minister of the Crown, a government department or a public authority to perform any function exercisable by the Minister, department or authority if the Secretary of State considers that ONR may appropriately perform the function. The Secretary of State exercised this power in allowing ONR to enter into agreement with:

- the Department for Business Innovation and Skills on 1 April 2014 regarding the Import of Goods Control Order 1998; and
- the Department for Work and Pensions on 1 April 2014 regarding the enforcement of Employers' Liability Compulsory Insurance.

Section 114:

Section 114(1) gives a power to the Secretary of State by Order to make any transitional, transitory or saving provisions which appear appropriate in consequence of or otherwise in connection with Part 111 of the Act. The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014 was made using this power. The Order amended primary and secondary legislation to facilitate the creation of the Office for Nuclear Regulation. Many of the regulations amended allocated ONR enforcement responsibilities on nuclear sites under health and safety law. In addition, the regulations also transitioned and saved certain provisions and actions (such as prohibition notices), to be treated as if they had been carried out or done by the new body.

Schedule 7:

- Paragraph 4 (1)(a) Secretary of State appointed two non-executive members and a non-executive chair on 1 April 2014.
- Paragraph 11 (1) & (2) Secretary of State agreed the remuneration of the two non-executive members and the non-executive Chair on appointment on 1 April 2014.
- Paragraph 12 (5) Secretary of State approved the appointment of the Chief Executive and Chief Nuclear Inspector on 1 April 2015. Secretary of State also approved the appointment of an interim Chief Executive on 4 February 2015.
- Paragraph 22 (7) Secretary of State approved the ONR Strategy prior to laying it in Parliament on 8 December 2014.

- Paragraph 23 (4) Secretary of State approved the ONR Annual Plan prior to laying it in Parliament on 23 March 2015.
- Paragraph 26 (2) Secretary of State gave consent for ONR to borrow money.

Schedule 11:

- Paragraph 2 (1) Secretary of State created a staff transfer scheme which was applied on 1 April 2014.
- Paragraph 7 (1) & (2) Secretary of State made a property transfer scheme which came into force on 1 April 2014.

2014-2015 powers exercised by Secretary of State for the Department of Energy and Climate Change:

In accordance with Section 108 of the 2013 Act, the following powers have been exercised by the Secretary of State for the Department of Energy and Climate Change.

Section 71:

Section 71 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 needing to be protected in the interests of national security. Using the powers under section 71(2) the Secretary of State has issued a notice to the ONR specifying descriptions of information which need to be protected.

Section 74:

Section 74 (1) gives the Secretary of State power to make regulations for the purposes of nuclear safety, nuclear security, nuclear safeguards and transport. Using this power the Secretary of State has made the Nuclear Security (Prescribed Material) and Nuclear Industries Security (Amendment) Regulations 2014. These regulations extend the definition of nuclear material for ONR's security purposes.

Section 90:

Section 90(2)(b) provides that 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 if the Secretary of State considers that ONR may appropriately perform the function. The Secretary of State has exercised this power by entering into an agreement with the ONR on 3rd April 2014. The agreement provides for the ONR to carry out personnel security and vetting services for the Civil Nuclear Police Authority. It also enables the ONR to provide independent advice relating to the effectiveness of the Civil Nuclear Constabulary.

Section 93:

Section 93(1) obliges the ONR to do such things as it considers are best calculated to ensure compliance by the UK with the safeguards obligations or to facilitate compliance by a Minister of the Crown with these obligations. The obligations are defined in section 93(2) of the Act. Section 93(2)(d) enables the Secretary of State, by a notice issued to the ONR, to extend the scope of what constitutes safeguards obligations through specifying additional obligations agreements or arrangements in the notice. The Secretary of State has exercised his power to issue such a notice to the ONR.

Section 94:

Section 94 provides that the ONR must not, without the consent of the Secretary of State, issue any communications relating to security guidance or any statement of the ONR's nuclear security policy which it considers concerns any matter to which

any government policy on nuclear security relates. Such consent has been provided eight times by the Secretary of State. The Secretary of State has also exercised powers under section 94(6) giving the ONR a general consent enabling it to issue communications of a particular description without requiring the Secretary of State's consent under section 94(1).

Schedule 7:

- Paragraph 4 (1) to (3) provides for the appointment of the chair of the ONR and its other non- executive members. Subparagraph (3) of paragraph 4 provides that one non- executive member must have experience of or expertise in matters relevant to the ONR's nuclear security purposes. The Secretary of State has used the power under paragraph 4 to appoint a temporary non- executive member to the ONR Board with expertise in this area until such time that an OCPA compliant recruitment process could be run. He has also used the power to appoint a permanent non-executive member to replace the temporary non-executive.

- Paragraph 11 (1) & (2) provides that the Secretary of State may determine the remuneration, allowances and expenses of the non -executive members of the ONR. He has exercised these powers in respect of the appointments of the non- executive members with expertise in security matters referred to above.

