

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Nuclear Regulation

Chapter 1: The ONR's purposes

Section 67: The ONR's purposes

351. This sets out each of the ONR's purposes, which the rest of the Chapter goes on to define. The ONR's purposes recognise the different areas of ONR's responsibility and, although each of the purposes cover broadly different areas of nuclear regulation, there are areas in which they are applicable to the same circumstances. For example, provision relating to access to parts of a nuclear site may be made from the perspective of nuclear security or safety.
352. There are five sets of purposes: those relating to nuclear safety, to nuclear site health and safety, to nuclear security, to nuclear safeguards and to the transport of radioactive materials. Section 78 (which sets out the ONR's principal function) puts the ONR under an obligation to do whatever it considers appropriate for ONR's purposes including assisting and encouraging others to further those purposes.
353. Some of these purposes cover areas that are currently covered by the purposes of the Health and Safety Executive, set out in section 1 of the Health and Safety at Work etc. Act 1974. Where the Health and Safety Executive currently has functions and powers in relation to those areas covered by the ONR's purposes it will cease to do so once these provisions come into force. The exception is in relation to the ONR's nuclear site health and safety purposes where both the ONR and the Health and Safety Executive will have powers; however on nuclear sites ONR will be the regulator for this Act and the Health and Safety at Work etc. Act 1974.

Section 68: Nuclear safety purposes

354. This section defines the ONR's nuclear safety purposes. These relate to protecting persons against the risks of harm from ionising radiation arising from, or in connection with, "GB nuclear sites". Risks of harm from ionising radiation that may arise from the design and construction, operation and decommissioning of relevant nuclear installations, or from the storage of nuclear matter used or stored on GB nuclear sites, are also within the scope of this purpose (see *subsections (1)(a) to (c)*), as well as the arrangements to minimise those risks in the event of an escape or release of such ionising radiation (see *subsection (1)(d)*). This section brings the specific hazards posed by nuclear installations and nuclear sites within the ONR's remit.
355. "Relevant nuclear installation" is defined in *subsection (3)*. The term includes former, current or proposed "nuclear installations" within the meaning of section 26 of the Nuclear Installations Act 1965, located (or to be located) anywhere in Great Britain and which required, require, or would require (as the case may be), the operator to hold a site licence under section 1 of that Act. These installations include nuclear reactors,

enrichment facilities and installations that are designed or adapted to store nuclear fuel. Reactors that are part of a means of transport (such as a nuclear submarine) are not included within this definition. Only installations on “GB nuclear sites” are within the scope of this purpose. Such sites are nuclear sites (within the meaning of section 112) in England, Wales or Scotland.

Section 69: Nuclear site health and safety purposes

356. This section defines the ONR’s non-nuclear or “conventional” health and safety purposes. This makes clear that one of the purposes of the ONR is securing the protection of persons at work on licensed nuclear sites in Great Britain, as well as the prevention of risks to the health and safety of other persons which arise from the activities carried out on these. This ensures that all work related hazards on licensed nuclear sites are within the ONR’s remit.
357. Although this is one of the ONR’s purposes, the predominant regulator of conventional health and safety in Great Britain will continue to be the Health and Safety Executive. This is reflected in the relationship between the ONR and the Health and Safety Executive and regulations governing conventional health and safety on nuclear sites will be made under section 15 of the Health and Safety at Work etc. Act 1974 and not under section 74 of this Act.

Section 70: Nuclear security purposes

358. This section sets out the ONR’s nuclear security purposes. Key areas which these purposes cover include ensuring the security of nuclear premises and of nuclear materials and certain software or equipment stored or used at such premises (see *subsections (1)(a) and (b)*). These purposes apply to civil nuclear premises only, so do not relate to premises which are controlled or operated wholly or mainly for the purposes of the department of the Secretary of State for Defence or to transports of nuclear material for the purposes of that department.
359. Civil nuclear premises are civil nuclear sites or premises where nuclear material is used or stored (see the definition of “civil nuclear premises” in *subsection (3)*). “Nuclear material” is defined in *subsection (3)* of this section as any fissile material in the form of a uranium or plutonium metal, alloy or compound. However, this definition of “nuclear material” can be added to by regulations made by the Secretary of State under the definition of nuclear material in *subsection (3)*. Therefore, the security purposes of the ONR in this respect are not fixed but can be expanded to cover other materials that need protection from a security perspective.
360. The nuclear security purposes also include the purpose of ensuring the security of “civil nuclear construction sites” and of nuclear material which is being transported, or expected to be transported, anywhere within the United Kingdom (including its territorial waters), to or from civil nuclear premises in the United Kingdom, or on ships registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995 operating anywhere in the world (see *subsections (1)(d) and (g) and subsection (3)*). The definition of “civil nuclear construction site” is to be found in *subsection (3)* of this section. It includes the purpose of ensuring the security of civil nuclear sites under construction which are located within 5km of an existing nuclear site. The intention here is to capture within the ONR’s purview regulatory responsibility for security sites which are in the vicinity of an existing nuclear site. This includes the eight sites which have been identified for possible nuclear new build in the *National Policy Statement for Nuclear Power Generation*. This purpose also extends to the ONR having responsibility for ensuring the security of “sensitive nuclear information” (as defined in *subsection (3)*).

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

361. This section relates to one of the areas of the ONR's nuclear security purposes, namely ensuring the security of sensitive nuclear information in the United Kingdom. "Sensitive nuclear information" is principally defined in *subsection (3)* of section 70 as information relating to, or capable of use in connection with, the enrichment of uranium i.e. the treatment of uranium that increases the proportion of isotope 235 contained in it (isotope 235 is fissile and can be used in the production of a nuclear weapon).
362. This section permits the Secretary of State, by notice to the ONR, to expand on the definition of "sensitive nuclear information" in connection with activities relating to nuclear premises, and thus also expand the purpose of the ONR in ensuring the security of such information. However, the power can only be exercised where the Secretary of State considers information should be protected in the interests of national security (see *subsection (1)*), and the Secretary of State must consult the ONR before issuing such a notice. This is to ensure that the ONR's civil nuclear security expertise is fed into any additional definition of sensitive nuclear information.

Section 72: Nuclear safeguards purposes

363. This section sets out the ONR's purposes relating to nuclear safeguards. There are two purposes here: firstly, ensuring compliance by the United Kingdom with its safeguards obligations and enabling or facilitating Ministers of the Crown in fulfilling their safeguards obligations, and secondly, developing future safeguards obligations.
364. Nuclear safeguards are measures to verify that States comply with their (predominantly international) obligations not to use nuclear materials from their civil nuclear programmes to manufacture nuclear weapons. The obligations to take these measures arise from international law, for example under the Euratom Treaty and other international agreements or undertakings and from domestic agreements or undertakings. The current key obligations on the United Kingdom Government, which are contained in the Euratom Treaty and agreements relating to the Treaty on the Non-Proliferation of Nuclear Weapons, are to be found in section 93(2). These primarily constitute "the safeguards obligations" for the purpose of the section. "Primarily" because the ONR will also be responsible for such further obligations as may be notified to the ONR by the Secretary of State under section 93(2)(d).

Section 73: Transport purposes

365. The ONR's transport purposes are to ensure that the civil transport of radioactive material in Great Britain by road, rail and inland waterway is carried out securely and in a manner that protects against the risks associated with such transport (see *subsection (1)*). The section defines "radioactive material" by reference to various international transport agreements that cover the transport of goods by road, rail and inland waterway, and being consistent with those agreements ensures that all preparatory processes to transport (such as loading, packaging and delivery) are part of the ONR's remit (see *subsection (2)(b)* and *(c)* respectively). However, the agreements upon which the meanings of 'radioactive material' are based - ADR/RID/ADN - might fall away in future or become obsolete if new international agreements come into force, and so the definition is supported by a power for the Secretary of State to amend the definition by regulations (see *subsection (4)*).
366. The ONR's transport purposes do not extend to transport by sea and air as the transport of radioactive goods by these means is covered by separate regulatory regimes. However, the ONR's nuclear security purposes (as set out in section 70) do extend to ensuring the security of nuclear material that is being transported by sea and air (as well as land). Otherwise the transport of nuclear and radioactive material by air and sea is outside the ONR's purposes. The security of transport of nuclear material in Great

*These notes refer to the Energy Act 2013 (c.32)
which received Royal Assent on 18 December 2013*

Britain by road, rail and inland waterway is covered by both the transport purposes and the security purposes.

367. The ONR's transport purposes are also limited to civil transportation, and do not extend to transportation of radioactive material that is the responsibility of the Secretary of State for Defence (see *subsection (2)(a)*).