

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Nuclear Regulation

Chapter 2: Nuclear regulations

Section 74: Nuclear regulations

368. This section gives the Secretary of State the power to make regulations by statutory instrument generally subject to the negative resolution procedure for any of the following purposes: the nuclear safety, nuclear security, nuclear safeguards, and transport purposes. These regulations are referred to in the Act as “nuclear regulations”.
369. Notably, the section does not give the Secretary of State power to make regulations for the nuclear site health and safety purposes. Although the ONR will have regulatory responsibility for conventional health and safety on nuclear sites, regulations will continue to be made for this purpose under section 15 of the Health and Safety at Work etc. Act 1974 rather than under this Act.
370. The section, together with Schedule 6, elaborates on the types of provision that may be included in nuclear regulations. These include provisions conferring functions on the ONR, creating offences (as set out further in section 75) and providing for defences to offences under any of the relevant statutory provisions (as defined in section 82). This list is not exhaustive, but indicative only.
371. Regulations may make provision applying to acts done outside the United Kingdom by United Kingdom persons (see *subsection (5)(a)*). For example regulations might impose duties on United Kingdom persons in relation to sensitive nuclear information when outside the United Kingdom. A United Kingdom person is defined in *subsection (6)*. In addition, regulations can be made in relation to United Kingdom ships carrying nuclear materials and operating anywhere in the world because of the way that the nuclear security purposes are defined (see section 59, *subsection (1)(g)*).
372. *Subsections (7) and (8)* require the Secretary of State to consult the ONR (unless the regulations are made to give effect, without modifications, to proposals from the ONR) and such other persons as he or she considers appropriate before making nuclear regulations. In addition, although any health and safety regulations made under section 15 of the Health and Safety at Work etc. Act 1974 will still regulate conventional health and safety on nuclear sites, it is conceivable nuclear regulations could affect the operation of such regulations. The Secretary of State is therefore required to consult the Health and Safety Executive if the proposed nuclear regulations will modify provisions of health and safety regulations (*subsection (7)(b)*).
373. *Subsections (9) and (10)* require any nuclear regulations which contain provision made exclusively for the safeguards or the security purposes, or exclusively for both, to identify where this is the case. The reason for this is that inspectors will not be able to issue improvement or prohibition notices under Part 2 of Schedule 8 when enforcing

regulations made for safeguards or security purposes – see [paragraph 3\(5\)](#) of Schedule 8 to the Act. In addition, the regulation making power allows for regulations to be made in the security and safeguards spheres which extend to Northern Ireland.

Section 75: Nuclear regulations: offences

374. This section elaborates on the power to create offences within nuclear regulations set out in section 74(3)(c). Nuclear regulations can create offences which are triable only summarily or either summarily or on indictment (sometimes referred to as “triable either way”). Indictable only offences cannot be created (see *subsection (1)*).
375. *Subsections (2) to (5)* provide further detail on the criminal sanctions that can be imposed by nuclear regulations.

Section 76: Nuclear regulations: civil liability

376. *Subsections (1) and (2)* of this section provide that breaches of duties imposed by nuclear regulations, and those provisions of the Nuclear Installations Act 1965, that are relevant statutory provisions (see section 82(2)(b)) will not give rise to a claim for breach of statutory duty, irrespective of whether such breach also constitutes an offence. However, nuclear regulations may provide otherwise.
377. Nuclear regulations may also make provision for defences and that any term in an agreement that seeks to exclude or restrict liability imposed by such regulations will be void (see *subsection (3)*). This section will not affect any right of action or defence that might otherwise exist (see *subsection (5)*).