

# ENERGY ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Nuclear Regulation**

#### **Chapter 4: Functions of the ONR**

#### **Information etc**

#### *Section 100: Disclosure of information*

460. This section introduces and gives effect to Schedule 9 (disclosure of information).
461. The Schedule prohibits the disclosure of “protected information” otherwise than in accordance with the specific gateways in that Schedule. “Protected information” is information acquired compulsorily by the ONR, its inspectors, an ONR inquiry official, or any other person under the relevant statutory provisions, together with information acquired by the ONR’s inspectors in the course of exercising their powers and information provided under section 98. It is a criminal offence to disclose “protected information” otherwise than in accordance with Part 3 of the Schedule (*paragraphs 2 and 3* of Schedule 9). It is also an offence for certain persons to use information disclosed under the Schedule otherwise than as permitted by Part 3 of the Schedule (*paragraph 4* of Schedule 9). Information will not be protected information if it is in the public domain (*paragraph 1(2)* of Schedule 9).
462. It is a defence for a person charged with the offences in *paragraphs 3 and 4* of the Schedule to prove that either they did not know and had no reason to suspect the information disclosed was protected information, or they have taken all reasonable precautions and exercised all due diligence to avoid committing the offence (see *paragraph 5* of Schedule 9). Disclosing protected information, except as permitted by the exceptions described below, is an offence which can be tried either in the Magistrates’ Court or in the Crown Court (see *paragraph 6* of Schedule 9).
463. One exception to the prohibition on disclosure of protected information is disclosure with appropriate consent (see *paragraph 7* of Schedule 9). This will in most cases be the consent of the person who provided the information or from whom the original recipient obtained it. Specific provision is made for cases where information is obtained as a result of entry to premises by ONR inspectors or ONR inquiry officials (see *paragraph 7(2)* of Schedule 9).
464. Additional gateways are provided for disclosure of “protected information” in cases where appropriate consent is not obtained by the original holder of the information or a person who obtains it directly or indirectly from the original holder. These gateways permit disclosure to certain persons such as to the ONR, an officer of the ONR, a Minister of the Crown, the devolved administrations, certain organisations that the ONR will work closely with or will have shared interests with, such as the Health and Safety Executive and Environment Agency (see *paragraphs 9 and 10(2)* of Schedule 9), local authority officers (see *paragraph 14* of Schedule 9) and a police constable authorised to receive the information (see *paragraph 15(1)* of Schedule 9). The Schedule puts

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

restrictions on the purposes that this information can be used for by certain of the people or bodies to whom information is disclosed under this Schedule (see [paragraphs 10\(3\), 11\(2\), 12\(2\), 13\(2\), 14\(2\) and 15\(2\)](#) of Schedule 9).

465. Disclosure can also take place for the purpose of an ONR inquiry, investigation or legal proceedings (see [paragraph 17](#) of Schedule 9); if the information is released in a way that prevents it from being identified as relating to a particular person or case (see [paragraph 21](#) of Schedule 9); or to permit statements of facts to be made in certain cases by inspectors or ONR Inquiry Officials (see [paragraph 18\(c\)](#) of Schedule 9). The ONR, an inspector, a health and safety inspector or an inquiry official may also disclose information for any of the purposes specified in section 17(a)-(d) of the Anti-Terrorism, Crime and Security Act 2001 (see [paragraph 19](#) of Schedule 9). In addition, disclosures which are made to comply with an obligation under certain freedom of information legislation are not contrary to [paragraph 2](#) of the Schedule (see [paragraph 16](#) of Schedule 9). Disclosure is also permitted where it is for the purposes of any safeguard obligations (see [paragraph 20](#) of Schedule 9).
466. Part 4 of the Schedule makes clear that the restrictions on disclosure imposed by this Schedule do not mean that ‘protected information’ under this Schedule is ‘exempt information’ for the purposes of the Freedom of Information Act 2000, or the Freedom of Information (Scotland) Act 2002 (which would not be required to be disclosed under those Acts) (see [paragraph 22](#)). The prohibitions on disclosure in the Schedule are to be disregarded for the purposes of specified provisions of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. This Part of the Schedule also makes clear that it does not permit or require the disclosure of any protected information if that disclosure would be prohibited by or under any other provision of primary legislation. Such restrictions will in particular include those in sections 79 and 80 of the Anti-terrorism, Crime and Security Act 2001 (which relate to the disclosure of information relating to nuclear security and information relating to uranium enrichment technology, respectively) (see [paragraph 23](#) of Schedule 9).