

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Nuclear Regulation

Chapter 4: Functions of the ONR

Functions of ONR: general

Section 78: Principal function

393. This section places the ONR under a general duty to do whatever it considers appropriate for its purposes including to assist others to further those purposes. This gives the ONR a general power to act to further its purposes in addition to the specific powers provided in the Act. This will ensure the ONR is capable of being flexible in its approach to regulation and adapting to a changing industry.

Section 79: Codes of practice

394. This section enables the ONR to issue, revise or withdraw codes of practice, which give practical guidance about the requirements of the relevant statutory provisions (defined in section 82(2)).

395. Failure to follow a code of practice will not be a criminal offence nor make a person liable to civil proceedings, but a relevant provision of the code will be admissible in evidence in criminal proceedings where a relevant statutory provision has allegedly been contravened and the code of practice was in place at the time of the alleged contravention (see *subsections (4) to (6)*).

396. Where an approved code of practice is used in court and the prosecution proves that the code was not followed, the defendant is taken to have failed to meet the requirement of the relevant statutory provision in question unless they can prove that they have complied in some other way (see *subsection (7)*).

Section 80: Procedure for issue, revision or withdrawal of codes of practice.

397. This section makes provision for a code of practice issued or revised by the ONR to be subject to a parliamentary process, akin to the negative procedure (see *subsection (8)*). The ONR will submit a draft code of practice, or a draft amendment to an existing code of practice, to the Secretary of State who may approve the draft code or amendment, with or without modification (see *subsection (6)*). Any modifications will require the consent of the ONR before they can be approved. Once approved, the Secretary of State will be required to lay the draft code or amendment before both Houses of Parliament for 40 days. If no resolution is made to oppose the code during that period, the ONR will be able to issue the code or (where what was submitted was an amendment to an existing code) revise the existing code together with a notice saying that the code has been revised. To withdraw a code, the ONR must seek approval from the Secretary of State (see *subsection (11)*) and publish a notice saying that the code has been withdrawn (see *subsection (12)(c)*).

Section 81: Proposals about orders and regulations

398. This section enables the ONR to submit proposals to the Secretary of State or the Health and Safety Executive for a number of different types of secondary legislation. First, proposals can be made to the Secretary of State for nuclear regulations (see Chapter 2 above), for orders or regulations under the “relevant enactments” listed in *subsection (2)* of the section, as well as proposals for regulations about fees to be made either under the Act or section 43 of the Health and Safety at Work etc. Act 1974. “Relevant enactments” captures legislation that relates to nuclear security and safeguards. The ONR may also submit proposals to the Health and Safety Executive for regulations to be made under section 15 of the Health and Safety at Work etc. Act 1974 where the proposals relate to the nuclear site health and safety purposes.
399. Before submitting any proposals to the Secretary of State or the Health and Safety Executive, the ONR must consult such persons (including government departments) as they are directed to by the Secretary of State and those persons who the ONR consider it is appropriate to consult (see *subsections (3)* and *(4)*).

Section 82: Enforcement of relevant statutory provisions

400. This section imposes a duty on the ONR to make adequate arrangements to enforce the “relevant statutory provisions”, for example to employ sufficient inspectors and to ensure they are adequately resourced or, where the ONR makes arrangements for another to carry out the ONR’s functions on its behalf (under section 95), that that person makes suitable arrangements and suitable financial provision etc. For these purposes “relevant statutory provisions” are the provisions of Part 3 of the Act and nuclear regulations as well as certain specified sections of the Nuclear Installations Act 1965 relating to the licensing of nuclear sites and the provisions of the Nuclear Safeguards Act 2000.

Section 83: Inspectors

401. This section introduces Schedule 8 which enables the ONR to appoint inspectors to inspect, investigate breaches of, and otherwise carry into effect, the “relevant statutory provisions” (as defined in section 82(2)). The Schedule also enables connected powers to be conferred on inspectors.
402. **Part 1** of the Schedule provides the ONR with the power to appoint as inspectors such persons as appear to the ONR to be suitably qualified individuals. Inspectors must be appointed by a written instrument. This instrument will specify the powers in the Schedule (and may specify powers conferred upon that inspector by other legislation) that a particular inspector is able to exercise and the purpose for which that inspector may exercise the powers. Inspectors may only exercise powers specified in their instruments of appointment.
403. **Part 2** of the Schedule gives authorised ONR inspectors (that is, authorised by their instruments of appointment) the power to issue improvement and prohibition notices. It also sets out the process for how such notices are to be issued, provides for the possibility of appeals against them and makes it a criminal offence to contravene these notices.
404. Improvement notices may be issued when, in the inspector’s opinion, a person is breaching a relevant statutory provision or has breached a relevant statutory provision in circumstances that make it likely that such breach will continue. The notice will require the person to take action to remedy this situation within a stated period of time.
405. Prohibition notices may be issued when, in the inspector’s opinion, relevant activities which are being carried out, or are likely to be carried out, pose a risk of serious personal injury. A prohibition notice would direct a person to ensure that the activities

are stopped either immediately or within a specified period and are not resumed or carried out until the matters specified in the notice have been resolved.

406. Improvement and prohibition notices cannot be issued for matters relating to provisions of the Nuclear Safeguards Act 2000 or more generally for the safeguards or security purposes dealt with in nuclear regulations. This is because there are other specific powers that inspectors will use instead. These include the powers to issue notices to require the disclosure of information.
407. *Paragraph 5* permits remedial action to be required under improvement and prohibition notices. For instance, a notice might include directions for remedying a situation that could refer to an approved code of practice and/or give a choice as to how to remedy the situation (see *sub-paragraph (3)*). The paragraph also sets out limitations that apply when an improvement notice is served that relates to the structure of a building (*sub-paragraphs (4)–(7)*). Unless the relevant statutory provision being breached imposes specific requirements which are stricter than relevant building regulations, a notice may not propose measures which are more onerous than those in the building regulations.
408. The arrangements for appealing against an improvement or prohibition notice are set out in *paragraph 6* of Schedule 8. An appeal may be made to an employment tribunal which can cancel a notice or confirm it (with or without modifications). The period within which an appeal must be made will be specified by the Secretary of State in regulations made under this paragraph. The operation of an improvement notice is automatically suspended until an appeal is withdrawn or finally determined. The operation of a prohibition notice instead can be suspended at the discretion of the tribunal, on an application from the appellant (see *sub-paragraphs (5) and (6)*). *Paragraph 7* of Schedule 8 sets out the offences associated with non-compliance with improvement and prohibition notices.
409. Part 3 of the Schedule sets out other powers that authorised inspectors may exercise in order to enforce, and otherwise carry into effect, the regulatory regime. These powers are broadly the same as those conferred on inspectors by the existing regulatory regime under the Health and Safety at Work etc. Act 1974. These include powers of entry, powers to seize or otherwise deal with articles or substances that are an imminent danger, and powers to take samples and to require information and documents.
410. The power of entry allows an authorised inspector to enter any non-domestic premises where the inspector considers it is necessary to carry out his or her duties. Entry is only possible at a reasonable time unless there is or may be a dangerous situation or to delay would be detrimental to the nuclear security purposes (see *paragraph 8*). This power of entry does not extend to domestic premises. Entry to such premises may be gained only by consent, with a warrant issued by a justice of the peace or in a situation judged by the inspector to be dangerous (see *sub-paragraphs (2) and (3)*). “Domestic premises” is defined in *sub-paragraph (5)*.
411. *Part 4* of the Schedule deals with supplementary matters. *Paragraph 23* places a duty on inspectors to provide certain information to employees relevant to their health, safety or wellbeing. This information might include, for example, that a prohibition notice had been served on a particular activity. Where information is provided to employees or representatives, the inspector must provide the same information to the employer.
412. *Paragraph 24* provides definitions for terms used in the Schedule.
413. In addition to the above, *paragraph 10* of Schedule 10 also makes provisions in relation to ONR inspectors to allow authorised inspectors to prosecute before a magistrates’ court in England and Wales an offence under any of the relevant statutory provisions.

Section 84: Investigations

414. This section empowers the ONR to, or to authorise another person to, investigate and produce a special report on certain defined matters, called “relevant matters”. These

matters include any accident or occurrence or situation which it considers it is desirable to investigate for any of its purposes. They also cover any matter which the ONR considers it is desirable to investigate with a view to making nuclear regulations or regulations under section 15 of the Health and Safety at Work etc. Act 1974 for the nuclear site health and safety purposes. Thus, for example, the ONR might ask a third party to carry out a study and report to it about the effectiveness of regulations in ensuring the safe and secure transport of nuclear materials in Great Britain.

415. Under *subsection (2)*, the ONR may publish all or part of a special report. However, *subsection (7)* provides that this is subject to section 94, and the consent of the Secretary of State must be sought for the publication of any communication which falls within section 94 (see *subsection (2)* of this section).
416. This section also gives the ONR the necessary powers to make payments to anyone (provided they are not a member of the ONR or a member of its staff) who carries out (or assists in) an investigation or makes (or assists in the making of) a special report (see *subsections (4)* and *(5)*).
417. Before investigating a matter which appears to the ONR to be, or is likely to be, relevant to the “railway safety purposes”, it must consult the Office of Rail Regulation (see *subsection (6)*). “Railway safety purposes” is defined in paragraph 1 of Schedule 3 to the Railways Act 2005 and relates, for example, to protecting the public or people at work from risks arising from the operation of railways.

Section 85: Inquiries

418. This section gives the ONR the power to arrange for an inquiry to be held, where it considers it necessary or desirable for any of its purposes. However, the Secretary of State’s approval must be given for an inquiry to take place (see *subsection (1)*). In addition, any such inquiry must be held in accordance with regulations made by the Secretary of State (see *subsection (3)*). Regulations here may confer powers on the person holding the inquiry (or anyone assisting) to enter premises to acquire information or take evidence on oath and summon witnesses.
419. Unless provided otherwise in regulations, the inquiry must be held in public and the report arising from the inquiry published (*subsections (4)* and *(5)(b)*). No inquiry is to be held under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, into a matter arising in Scotland which causes the death of a person, unless the Lord Advocate directs otherwise (*subsection (8)*).

Section 86: Inquiries: payments and charges

420. This section allows the ONR to make payments to anyone who holds an inquiry under section 85 or an assessor who assists in such an inquiry. Payments may take the form of remuneration or allowances or expenses.
421. In addition, *subsection (2)*, allows the ONR to pay expenses to witnesses attending inquiries and *subsection (3)* allows the ONR to make other payments to meet the costs of an inquiry.
422. *Subsections (4)* to *(6)* enable the ONR, with the consent of the Secretary of State, to require such persons as it considers appropriate to make payments in connection with an ONR inquiry. The costs recovered under this provision cannot exceed the ONR’s costs associated with the inquiry (*subsection (5)*) and the underlying purpose of the section is to enable the ONR to pass the connected cost on to industry. For example, if an inquiry related to a specific nuclear site, it might be appropriate for the ONR to apportion some or all of the costs of an inquiry to the holder of the licence for the relevant site.

Other functions

Section 87: Provision of information

423. The section places a duty on the ONR to make such arrangements as it considers appropriate for the dissemination of information, for example to industry and the public, that is relevant to its purposes. In compliance with this duty, for instance, the ONR might publish information in print or on its website in order for employers and employees to be better informed about the health and safety risks peculiar to the nuclear industry and how these risks can be managed.

Section 88: Research, training etc

424. This section permits the ONR to undertake research, or arrange for someone else to carry out research, in relation to any matter connected with its purposes. It imposes an obligation on the ONR, if it thinks it appropriate, to publish, or arrange the publication of, the results of any research. In addition, the section empowers the ONR to provide training or make arrangements for training through third parties (*subsection (3)*) for any of its purposes.
425. Under *subsections (1)(a)* and *(2)* the ONR is given the necessary powers to pay for others to carry out research or publish the results on its behalf. *Subsection (4)* entitles the ONR to charge for the training that it provides. The power to publish the results of research is subject to general prohibitions on disclosure contained within the Act (in particular in Schedule 9) and in other legislation.

Section 89: Provision of information or advice to relevant authorities

426. Under this section, a duty is imposed on the ONR to provide certain information or advice if it is requested to do so by “a relevant authority”. The “relevant authorities” are: Ministers of the Crown, the devolved administrations, the Health and Safety Executive, the Health and Safety Executive for Northern Ireland, the Civil Aviation Authority and the Office of Rail Regulation (see *subsections (1)* and *(8)*).
427. The information which may be requested by any of these authorities (and thus needs to be provided by the ONR to the person requesting it) must be about the ONR’s activities (including those of its inspectors: see *subsection (3)*) and connected to a matter of concern to the authority requesting it (*subsection (2)(b)*).
428. In addition, a Minister of the Crown may also make a request for information for the purpose of monitoring the ONR’s performance of its functions or for the purpose of any proceedings in Parliament (*subsection (2)(a)*).
429. In the case of advice, the advice requested must relate to a matter which is of concern to the authority requesting it and be within the expertise of a member, employee or other member of staff (such as a secondee) of the ONR (*subsection (4)*), or be relevant to any of the ONR’s purposes. The ONR is entitled to charge for the provision of information to a relevant authority by virtue of *subsection (5)*, although regulations made by the Secretary of State under *subsection (6)* may prevent charging in particular cases, classes of cases or circumstances.

Section 90: Arrangements with government departments etc

430. *Subsection (1)* permits the ONR, by agreement, to perform functions of Ministers of the Crown, government departments and other public authorities (whether or not those functions fall within the ONR’s purposes). These agreements can be entered into without the Secretary of State’s consent if the function being delegated is the Health and Safety Executive’s function of investigating or making a special report under section 14 of the Health and Safety at Work etc. Act 1974, or a similar function of the Office of Rail Regulation under the Railways Act 2005 (see *subsection (2)(a)(i)* and *(ii)*). Otherwise,

such an agreement may only be entered into if the Secretary of State considers the ONR can perform the function appropriately.

431. Whilst the section permits agreements for the ONR to perform the functions of a Minister of the Crown that arise at common law, it does not permit the ONR to make legislation on behalf of another person (*subsection (3)*).
432. The agreement between the ONR and the other government department or public body may include provisions for payment.
433. The section permits the ONR to provide services or facilities that are outside its purposes, and to charge for these, in connection with a government department's or other public authority's functions (see *subsection (5)*).
434. This section broadly allows for flexibility in the ONR's role and for it to take on the functions of other bodies, where it can appropriately do so. This places the ONR in a similar position to the Health and Safety Executive, which carries out a number of functions under similar provisions set out in section 13 of the Health and Safety at Work etc. Act 1974.

Section 91: Provision of services or facilities

435. *Subsection (1)* allows the ONR to provide services or facilities to any person for the ONR's purposes. This would allow, for example, the ONR to provide advice and information on nuclear information security to a (United Kingdom) company that was expecting to become a holder of sensitive nuclear information.
436. *Subsection (2)* would also allow the ONR to carry out activities that are within its expertise but not within its purposes. This can only be done with the permission of the Secretary of State. Examples of these activities would include providing advice on nuclear matters to other nations or to those in the United Kingdom who are manufacturing nuclear parts for an international market (not in the United Kingdom). The section provides for the ONR to undertake such activities, at a cost to be agreed by both parties. This would allow it to provide such services at a commercial rate, rather than on the basis upon which the Secretary of State sets the ONR's fees under section 101.

Exercise of functions: general

Section 92: Directions from Secretary of State

437. This section enables the Secretary of State to make directions to the ONR. There are three separate powers of direction.
438. Under the first of these, set out in *subsections (1)* and *(2)*, the Secretary of State has the power to give directions to the ONR about how it must perform its functions, and such directions may be specific or of general application. This power might be used, for example, to direct the ONR to conduct a review into nuclear site licence conditions, or to conduct an investigation into the effectiveness of the nuclear security regime at nuclear sites. This power can be used to modify a function of the ONR although it cannot be used to confer additional functions on the ONR.
439. *Subsections (3)* and *(4)* allow the Secretary of State to issue a direction, in the interests of national security, which can modify or confer a function on to the ONR (*subsection (4) (a)* and *(b)*).
440. Neither of the powers to give directions set out in *subsection (1)* or *(3)* can be used to issue a direction in relation to the exercise of a regulatory function in a particular case (*subsection (5)*). This reflects the fact that although the Secretary of State is able to exercise some controls over the ONR it is an independent regulator and the Secretary of State should not be able to overrule its expertise in individual regulatory circumstances.

441. *Subsection (6)* allows the Secretary of State to give a direction to the ONR in a specific instance with regard to a regulatory function (such as to react to specific information received by government in order to ensure the security of nuclear premises). Such a direction can only be given where the Secretary of State is satisfied that it can be justified because there are exceptional circumstances relating to national security. The direction may only be given for nuclear security purposes (*subsection (7)*). This exceptional power reflects the particular expertise that government may have in the sphere of security, but the power is only exercisable in very limited circumstances.
442. In order to provide some transparency about the exercise by the Secretary of State of a power to overrule the ONR in such circumstances, directions made under this section must be laid before Parliament. However, this is unless the Secretary of State considers that making public the direction would be contrary to the interests of national security. In such an instance, a memorandum, stating that a direction has been given and its date, must be laid before Parliament (*subsections (8) and (9)*).

Section 93: Compliance with nuclear safeguards obligations

443. *Subsection (1)* imposes an obligation on the ONR to do such things as it considers are best calculated to ensure compliance by the United Kingdom or to enable or facilitate compliance by a Minister of the Crown, with the “safeguards obligations”.
444. “Safeguards obligations” are principally defined in relation to Articles 77 to 85 of the Euratom Treaty and two international agreements made in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (see *subsection (2)(a) to (c)*). The overall purpose of these safeguards obligations is to provide confidence that States do not use nuclear material from civil nuclear programmes to manufacture nuclear weapons. The obligations in question require the United Kingdom Government to provide information to the International Atomic Energy Agency and the European Commission about nuclear material held within the United Kingdom and the use of technology linked with the processing or enrichment of nuclear material.
445. In addition, “safeguards obligations” is defined to include any further obligations or agreements that the Secretary of State specifies in a notice to the ONR (see *subsection (2)(d)*). The Secretary of State must consult with the ONR before issuing such a notice (*subsection (4)*). The power here is intended to provide flexibility in the ONR’s safeguards remit so it can also be required to ensure compliance with other existing international agreements and any new agreements which the United Kingdom may enter into in the future relating to safeguards, as well as any undertakings that Ministers may make in relation to safeguards matters.

Section 94: Consent of Secretary of State for certain communications

446. This section requires the ONR to seek consent from the Secretary of State before it issues certain communications relating to both the ONR’s nuclear security policy and the government’s national security policy. The specific ONR communications to which this section applies are any ONR security guidance or any statement of the ONR’s nuclear security policy to the extent that the ONR considers that either of those things relate to government policy on national security (see *subsection 2(a)*). It also allows the Secretary of State to direct the ONR to seek his or her consent to the publication of certain descriptions of material (see *subsection 2(b)*). The ONR will not have to seek the consent of the Secretary of State before publishing any code of practice issued by the ONR under section 79, the ONR’s plan, strategy or a report made under [paragraph 24](#) of Schedule 7 or advice given in a particular case (see *subsection (3)*).
447. The Secretary of State can only use such a direction in relation to communications which he or she considers satisfies the twin tests of relating to government policy on national security matters and being relevant to the ONR’s security policy (for example by containing security guidance or information about that policy) (see *subsection (5)*). Therefore this power is limited only to communications associated with both the ONR’s

nuclear security policy and government national security policy. It does not relate to any of the ONR's purposes other than the ONR's security purposes.

448. In order to minimise any administrative burdens, the Secretary of State may issue a general consent in relation to a particular description of guidance which will exempt the ONR from having to seek consent to issue such documents (see *subsections (6) and (7)*).

Section 95: Power to arrange for exercise of functions by others

449. The effect of this section is to enable the ONR to delegate any of its functions to any person, subject to obtaining the Secretary of State's consent. The section also permits the ONR to pay the person to whom it has delegated for the performance of the function.
450. *Subsection (2)* provides that the Secretary of State may only give his or her consent to the ONR delegating a function, if he or she considers that the person to whom it is proposed to delegate can perform the function appropriately.

Section 96: Co-operation between ONR and Health and Safety Executive

451. This section requires the ONR and the Health and Safety Executive to enter into arrangements (and to maintain, review and revise these from time to time) in order to ensure mutual co-operation and the exchange of information about their respective functions. This will help to ensure that the two regulators have a consistent approach to the regulation of health and safety, and that interfaces between their respective health and safety enforcement activities are effectively managed.

Information etc

Section 97: Power to obtain information

452. This section allows the ONR to require a person to provide it with any information that it requires for the purposes of carrying out its functions. Refusal or failure to comply with a notice requiring information is a criminal offence (*subsection (5)*).
453. This section might be used, for example, to require the provision of certain safeguards related information such as records detailing quantities and locations of nuclear material.
454. Notices may impose a continuing requirement to provide information, for example to provide quarterly returns as opposed to simply imposing one-off requirements for information (see *subsection (2)*).
455. Notices under this section cannot be used where a notice under section 2 of the Nuclear Safeguards Act 2000 could be used instead (see *subsection (4)*). The reason for this is that the 2000 Act contains a specific power to obtain information related to the protocol signed at Vienna on 22nd September 1998 additional to the agreement for the application of safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (the "additional protocol"). This subsection therefore ensures that the specific power in the 2000 Act is used to obtain such additional protocol information rather than the more generic power included in this section.

Section 98: Powers of HMRC in relation to information; and Section 99: HMRC power to seize articles etc to facilitate ONR and inspectors

456. *Section 98* enables the Commissioners for Her Majesty's Revenue and Customs (HMRC) to provide the ONR or an ONR appointed inspector with information about imports whether or not it has been requested (see section 98(3)). *Section 99* allows an officer of HMRC (an HMRC officer) to seize and detain imported goods to facilitate the ONR or its inspectors in the exercise of their functions. Anything that is seized for this purpose may only be detained for a maximum of 2 working days (see section 99(1) and (5)(a)).

457. The Borders, Citizenship and Immigration Act 2009 provides for functions of HMRC that are “general customs matters” to be exercised concurrently by both HMRC and the Secretary of State. It makes specific provision for references to HMRC in enactments, instruments and documents to be interpreted as references to the Secretary of State (see section 1(6) of that Act), but that provision would not apply to provision made in this Act. In order to ensure that the functions conferred on the HMRC by this section can be exercised by the Secretary of State (as necessary) a consequential amendment has been made to this section of the 2009 Act. This preserves the split in functions put in place by the 2009 Act, section 1.
458. Section 7 of the 2009 Act provides for functions of HMRC that are “customs revenue matters” to be exercised concurrently by both HMRC and the Director of Border Revenue. It makes specific provision for references to HMRC in enactments, instruments and documents to be interpreted as references to the Director of Border Revenue (see section 7(7) of that Act), but that provision would not apply to provision made in this Act. In order to ensure that the functions conferred on the HMRC by this section can be exercised by the Director of Border Revenue (as necessary) the Act makes a consequential amendment to the 2009 Act (see [paragraph 101](#) of Schedule 12). This preserves the split in functions put in place by the 2009 Act, section 7.
459. The 2009 Act also allows for certain functions of HMRC officers to be exercised by designated general customs officials (see section 3 of that Act) and designated customs revenue officials (see section 11 of that Act). In order to ensure that designated general customs officials and designated customs revenue officials can exercise the functions in these sections specific provision is made in sections 3(7)(b) and 11(6)(b) respectively.

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 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).

Fees

Section 101: Fees

467. *Subsection (1)* enables the Secretary of State, by regulations, to make provision for fees to be payable in connection with the performance of the ONR’s functions under the relevant statutory provisions and under regulations made under section 80 of the Anti-terrorism, Crime and Security Act 2001. This power supplements those found in section 43 of the Health and Safety at Work etc. Act 1974, which enable regulations to be made for the payment of fees in connection with the ONR’s performance of its functions under that Act and section 24A of the Nuclear Installations Act 1965, which provides for the recovery of costs incurred in connection with nuclear site licence activities and nuclear safety research. The power will therefore be additional to the existing cost recovery powers, in section 43 and section 24A of the Acts identified above, and will increase ONR’s capacity to recover its costs.
468. Regulations made under this power must either specify the fee’s amount or the process by which the fee will be determined. Fees under the regulations could be determined, for example, by reference to a daily or hourly rate specified in the regulations or by reference to the reasonable costs of performing the function or carrying out the relevant work (see *subsection (2)*).

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

469. Regulations made under this section cannot require a fee to be paid by anyone in the capacity of four specified categories of person: an employee; a person seeking employment; a person training for employment; or a person seeking training for employment (see *subsection (4)*).
470. The power contained in this section provides for fees recovery only and any exercise of this power will be required to follow government guidelines on the setting of fees.