

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

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)*).

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)*).

Chapter 3: Office for Nuclear Regulation

Section 77: The Office for Nuclear Regulation

378. This section establishes the ONR as a body corporate. Therefore, it will have a legal identity in its own right, independent of its members.
379. The section introduces Schedule 7 to the Act which covers a broad range of matters relating to the ONR, its constitution and how its staff and members are to be appointed and remunerated.
380. *Schedule 7* also permits the ONR to authorise its staff, members, inspectors and committees to do, on its behalf, anything required to be done by the ONR (*paragraph 18*). The exercise of regulatory functions in particular cases can only be delegated to members of the ONR's staff (*paragraph 18(3)*) or inspectors appointed by the ONR under section 19 of the Health and Safety at Work etc. Act 1974. So, it will be possible to delegate such functions to executive members of the ONR (those listed under *paragraph 3*) and other members of suitably qualified staff of the ONR but not to non-executive members of the ONR (those listed under *paragraph 4*). Regulatory function is defined in section 112.
381. Committees of the ONR may include people who are not members of or members of staff of the ONR (see *paragraph 16(2)* of Schedule 7). However, such committees will not be able to perform regulatory functions in particular cases on behalf of the ONR but may, for example, carry out functions such as developing policies.
382. The ONR will not be a Crown body. ONR's staff and members will not be civil servants (see *paragraphs 1, 5 and 14* of Schedule 7) but they will be treated as Crown servants for the purposes of the Official Secrets Act 1989 (see *paragraphs 6 and 14(3)* of Schedule 7). Civil servants who are seconded to the ONR will continue to be civil servants during the period of secondment.
383. The ONR will consist of a predominantly non-executive "Board" numbering no more than 11 members including a non-executive chair, the Chief Nuclear Inspector and the Chief Executive Officer (the latter two being employees of the ONR), as well as further executive members (i.e. members who are employees of the ONR) and non-executive members (i.e. members who are not members of the ONR's staff). The ONR's staff includes both employees of the ONR and persons who have been seconded to it. The overall number of non-executive members (at least 5 but no more than 7) should always exceed the number of executive members (up to 4 in total) (see *paragraphs 2, 3 and 4* of Schedule 7). In order to facilitate a close working relationship with the Health and Safety Executive, there is provision for the Health and Safety Executive to appoint one of its non-executive members to the ONR Board (see *paragraph 4(4)*) and for the ONR

to appoint one of its non-executive members to the Health and Safety Executive's Board (see [paragraph 15 \(4\)](#) of Schedule 12).

384. Executive members will be appointed by the ONR and non-executive members, other than the Health and Safety Executive member, will be appointed by the Secretary of State (see [paragraph 4](#) of Schedule 7).
385. Under [paragraph 21](#) of Schedule 7, the ONR will be required to keep financial records, and submit accounts in respect of each financial year to the Secretary of State as well as to the Comptroller and Auditor General (who will need to audit the accounts and report on them to Parliament). "Financial year" is defined in [paragraph 28](#) of Schedule 7 as a period of 12 months ending on 31st March.
386. The ONR will also be required to prepare a long-term strategy for the carrying out of its functions and must act in accordance with this strategy (see [paragraph 22](#) of Schedule 7). The ONR will be required to consult when preparing its strategy, and the strategy will require Secretary of State approval before being laid before Parliament. The strategy may be reviewed at any time, but must be reviewed at least every 5 years.
387. The ONR will also be required, under [paragraph 23](#) of Schedule 7, to prepare an annual plan about its activities for each forthcoming financial year, which is to be approved by the Secretary of State, published and laid before Parliament. Additionally, the ONR will need to prepare, in respect of each financial year, a report to the Secretary of State on the performance of its functions during that year (see [paragraph 24](#) of Schedule 7).
388. The annual plan and associated report and the strategy (including revisions to it) must be laid before Parliament by the Secretary of State and published by the ONR (see [paragraph 25](#) of Schedule 7), although information may be redacted from the documents in the interests of national security.
389. The ONR may appoint employees and set the terms and conditions of that employment, including remuneration. ONR may also take on secondees to serve as members of ONR staff, for example, staff seconded from the Health and Safety Executive (see [paragraph 12](#) of Schedule 7).
390. [Schedule 7](#) also covers a number of other financial matters. The Secretary of State may pay grants to the ONR with consent from the Treasury (see [paragraph 26](#)), and the ONR is empowered to borrow money – up to £35 million (with the possibility of that amount being extended up to £80 million by order made by the Secretary of State). This ability to borrow money gives ONR the option, for example, to make up interim shortfalls in cash flow from month to month when invoicing industry for ONR's nuclear site licensing costs quarterly.
391. The ONR is also given a power in [paragraph 20](#) of Schedule 7 to indemnify "ONR officers" in certain circumstances against all or any part of any personal liability that they might incur in the execution, or purported execution, of their functions. The ONR may only indemnify such officers if it is satisfied that the officer honestly believed they were acting within their "relevant powers" and the act or omission giving rise to the liability is one that the ONR officer was required or entitled to do by virtue of being an ONR officer. "ONR officer" is defined in [paragraph 20\(4\)](#) of Schedule 7 as those appointed by the ONR as inspectors under the Act and under specified fire safety legislation, as well as under the Employers' Liability (Compulsory Insurance) Act 1969.
392. The power provided in [paragraph 20](#) of Schedule 7 is without prejudice to any other power the ONR may have to indemnify its staff, its members or persons appointed by it. It also does not apply where the ONR is otherwise required to indemnify its officers (see [paragraph 20\(3\)](#) of Schedule 7).

[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)*).
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.

Chapter 5: Supplementary

General duties of employers, employees and others

Section 102: General duty of employees at work in relation to requirements imposed on others

471. *Subsection (1)* of this section places a general duty on employees, whilst at work, to co-operate with those who have duties under the relevant provisions (defined in

subsection (5)(b)), as far as is necessary, to enable those duties to be complied with. An example of such co-operation would be to comply with a nuclear safety policy implemented at a site as part of a responsibility under a relevant statutory provision.

472. Failure to comply with this provision is an offence which is triable either way. This section does not apply to duties relating to the Nuclear Safeguards Act 2000 or any regulation made under section 74(10) solely for nuclear safeguards purposes (see *subsection (5)(b)*).
473. Similar provision already exists in section 7 of the Health and Safety at Work etc. Act 1974 in relation to requirements imposed by or under the relevant statutory provisions of that Act. The duties under that section already apply in relation to many duties that the ONR will be responsible for enforcing under the Act (including provisions of the Nuclear Installations Act 1965 and regulations relating to the carriage of radioactive materials). Replicating this provision in the Act ensures that the regulatory framework is not changed when functions are transferred from the Health and Safety Executive to the ONR.

Section 103: Duty not to interfere with or misuse certain things provided under statutory requirements

474. This section makes it an offence (triable either way) to intentionally or recklessly interfere with anything provided in the interests of health, safety or welfare under the relevant statutory provisions. For example, it would be an offence to recklessly remove a piece of safety equipment that has been installed in the interest of nuclear safety under a requirement of a relevant statutory provision.
475. Similar provision already exists in section 8 of the Health and Safety at Work etc. Act 1974 in relation to requirements imposed by or under the relevant statutory provisions of that Act. The duties under that section already apply in relation to many duties that the ONR will be responsible for enforcing under the Act (including provisions of the Nuclear Installations Act 1965 and regulations relating to the carriage of radioactive materials). Replicating this provision in the Act ensures that the regulatory framework is not changed when functions are transferred from the Health and Safety Executive to the ONR.

Section 104: Duty not to charge employees for certain things

476. This section creates an offence for an employer to impose a charge on an employee for anything done or provided for the purposes of a specific requirement of a relevant provision (as defined in section 102(5)(b)). For example, an employer would be committing an offence if they charged employees for specific nuclear safety personal protective equipment required under nuclear regulations or for security vetting required under relevant statutory provisions.
477. Similar provision already exists in section 9 of the Health and Safety at Work etc. Act 1974 in relation to requirements imposed by or under the relevant statutory provisions of that Act. The duties under that section already apply in relation to many duties that the ONR will be responsible for enforcing under the Act (including provisions of the Nuclear Installations Act 1965 and regulations relating to the carriage of radioactive materials). Replicating this provision in the Act ensures that the regulatory framework is not changed when functions are transferred from the Health and Safety Executive to the ONR.

Offences

Section 105: Offences relating to false information and deception

478. This section creates an offence for a person to knowingly or recklessly make a false statement in response to a requirement under a relevant statutory provision or for the

purpose of obtaining the issue of a document under any of those provisions. This includes information provided to the ONR or its inspectors for the purposes of those provisions. Offences are also created for the making of false statements or entries in documents issued under the relevant statutory provisions as well as using counterfeit documents with the intent to deceive (see *subsections (3)(a) and (5)(a)*).

Section 106: Provision relating to offences under certain relevant statutory provisions

479. This section introduces Schedule 10 which contains provisions relating to offences. The Schedule sets out provisions for determining the location where an offence has been committed (*paragraph 2* of Schedule 10) and provides details of the circumstances under which the time for bringing summary proceedings can be extended such as an ongoing inquiry or investigation being carried out by the ONR (*paragraphs 3 and 4* of Schedule 10). The Schedule also covers the circumstances under which an offence is deemed to continue (*paragraph 5* of Schedule 10); where the offence is the fault of another person (*paragraph 6* of Schedule 10); the approach to be taken in terms of liability when the offence is committed by a body corporate or a partnership (*paragraphs 7 and 8* of Schedule 10); who can institute proceedings in England and Wales (*paragraph 9* of Schedule 10); and that an authorised inspector may prosecute proceedings in a magistrates' court (although not in Scotland) (*paragraph 10* of Schedule 10).
480. The Schedule also provides that, if regulations under this Part create an offence consisting of a failure to comply with a duty to do something so far as practicable, then regulations may also provide that the burden of proof passes to the defendant to prove that it was not practicable to do more than was in fact done (*paragraph 11* of Schedule 10). *Paragraph 12* of Schedule 10 provides for the admissibility in evidence of the fact that an entry has been made on a relevant register or record, where there is a requirement to do so, or the fact that it has not been recorded in that record or register and *paragraph 13* of Schedule 10 sets out how a court can order the consequences of an offence to be remedied in the event that it is possible to do so.

Supplementary

Section 107: Civil liability: saving for section 12 of the Nuclear Installations Act 1965

481. This section prevents anything in Part 3 of the Act, including in regulations made under any provision of that Part, from limiting the effect of section 12 of the Nuclear Installations Act 1965. That section ensures that compensation for damage caused by occurrences involving nuclear matter or emissions of ionising radiations on or from nuclear licensed sites are payable only in accordance with the provisions of the 1965 Act.

Section 108: Reporting requirements of Secretary of State

482. Under this section, the Secretary of State must make a report to both Houses of Parliament, in respect of each financial year and as soon as reasonably practicable after the end of the relevant financial year, on how the Secretary of State's powers under the Act in relation to the ONR have been exercised. The report must be laid before each House.
483. The purpose of this annual reporting is to facilitate Parliamentary scrutiny of powers exercised by the Secretary of State in relation to the ONR, for instance, the appointment or dismissal of ONR non-executive members, approving the appointment of the Chief Nuclear Inspector or the Chief Executive Officer, the modification of the ONR's strategy or annual plan or the use of the Secretary of State's power of direction.

Section 109: Notices etc

484. This section contains a variety of provisions relating to notices served under any of the “relevant statutory provisions” other than the provisions of the Nuclear Safeguards Act 2000 (“relevant statutory provisions” is a phrase which is defined in section 82 of the Act and includes Part 3 of the Act, nuclear regulations, certain provisions of the Nuclear Installations Act and the 2000 Act).
485. The section provides that any such notice must be made in writing and sets out how valid service of a notice may be effected for example, by delivery to the person (*subsection (3)(a)*), to the director, manager, or secretary or other officer of a body corporate (*subsection (4)(a)*), or a partner or other person with control of a partnership (*subsection (4)(b)*).
486. *Subsection (9)* sets out the method of delivery for notices that are to be given to the owner or occupier of a premises. *Subsection (10)* allows for exceptions to this where the name or address of the owner or occupier of the premises cannot be ascertained through reasonable inquiry.

Section 110: Electronic delivery of notices etc

487. This section permits the ONR to serve notices by means of electronic communications (such as by e-mail), provided the person who is to receive the notice has consented to the method of service (see *subsection (2)*). In order for that consent to be validly given, or willingness as it is described in the Act, it needs to satisfy the conditions in *subsections (3)(a) to (d)*, and it may be modified or withdrawn, see *subsection (3)(e)*.

Section 111: Crown application: Part 3

488. This section covers the application of Part 3 of the Act to the Crown. Part 3 and regulations made under it will apply to the Crown subject to certain exceptions which are listed in *subsections (2) and (3)*. In addition, the Secretary of State can, by means of secondary legislation, amend this section so as to alter the way in which Part 3 or provision made under it applies to the Crown (see *subsection (6)*).

Section 112: Interpretation of Part 3

489. This section sets out definitions for various terms used in Part 3 of the Act.

Section 113: Subordinate legislation under Part 3

490. Any orders and regulations made under Part 3 (including the Schedules introduced by this Part) will be made by statutory instrument (*subsection (1)*). As a general rule, such orders and regulations will be made subject to annulment by either House of Parliament (see *subsection (4)*). There are several exceptions to this rule relating to where regulations are the first nuclear regulations to be made; or where they modify or repeal any part of the Nuclear Installations Act 1965, or the Nuclear Safeguards Act 2000; or where they create a new offence. In these circumstances the statutory instrument containing such regulations must be approved by a resolution of each House of Parliament (see *subsection (3)*). Where an existing offence is revoked or re-enacted by nuclear regulations, it would not constitute the creation of a new offence for the purposes of this section.
491. Another exception concerns orders made under *paragraph 26* of Schedule 7 to raise the limit on how much the ONR may borrow (see *subsection (4)*). Such orders must be positively approved by the House of Commons before they can be made.
492. In addition, orders made under section 111 must be approved by both Houses of Parliament before they can be made by the Secretary of State (see *subsection (2)(b)*).

Section 114: Transitional provision etc

493. This section allows for the Secretary of State by order to make provisions for transitional arrangements which appear to him or her to be appropriate in consequence of, or in connection with, Part 3. Specifically, such arrangements can include amending legislation made before the end of the session in which this Act is passed, and can include provision treating relevant existing regulations as ‘relevant statutory provisions’, regulations made under section 85 (inquiries) or under section 101 (fees) (see *subsection 2(b)*). Only regulations which are relevant to the ONR’s purposes or fees payable in respect of functions relating to them are within scope of this provision (see *subsection (3)*). This provision will allow the statutory ONR to continue to enforce these existing regulations or charge fees under them for a transitional period, to ensure continuity following its creation if there is not time to amend or replace the regulations in advance of that event.

Section 115: Transfer of staff etc

494. This section introduces Schedule 11 which makes provision for the Secretary of State to make schemes transferring staff and property from the Health and Safety Executive to the ONR and property from the Secretary of State to the ONR.
495. *Part 2* of Schedule 11 provides the Secretary of State with the power to make “staff transfer schemes”. That is to say schemes to transfer staff into the ONR who are employees of the Health and Safety Executive and have been assigned to work in the interim ONR (see *paragraph 3(2)* of Schedule 11). Staff transfer schemes may include any provisions that have the same or similar effect as the *Transfer of Undertakings (Protection of Employment) Regulations 2006*. The transfer may include the transfer of employee’s records from the Health and Safety Executive to the ONR, this is included in the broad power to create a transfer under *paragraph 4(1)* of Schedule 11.
496. *Part 3* of Schedule 11 provides the Secretary of State with the power to make schemes transferring qualifying property, rights and liabilities from the Health and Safety Executive or the Secretary of State to the ONR. All transfers of this type will be associated with the functions that the ONR will carry out in future. The property transfer scheme may include provision in respect of the continuity of legal proceedings, to apportion rights and liabilities and to transfer property rights or liabilities that could not otherwise be transferred or assigned (see *paragraph 10(1)(d)* of Schedule 11). No provision can be made in such a scheme in connection with rights or liabilities arising under or in connection with contracts of employment (see *paragraph 9(2)* of Schedule 11).
497. *Part 4* of Schedule 11 requires that the Secretary of State must consult those likely to be affected by a staff or property transfer, and where consultation has already taken place prior to such a transfer, he or she must have regard to the results of that consultation (see *paragraph 12* of Schedule 11). This consultation may be carried out by a person other than the Secretary of State. This allows the interim ONR to engage in consultation on these key issues prior to Royal Assent. The Secretary of State also has the power to modify transfer schemes before they come into force, as long as appropriate consultation can be shown to have taken place. Modifications can be made to such schemes after they have come into force but only with the agreement of the persons affected by those modifications (section 153(3)).

Section 116: Minor and consequential amendments

498. *Schedule 12*, which *subsection (1)* of this section gives effect to, contains a number of minor and consequential amendments to various enactments. In addition, *subsection (2)* confers a power on the Secretary of State to, by order, make further consequential amendments to legislation in consequence of Part 3 of the Act.

499. Part 1 of the Schedule makes various amendments to the Health and Safety at Work etc. Act 1974 which are consequential on functions in respect of nuclear safety, nuclear site health and safety, security, safeguards and transport of radioactive materials being carried out in future by the ONR and not the Health and Safety Executive.
500. These amendments include, among others, amendments to section 18 of the Health and Safety at Work etc. Act 1974, to make ONR responsible for the enforcement of any of the relevant statutory provisions of that Act, in relation to GB nuclear sites (see [paragraph 6](#) of Schedule 12) except where health and safety regulations provide for the Office of Rail Regulation to be responsible for enforcement. The amendments made by [paragraph 6\(3\)\(d\)](#) of Schedule 12 to section 18 ensure provision can be made for responsibility for enforcement to be assigned to either the ONR or the Office of Rail Regulation in cases of uncertainty. In addition, the amendments provide for the ONR to be made an enforcing authority by means of regulations made under that Act. This will allow the ONR to take responsibility for the enforcement of provisions of the 1974 Act at sites other than GB nuclear sites. These sites could include, for example, the non-licensed, defence-related nuclear sites where the interim ONR currently enforces certain statutory provisions of the 1974 Act as part of Health and Safety Executive, as well as sites which are intended to become nuclear sites.
501. The Schedule also makes amendments to Schedule 2 of the 1974 Act to enable the appointment of an ONR member of the Health and Safety Executive (see [paragraph 15](#) of Schedule 12), just as [paragraph 4\(4\)](#) of Schedule 7 enables the Executive to appoint a member of the ONR.
502. Part 2 of the Schedule makes minor and consequential amendments to other legislation. Part 2 restates sections 1, 3 to 6 and 22 of the Nuclear Installations Act 1965, and in doing so incorporates changes to various nuclear safety functions of the Health and Safety Executive under those sections to the ONR. The replacement text restates the terms of the Act. In restating section 4, [paragraph 19](#) does not replicate the offence of failing to display licence conditions on a nuclear site as is no longer considered appropriate.
503. [Parts 3](#) and [4](#) of Schedule 12 confer functions on the ONR in the same manner, but in relation to Security and Safeguards respectively.
504. Part 5 of the Schedule amends primary legislation to ensure that the ONR's functions are clearly defined from those of the Secretary of State or the Health and Safety Executive, particularly in respect of the ability of the ONR to be an enforcing authority under some health and safety legislation in Scotland and Wales. It also repeals the Radioactive Material (Road Transport) Act 1991, with the exception of section 1(1) (see [paragraph 63\(1\)](#) of Schedule 12). This is preserved because Section E5 of Part II of Schedule 5 to the Scotland Act 1998 uses the definition of 'radioactive material' in this provision.
505. In addition, [paragraph 71](#) of Schedule 12 ensures that the power to repeal or revoke nuclear safety provisions in section 37 of the Deregulation and Contracting Out Act 1994 is preserved. This power can only be exercised following consultation with the ONR. [Paragraph 81](#) of Schedule 12 confirms the ONR as a Category 2 responder under the Civil Contingencies Act 2004.

Section 117: Application of Part 3

506. This section sets out that Her Majesty may, by Order in Council, extend the application of Part 3 of this Act outside the United Kingdom. This power is necessary because some aspects of Part 3 (and nuclear regulations) will apply to acts and things done outside the United Kingdom as a consequence of nuclear material being transported outside of the United Kingdom. The power gives flexibility to amend the application of Part 3 to ensure that the provisions of this Part apply to persons, premises, activities, articles, substances or other matters outside the United Kingdom just as they would if they were within the United Kingdom.

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

Section 118: Review of Part 3

507. This section requires the Secretary of State to carry out a review of the provisions of Part 3 of the Act after the ONR has been in existence for five years. The conclusions of the review must be set out in report and laid before Parliament.