



Energy Act 2008

2008 CHAPTER 32

PART 3

DECOMMISSIONING OF ENERGY INSTALLATIONS

CHAPTER 1

NUCLEAR SITES: DECOMMISSIONING AND CLEAN-UP

Funded decommissioning programmes

45 Duty to submit a funded decommissioning programme

- (1) This section applies where, on or after the day on which this section comes into force, a person applies for a nuclear site licence in respect of a site to which subsection (2) applies.
- (2) This subsection applies to—
 - (a) a site on which the person intends to construct a nuclear installation for a purpose for which a licence under section 6(1)(a) of the Electricity Act 1989 (c. 29) or Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I.)) (generating licences) is required, and
 - (b) a site to which this section previously applied by virtue of paragraph (a) and on which the person intends to operate a nuclear installation which was constructed for such a purpose.
- (3) The person must—
 - (a) give written notice of the application to the Secretary of State, and
 - (b) prepare and submit to the Secretary of State a funded decommissioning programme.
- (4) A funded decommissioning programme is a programme which—
 - (a) makes provision for the technical matters, and

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- (b) specifies how the implementation of that provision, so far as it relates to the designated technical matters, is to be financed.
- (5) The technical matters, in relation to a site, are—
- (a) the treatment, storage, transportation and disposal of hazardous material (within the meaning of section 37 of the Energy Act 2004 (c. 20)) during the operation of a nuclear installation on the site,
 - (b) the decommissioning of any relevant nuclear installation and the cleaning-up of the site, and
 - (c) activities preparatory to the matters mentioned in paragraph (b);
- and for the purposes of paragraph (a) a nuclear installation is not to be regarded as being operated at a time when it is being decommissioned.
- (6) The designated technical matters, in relation to a site, are—
- (a) such of the matters within subsection (5)(a) or (c) as are specified by the Secretary of State by order, and
 - (b) the matters within subsection (5)(b).
- (7) The funded decommissioning programme must, in particular, contain—
- (a) details of the steps to be taken under the programme in relation to the technical matters,
 - (b) estimates of the costs likely to be incurred in connection with the designated technical matters, and
 - (c) details of any security to be provided in connection with those costs.
- (8) A person who submits a programme must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (9), at a time determined in accordance with such regulations.
- (9) The costs are those incurred by the Secretary of State in relation to the consideration of the programme, including, in particular, the costs of obtaining advice in relation to—
- (a) the programme, or
 - (b) information required in relation to the programme in accordance with section 52(4).

46 Approval of a programme

- (1) The Secretary of State may approve or reject a funded decommissioning programme submitted under section 45 in respect of a site.
- (2) The Secretary of State may approve a programme—
 - (a) with or without modifications, and
 - (b) unconditionally or subject to conditions.
- (3) A modification under subsection (2) may, in particular, impose obligations, or additional obligations, on a body corporate associated with the person who submitted the programme.
- (4) The Secretary of State's powers under subsections (1) to (3) must be exercised with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).

- (5) Before deciding whether to approve or reject a programme, the Secretary of State must consult each interested body about—
- (a) the programme, and
 - (b) any modification which it is proposed to make, or any condition it is proposed to impose,
- so far as it relates to a function conferred on the interested body by or under an enactment.
- (6) “Interested body” means—
- (a) the Health and Safety Executive,
 - (b) in relation to a funded decommissioning programme for a site in England and Wales, the Environment Agency, and
 - (c) in relation to a funded decommissioning programme for a site in Northern Ireland, the Department of the Environment for Northern Ireland.
- (7) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the following persons an opportunity to make written representations about the proposed modifications or conditions—
- (a) the site operator;
 - (b) any other person with obligations under the programme;
 - (c) in the case of proposed modifications, any person who would have such obligations were the modifications made.
- (8) The Secretary of State may not reject a programme without informing the site operator of the reasons for doing so.
- (9) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.
- (10) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

47 Prohibition on use of site in absence of approved programme

- (1) This section applies where a person is required to submit a programme under section 45 by reason of an application made for a nuclear site licence in respect of a site.
- (2) It is an offence for the person to use or permit another person to use the site, by virtue of the licence, at a time when there is no programme submitted in accordance with that requirement and approved under section 46.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

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Modification of approved programmes

48 Modification of approved programme

- (1) Where the Secretary of State has approved a funded decommissioning programme in respect of a site, a person mentioned in subsection (2) may—
 - (a) propose a modification of the programme, or
 - (b) propose a modification of the conditions to which the approval of the programme is subject.
- (2) Those persons are—
 - (a) the Secretary of State,
 - (b) the site operator, and
 - (c) any other person who has obligations under the programme (provided that the site operator consents to the proposed modification).
- (3) A proposal under subsection (1) may, in particular, propose—
 - (a) that obligations, or additional obligations, be imposed on a body corporate associated with the site operator, or
 - (b) the removal of obligations imposed on a body corporate which is or was so associated.
- (4) In subsection (1)(b) “modification of the conditions” includes the imposition of conditions where the programme was approved unconditionally.

49 Procedure for modifying approved programme

- (1) This section applies in relation to a proposal for the modification of an approved funded decommissioning programme, or of the conditions, under section 48 (but is subject to regulations under section 50).
- (2) The proposal must be made by notice in writing given—
 - (a) if the proposal is made by the Secretary of State, to the site operator, and
 - (b) in any other case, to the Secretary of State.
- (3) Where a proposal is made, the site operator must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (4), at a time determined in accordance with such regulations.
- (4) The costs are those incurred by the Secretary of State in relation to the consideration of the proposal, including, in particular, the costs of obtaining advice in relation to—
 - (a) the proposal, or
 - (b) information required in relation to the proposal in accordance with section 52(4).
- (5) Where the Secretary of State makes the proposal, the following persons must be given the opportunity to make written representations about the proposal—
 - (a) the site operator;
 - (b) any other person with obligations under the programme;
 - (c) any person who would have such obligations if the proposed modification were made.

- (6) The Secretary of State must—
 - (a) decide whether the proposed modification is to be made, and
 - (b) give notice of the decision, and the reasons for it, to every person who has obligations under the approved funded decommissioning programme, and
 - (c) if the decision is to make the modification, give such notice to any other person who will have such obligations by reason of the modification.
- (7) The Secretary of State’s power under subsection (6)(a) must be exercised with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).
- (8) Before deciding whether the proposed modification is to be made, the Secretary of State must consult each interested body (within the meaning of section 46(6)) in so far as the modification relates to a function conferred on the interested body by or under an enactment.

50 Power to disapply section 49

- (1) The Secretary of State may make regulations disapplying section 49 in relation to modifications which—
 - (a) are proposed by a person within section 48(2) (other than the Secretary of State), and
 - (b) are of a description specified by the regulations.
- (2) Before making regulations under subsection (1), the Secretary of State must consult—
 - (a) the Health and Safety Executive,
 - (b) the Environment Agency, and
 - (c) the Department of the Environment for Northern Ireland,in so far as the regulations relate to a function conferred on the body by or under an enactment.
- (3) The regulations may, in particular—
 - (a) describe a modification by reference to its financial consequences;
 - (b) specify that, in determining whether a modification is of a specified description or not, the cumulative financial effect of all modifications, or all modifications of a specified class, within a specified period is to be taken into account.
- (4) In the case of a modification to which the regulations apply, the site operator must give notice of the modification to the Secretary of State in such manner as may be specified in the regulations.

51 Time when modification takes effect

- (1) This section applies where, in the case of an approved funded decommissioning programme, a modification is made of the programme or of the conditions to which its approval is subject.
- (2) The modification does not take effect until the relevant time, and from that time this Chapter has effect—
 - (a) in the case of a modification of the programme, as if the programme had been approved by the Secretary of State under section 46 in the modified form;

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- (b) in the case of a modification of the conditions to which the approval of the programme is subject, as if the Secretary of State had approved the programme under that section subject to the modified conditions.
- (3) “The relevant time” means—
 - (a) in the case of a modification to which section 49 applies, the time specified in the notice given under section 49(6)(b) of the Secretary of State’s decision that the modification is to be made, and
 - (b) in the case of a modification to which regulations under section 50 apply, the time specified in the notice of the modification given to the Secretary of State in accordance with section 50(4).
- (4) The time specified in a notice, as mentioned in subsection (3)(a) or (b), must not be earlier than the time the notice is given.

Information

52 Provision of information and documents

- (1) This section applies where either Condition A or Condition B is satisfied.
- (2) Condition A is that a funded decommissioning programme has been submitted to the Secretary of State under section 45 and the Secretary of State has not yet decided whether to approve or reject it.
- (3) Condition B is that—
 - (a) a modification of a programme, or of the conditions subject to which a programme is approved, has been proposed in accordance with section 48,
 - (b) the modification is not one to which regulations under section 50(1) apply, and
 - (c) the Secretary of State has not yet decided whether the modification should be made.
- (4) The Secretary of State may by notice in writing require a person within subsection (5) —
 - (a) to produce documents, or documents of a description, specified in the notice, or
 - (b) to provide information, or information of a description, specified in the notice.
- (5) Those persons are—
 - (a) the site operator;
 - (b) any other person with obligations under the programme;
 - (c) in a case where Condition A is satisfied, any body corporate associated with the site operator and in relation to which the Secretary of State is considering making a modification under section 46 which, if made, would result in the body corporate having obligations under the programme;
 - (d) in a case where Condition B is satisfied, any person who would have such obligations if the proposed modification were made.
- (6) A notice under subsection (4)—
 - (a) must specify the period within which the documents or information are to be provided or produced;

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- (b) may, in the case of information, require it to be provided in a manner or form specified in the notice.
- (7) This section applies only to information and documents the provision or production of which the Secretary of State considers necessary for the purpose of making the decision referred to in subsection (2) or (3).
- (8) If at any time it appears to the Secretary of State that a person has failed to comply with a notice under subsection (4), the Secretary of State may make an application to the High Court under this section.
- (9) If, on an application under this section, the High Court decides that the person has failed to comply with the notice, it may order the person to take such steps as it directs for securing that the notice is complied with.
- (10) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

53 Power to review operation of programme

- (1) This section applies where a funded decommissioning programme has been approved by the Secretary of State in relation to a site under section 46.
- (2) The Secretary of State may by notice in writing require information relating to the operation of the programme from—
 - (a) the site operator;
 - (b) any other person who has obligations under the programme.
- (3) A notice under subsection (2) may be given only for the purpose of enabling the Secretary of State to determine—
 - (a) whether the programme is being complied with;
 - (b) whether it will be possible for obligations under the programme arising at a future date to be complied with;
 - (c) whether the programme makes prudent provision for the technical matters (including the financing of the designated technical matters).
- (4) Subsection (5) applies if the Secretary of State has reason to believe (whether as a result of information obtained under this section or otherwise)—
 - (a) that the programme is not being complied with,
 - (b) that it will not be possible for an obligation under the programme arising at a future date to be complied with, or
 - (c) that the programme does not make prudent provision for the matters mentioned in subsection (3)(c).
- (5) The Secretary of State may by notice in writing require information from—
 - (a) the site operator,
 - (b) any other person who has obligations under the programme, or
 - (c) any body corporate associated with the site operator,for the purpose of enabling the Secretary of State to determine whether to make a proposal, or the nature of any proposal to be made, under section 48 in respect of the programme.

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- (6) Where a notice under subsection (2) or (5) has been given, the Secretary of State may require the site operator to pay to the Secretary of State such fee in respect of costs incurred by the Secretary of State in obtaining advice in relation to the information as may be determined in accordance with regulations under section 54.
- (7) A fee under subsection (6) must be paid at a time determined in accordance with regulations under section 54.
- (8) If at any time it appears to the Secretary of State that a person has failed to comply with a notice under subsection (2) or (5), the Secretary of State may make an application to the High Court under this section.
- (9) If, on an application under this section, the High Court decides that the person has failed to comply with the notice, it may order the person to take such steps as it directs for securing that the notice is complied with.

Regulations and guidance

54 Nuclear decommissioning: regulations and guidance

- (1) The Secretary of State may make regulations about—
 - (a) the preparation, content and implementation of funded decommissioning programmes,
 - (b) the modification of funded decommissioning programmes under sections 48 to 51, and
 - (c) the modification, under those sections, of the conditions subject to which funded decommissioning programmes are approved.
- (2) Regulations under this section may, in particular, make provision—
 - (a) about the technical matters in relation to sites to which section 45(2) applies;
 - (b) about the estimation of the costs likely to be incurred in connection with the designated technical matters in relation to such sites, and about the manner in which such estimates are to be verified (which may include provision requiring verification by an independent third party);
 - (c) about the financing of those designated technical matters, including the security to be provided for the performance of obligations imposed in respect of those matters by virtue of programmes and the establishment and maintenance, for the purposes of such security, of trusts or other arrangements to hold and accumulate funds;
 - (d) about payments to a site operator or another person from funds so held or accumulated;
 - (e) for information prescribed, or of a description prescribed, by the regulations to be supplied to the Secretary of State by persons with obligations under programmes at such intervals, or on such occasions, as may be so prescribed;
 - (f) enabling the Secretary of State to charge a fee to a site operator in order to recover the costs of obtaining advice in relation to information supplied in accordance with regulations under paragraph (e);
 - (g) about how fees payable under this Chapter are to be determined;
 - (h) about when fees payable under this Chapter are to be paid.

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- (3) Regulations under this section may include provision making it an offence to contravene specified provisions of the regulations.
- (4) Where regulations under subsection (3) create an offence, they must also make provision as to the mode of trial and punishment of offences; but—
 - (a) any provision as to punishment on summary conviction must not authorise a fine exceeding the statutory maximum or imprisonment, and
 - (b) any provision as to punishment on conviction on indictment must not authorise imprisonment for a term exceeding 2 years.
- (5) The Secretary of State may publish guidance about the preparation, content, modification and implementation of funded decommissioning programmes (including any matter mentioned in subsection (2)(a) to (e)).
- (6) The Secretary of State must publish guidance about factors which it may be appropriate to consider in deciding whether or not—
 - (a) to approve a programme,
 - (b) to approve a programme with modifications or subject to conditions, or
 - (c) to make a proposed modification to a programme or the conditions subject to which it is approved.
- (7) When making a decision of a kind mentioned in subsection (6), the Secretary of State must have regard to the guidance for the time being in force under this section.
- (8) Before making regulations or publishing guidance under this section, the Secretary of State must consult—
 - (a) the Health and Safety Executive,
 - (b) the Environment Agency, and
 - (c) the Department of the Environment in Northern Ireland,in so far as the regulations or guidance relate to functions conferred on them by or under an enactment.
- (9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the commencement of this section or the passing of this Act.
- (10) The Secretary of State must lay before Parliament a copy of any guidance published under this section.
- (11) Guidance under this section may make different provision for different cases or circumstances.

55 Funded decommissioning programmes: verification of financial matters

- (1) Regulations under section 54 may make provision enabling the Secretary of State to rely, in specified circumstances, on verification of financial matters by an independent third party.
- (2) Regulations may, in particular, provide that for the purposes of the Secretary of State's functions under this Chapter, the Secretary of State may—
 - (a) rely on estimates of costs verified by an independent third party in accordance with the regulations;
 - (b) rely on an independent third party's assessment of the prudence or otherwise of any provision made for the financing of the designated technical matters.

Protection of decommissioning funds

56 Protection of security under approved programme

- (1) This section applies where, in relation to a site to which section 45 applies, any security for the performance of obligations relating to the designated technical matters has been provided by a person (“the security provider”) by way of a trust or other arrangements, in accordance with an approved funded decommissioning programme.
- (2) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.
- (3) In this section “security” includes—
 - (a) a charge over a bank account or any other asset;
 - (b) a deposit of money;
 - (c) a performance bond or guarantee;
 - (d) an insurance policy;
 - (e) a letter of credit.
- (4) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider’s insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (5) For the purposes of subsection (4), no regard is to be had to so much of the Insolvency Act 1986 (c. 45), the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
 - (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.

Enforcement

57 Offence to fail to comply with approved programme

- (1) It is an offence for a site operator or a body corporate associated with a site operator (a “relevant person”) to fail to comply with an obligation imposed on the relevant person by an approved funded decommissioning programme in respect of the site.
- (2) In proceedings against a person for an offence under this section, it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

58 Secretary of State’s power of direction

- (1) This section applies where—
 - (a) a person fails to comply with an obligation imposed on the person by an approved funded decommissioning programme, or

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- (b) a person on whom obligations are imposed by such a programme has engaged in unlawful conduct which the Secretary of State thinks may affect the programme.
- (2) In this section—
- “the defaulter” means a person to whom subsection (1)(a) or (b) applies, and
 - “unlawful conduct” means conduct which is unlawful under the criminal law of a part of the United Kingdom.
- (3) A person has engaged in unlawful conduct for the purposes of subsection (1) if—
- (a) the person has been found guilty of the unlawful conduct by a court in a part of the United Kingdom,
 - (b) the period for an appeal against the conviction has expired, and
 - (c) if an appeal has been made, it has been withdrawn or finally determined.
- (4) The Secretary of State may direct the defaulter to take steps which the Secretary of State considers necessary or appropriate to comply with the obligation or remedy the effects of the unlawful conduct.
- (5) Before giving a direction under subsection (4), the Secretary of State must consult each interested body (within the meaning of section 46(6)) in so far as the direction relates to a function conferred on the interested body by or under an enactment.
- (6) If at any time it appears to the Secretary of State that the defaulter has failed to comply with a direction under subsection (4), the Secretary of State may make an application to the High Court under this section.
- (7) If, on an application under this section, the High Court decides that the defaulter has failed to comply with the direction, it may order the defaulter to take such steps as it directs for securing that the direction is complied with.

59 Offence of further disclosure of information

- (1) A person who discloses information obtained by virtue of a notice under section 52(4) or 53(2) or (5), or regulations under section 54(2)(e), is guilty of an offence unless the disclosure is permitted by this section.
- (2) The disclosure is permitted if—
- (a) it is made with the consent of the person by or on behalf of whom the information was provided;
 - (b) it is made under section 63 or for the purposes of any other function of the Secretary of State under this Chapter;
 - (c) it is a disclosure of information obtained under section 63 by the Health and Safety Executive and it is made by the Executive for the purposes of its functions under the Nuclear Installations Act 1965 (c. 57);
 - (d) it is a disclosure of information obtained under that section by the Environment Agency or the Department of the Environment for Northern Ireland and it is made by the Agency or Department for the purposes of its functions under the Radioactive Substances Act 1993 (c. 12);
 - (e) it is required by or under an enactment.
- (3) A person guilty of an offence under this section is liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

60 Offence of supplying false information

- (1) It is an offence for a person, knowingly or recklessly, to supply information which is false or misleading in a material respect to the Secretary of State in response to a requirement under this Chapter.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

61 Restriction on prosecutions under this Chapter

No proceedings for an offence under this Chapter (including an offence created by regulations under section 54) may be instituted except by the Secretary of State or—

- (a) in England and Wales, the Director of Public Prosecutions, or
- (b) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

Miscellaneous

62 Power to apply this Chapter to other nuclear installations

- (1) The Secretary of State may, by order, modify section 45 so that it also applies where, on or after the day on which the order comes into force, a person applies for a nuclear site licence in respect of a site of a description specified in the order.
- (2) The sites which fall within a description specified under subsection (1) must be—
 - (a) sites on which the person intends to construct a nuclear installation for a purpose connected with the generation of electricity, or
 - (b) sites in respect of which an obligation has previously arisen under section 45 by virtue of paragraph (a) and on which the person intends to operate a nuclear installation which was constructed for such a purpose.

63 Co-operation with other public bodies

- (1) The Secretary of State may require a body within subsection (2) to provide the Secretary of State with such assistance as that body is reasonably able to give in connection with the performance by the Secretary of State of a function under this Chapter.
- (2) Those bodies are—
 - (a) the Health and Safety Executive;
 - (b) the Environment Agency;
 - (c) the Department of the Environment for Northern Ireland.
- (3) A body within subsection (2) may provide information to the Secretary of State if—
 - (a) the information relates to a person within subsection (5), and

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- (b) the Secretary of State or the body thinks that the information is relevant to a function of the Secretary of State under this Chapter.
- (4) The Secretary of State may provide information to a body within subsection (2) if—
- (a) the information relates to a person within subsection (5), and
 - (b) the Secretary of State or the body thinks that the information is relevant to a function of the body in relation to the programme.
- (5) The persons are—
- (a) a site operator, or another person, who has obligations under a funded decommissioning programme (whether or not the programme is approved),
 - (b) a body corporate which is associated with a site operator who has submitted a funded decommissioning programme if—
 - (i) the Secretary of State is considering making a modification under section 46 which, if made, would result in the body corporate having obligations under the programme, or
 - (ii) a proposal under section 48 has been made for a modification which, if made, would result in the body corporate having obligations under the programme, or
 - (c) in the case of subsection (3) only, a body corporate which is so associated and in relation to which the Secretary of State is considering whether to make a proposal of the kind mentioned in paragraph (b)(ii).
- (6) This section applies despite any statutory or other restriction on the disclosure of information.
- (7) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

64 Continuity of obligations

- (1) This section applies where a person (“the former site operator”) ceases to hold a nuclear site licence in respect of a site.
- (2) This Chapter continues to apply to the former site operator as if it were the site operator in relation to the site.
- (3) But the Secretary of State may give notice to the former site operator releasing it from its obligations under—
- (a) this Chapter, and
 - (b) an approved funded decommissioning programme in respect of the site.
- (4) A notice under subsection (3)—
- (a) may relate to all the former site operator’s obligations or only to specified obligations;
 - (b) may relate to the whole or part of a site;
 - (c) may relate to all nuclear installations on a site or only to specified nuclear installations;
 - (d) may be unconditional or subject to conditions.

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- (5) The power conferred by subsection (3) applies in relation to any other person with obligations under a programme within subsection (3)(b) as it applies in relation to the site operator.
- (6) This section is without prejudice to the operation of this Chapter in relation to another person who applies for or is granted a nuclear site licence in respect of the site.

65 Amendment of Nuclear Installations Act 1965

After section 1(3) of the Nuclear Installations Act 1965 (c. 57) (nuclear site licences) insert—

“(4) Subsection (1) is subject to section 47 of the Energy Act 2008 (prohibition on use of site in absence of approved funded decommissioning programme).”

66 Disposal of hazardous material

- (1) Where the Secretary of State enters an agreement for, or in connection with, the disposal of relevant hazardous material by or on behalf of the Secretary of State, the agreement may provide for a fee to be paid to the Secretary of State.
- (2) The Secretary of State may not enter an agreement which provides for the payment of a fee unless the consent of the Treasury has been obtained in relation to the amount of the proposed fee.
- (3) The fee for which such an agreement provides may include—
 - (a) such amount as the Secretary of State considers prudent by reason of any uncertainty which exists about the relevant expenditure which will or may be incurred in connection with the Secretary of State’s obligations under the agreement in relation to the relevant hazardous material;
 - (b) an amount in respect of such proportion as the Secretary of State considers appropriate of the aggregate of—
 - (i) the relevant expenditure which has been, will or may be, incurred in connection with the design and construction of a repository in which material (including any hazardous material to which the agreement relates) is to be disposed of, and
 - (ii) such amount as the Secretary of State considers it prudent to make allowance for by reason of any uncertainty which exists about the relevant expenditure which will or may be incurred as mentioned in sub-paragraph (i).
- (4) In this section—
 - “hazardous material” has the meaning given by section 37 of the Energy Act 2004 (c. 20);
 - “relevant expenditure” means expenditure incurred by the Secretary of State, the Nuclear Decommissioning Authority or any other person;
 - “relevant hazardous material” means hazardous material which is, or is required to be, the subject of a funded decommissioning programme.

General

67 Meaning of “associated”

- (1) For the purposes of this Chapter, one body corporate is associated with another if one of them has a significant interest in the other or a third body corporate has a significant interest in both of them; and subsections (2) to (5) set out the circumstances in which one body corporate (“A”) has a significant interest in another (“B”).
- (2) Where B is a company, A has a significant interest in B if A possesses or is entitled to acquire—
 - (a) 20% or more of the issued share capital of B,
 - (b) such rights as would entitle A to exercise 20% or more of the votes exercisable in general meetings of B,
 - (c) such part of the issued share capital of B as would entitle A to 20% or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
 - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive 20% or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A has a significant interest in B if A—
 - (a) holds 20% or more of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove 20% or more of other members, or
 - (c) is a member of B and controls alone, or pursuant to an agreement with other members, 20% or more of the voting rights in B.
- (4) In subsection (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A has a significant interest in B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A’s wishes.
- (6) In determining whether, by virtue of this section, A has a significant interest in B, A shall be taken to possess—
 - (a) any rights and powers possessed by a person as nominee for A, and
 - (b) any rights and powers possessed by a body corporate which A controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).
- (7) In order to determine whether one body corporate controls another for the purposes of subsection (6)(b), subsections (2) to (5) and (6)(a) are to be applied, but as if—
 - (a) for “has a significant interest in” in each place there were substituted “controls”, and
 - (b) for “20%” in each place there were substituted “50%”.

68 Interpretation

In this Chapter—

Status: This is the original version (as it was originally enacted).

“approved funded decommissioning programme” means a funded decommissioning programme approved under section 46;

“cleaning-up” and “decommissioning”, in relation to a site or installation, include the treatment, storage, transportation and disposal of hazardous material (within the meaning of section 37 of the Energy Act 2004) and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes;

“the designated technical matters” has the meaning given by section 45;

“document” includes anything in which information is recorded in any form;

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation;

“funded decommissioning programme” is to be construed in accordance with section 45;

“nuclear installation” has the meaning given by section 26 of the Nuclear Installations Act 1965 (c. 57);

“nuclear site licence” has the meaning given by that section;

“relevant nuclear installation”, in relation to a site, means a nuclear installation which is or is intended to be established on the site;

“site operator” means a person who holds a nuclear site licence in respect of a site;

“the technical matters” has the meaning given by section 45.

CHAPTER 2

OFFSHORE RENEWABLES INSTALLATIONS

69 Decommissioning notices relating to offshore renewable energy installations

(1) The Energy Act 2004 (c. 20) is amended as follows.

(2) In section 105(2) (notices), for “that person” substitute “—

(a) a person falling within subsection (1)(a), (b) or (c), or

(b) if a person to whom paragraph (a) applies is a body corporate, a body corporate associated with that person (subject to section 105A),”.

(3) In section 105(3) (consents) for the words from the beginning to “proposals—” substitute—

“(3) Before requiring a person to submit a decommissioning programme in respect of proposals made by a person within paragraph (a) or (b) of subsection (1), the Secretary of State must be satisfied that at least one of the statutory consents required for giving effect to those proposals—”.

(4) After section 105 (requirement to prepare decommissioning programme) insert—

“105A Section 105 notices: supplemental

(1) The Secretary of State may not give a notice under section 105(2)(b) to a body corporate associated with a person (“the responsible person”) within section 105(1)(a), (b) or (c) unless the Secretary of State—

Status: This is the original version (as it was originally enacted).

- (a) has given a notice to the responsible person under section 105(2)(a), and
 - (b) is not satisfied that adequate arrangements (including financial arrangements) have been made by the responsible person to ensure that a satisfactory decommissioning programme will be carried out.
 - (2) Subsection (1) does not apply if—
 - (a) there has been a failure to comply with a notice under section 105(2), or
 - (b) the Secretary of State has rejected a programme submitted in compliance with such a notice.
 - (3) For the purposes of this section and section 105, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them, and subsections (4) to (8) set out the circumstances in which one body corporate (“A”) controls another (“B”).
 - (4) Where B is a company, A controls B if A possesses or is entitled to acquire—
 - (a) one half or more of the issued share capital of B,
 - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
 - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
 - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
 - (5) Where B is a limited liability partnership, A controls B if A—
 - (a) holds a majority of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove a majority of other members, or
 - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
 - (6) In subsection (5)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
 - (7) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A’s wishes.
 - (8) In determining whether, by virtue of subsections (4) to (7), A controls B, A is to be taken to possess—
 - (a) any rights and powers possessed by a person as nominee for it, and
 - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).”
- (5) In section 108 (reviews of decommissioning programmes), after subsection (3) insert
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“(3A) A proposal under subsection (3)(b) may, in particular, be made in relation to a body corporate associated with a person who has a duty under section 109(1) (and for this purpose “associated” is to be construed in accordance with section 105A(3) to (8)).”

70 Security for decommissioning obligations

- (1) After section 110 of the Energy Act 2004 (c. 20) (failure to carry out decommissioning programme) insert—

“110A Protection of funds held for purposes of decommissioning

- (1) This section applies where any security in relation to the carrying out of an approved decommissioning programme, or for compliance with the conditions of its approval, has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.
- (3) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider’s insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (4) For the purposes of subsection (3), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
 - (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (5) In subsection (4) “enactment” includes an instrument made under an enactment.

110B Section 110A: supplemental

- (1) The Secretary of State may direct a security provider to publish specified information about the protected assets.
- (2) A direction under this section may specify—
 - (a) the time when the information must be published, and
 - (b) the manner of publication.
- (3) If a security provider fails to comply with a direction, the Secretary of State or a creditor of the security provider may make an application to the court under this section.
- (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security

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provider to take such steps as the court directs for securing that the direction is complied with.

(5) In this section—

“the protected assets” has the same meaning as in section 110A;

“security provider” means a person who has provided security in relation to which that section applies.

(6) In subsections (3) and (4) references to “the court” are references—

(a) to the High Court, in relation to an application in England and Wales or Northern Ireland, or

(b) to the Court of Session, in relation to an application in Scotland.”

(2) In section 114(2) of that Act (interpretation), in the definition of “security” after paragraph (c) insert—

“(ca) an insurance policy;”.

71 Provision of information to Secretary of State

After section 112 of the Energy Act 2004 (c. 20) (duty to inform Secretary of State) insert—

“112A Power of Secretary of State to require information and documents

(1) The Secretary of State may by notice require a person within subsection (2) to provide the Secretary of State with such relevant information or documents as the Secretary of State may require in connection with the exercise of functions under this Chapter.

(2) Those persons are—

(a) a person who has been, or may be, given a notice under section 105(2) (a) in relation to a relevant object,

(b) where a person falling within paragraph (a) is a body corporate, a body corporate associated with that person,

(c) a person not within paragraph (a) or (b) who by virtue of provision made under section 108(3)(b) is subject to the duty under section 109(1) in relation to a decommissioning programme relating to a relevant object.

(3) Information or a document is “relevant” if it relates to—

(a) the place where the relevant object is or is to be situated,

(b) the relevant object,

(c) where the recipient of the notice is a body corporate falling within subsection (2)(c) or section 105(2)(a), details of an associated body corporate,

(d) the financial affairs of the recipient of the notice or, where the recipient is a body corporate falling within subsection (2)(c) or section 105(1) (a), (b) or (c), an associated body corporate,

(e) the security that the recipient proposes to provide in relation to the carrying out of a decommissioning programme relating to the relevant object or for the recipient’s compliance with any conditions of the programme’s approval, or

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- (f) where the recipient of the notice (“R”) is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), the name or address of any person whom R believes to be an associated body corporate.
- (4) But if a notice under subsection (1) requires information in connection with a function of the Secretary of State under section 107(1) or (4), the notice may require the provision of information or documents which the Secretary of State considers are necessary or expedient for the purpose of exercising those functions (whether or not they are of a kind specified in subsection (3)).
- (5) A notice under subsection (1) must specify the documents or information, or the description of documents or information, to which it relates.
- (6) Information or documents required to be provided under this section must be provided within such period as is specified in the notice under subsection (1).
- (7) In this section, “associated”, in relation to a body corporate, is to be construed in accordance with section 105A(3) to (8).
- (8) A person who fails, without reasonable excuse, to comply with a notice under subsection (1) is guilty of an offence.
- (9) A person who discloses information obtained by virtue of a notice under this section is guilty of an offence unless the disclosure—
 - (a) is made with the consent of the person by or on behalf of whom the information was provided,
 - (b) is for the purpose of the exercise of the Secretary of State’s functions under this Chapter, the Electricity Act 1989 or Part 4 of the Petroleum Act 1998, or
 - (c) is required by or under an enactment.”

CHAPTER 3

OIL AND GAS INSTALLATIONS

72 Persons who may be required to submit abandonment programmes

- (1) Section 30 of the Petroleum Act 1998 (c. 17) (persons who may be required to submit programmes) is amended as follows.
- (2) In subsection (1)—
 - (a) after paragraph (b) insert—
 - “(ba) a person to whom subsection (5)(a) and (b) applied in relation to the installation, but who—
 - (i) transferred the right mentioned in that subsection to another person, and
 - (ii) has not obtained a consent required under the licence in relation to the transfer;”, and
 - (b) in paragraph (e) for “company” in each place substitute “body corporate”.
- (3) In subsection (2)(c) for “company” in each place substitute “body corporate”.
- (4) For subsection (5)(b) substitute—

- “(b) either—
- (i) any activity mentioned in subsection (6) is carried on from, by means of or on the installation, or
 - (ii) the person intends to carry on an activity mentioned in that subsection from, by means of or on the installation.”

(5) For subsection (8) substitute—

“(8) For the purposes of this section, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them; and subsections (8A) to (8D) set out the circumstances in which one body corporate (“A”) controls another (“B”).

(8A) Where B is a company, A controls B if A possesses or is entitled to acquire—

- (a) one half or more of the issued share capital of B,
- (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
- (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
- (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.

(8B) Where B is a limited liability partnership, A controls B if A—

- (a) holds a majority of the voting rights in B,
- (b) is a member of B and has a right to appoint or remove a majority of other members, or
- (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.

(8C) In subsection (8B)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.

(8D) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A’s wishes.”

(6) In subsection (9)—

- (a) for “subsection (8)” substitute “subsections (8) to (8D)”, and
- (b) for “company” in each place substitute “body corporate”.

(7) In section 31 of that Act (notices: supplementary provision), before subsection (1) insert—

“(A1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a person (“P”) who, in relation to the installation, falls within paragraph (b) or (c) of section 30(1), if—

- (a) P is not entitled to derive, and never has been entitled to derive, any financial or other benefit from any activity within section 30(6)—

Status: This is the original version (as it was originally enacted).

- (i) which has been or is carried on (or is intended to be carried on) from, by means of or on the installation, and
 - (ii) is an activity to which subsection (B1) applies, and
 - (b) P is not, and never has been, a person within section 30(1)(a), (ba), (d) or (e) in relation to the installation.
- (B1) This subsection applies to an activity if—
- (a) where the activity is the exploitation or exploration of mineral resources, it relates to an oil field for which the installation is or is to be established or maintained;
 - (b) where the activity is the conveyance of minerals, the minerals are got, or to be got, from such an oil field;
 - (c) where the activity is the unloading, storage or recovery of gas, it relates to a controlled place (within the meaning of Chapter 2 or 3 of Part 1 of the Energy Act 2008) for which the installation is or is to be established or maintained;
 - (d) where the activity is the conveyance of gas being stored or recovered, the storage or recovery of the gas relates to such a controlled place;
 - (e) where the activity is within section 30(6)(c)—
 - (i) the installation is in an oil field in respect of which P has an interest, or
 - (ii) the installation is in a controlled place in respect of which P has a licence under Part 1 of the Energy Act 2008.
- (C1) For the purposes of subsection (B1)—
- (a) “oil field” means an area which the appropriate authority (within the meaning of paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975) has determined to be an oil field for the purposes of Part 1 of that Act,
 - (b) P has an interest in an oil field if P is entitled to derive, or has at any time been entitled to derive, any financial or other benefit from activities within section 30(6) (other than paragraph (c)) carried on in the field.
- (D1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a body corporate if—
- (a) the body corporate falls within paragraph (e) of section 30(1) (and no other paragraph of that section), and
 - (b) the body corporate falls within that paragraph by reason only that it is associated (within the meaning given by section 30(8)) with a person to whom the Secretary of State may not give a notice in relation to the installation by virtue of subsection (A1).”
- (8) In section 34 of that Act (revision of programmes), after subsection (3) insert—
- “(3A) A proposal that a person who is or has been within paragraph (b) or (c) of section 30(1) is to have a duty to secure that a programme is carried out may not be made if the Secretary of State would be prevented from giving a notice under section 29(1) to the person by virtue of section 31(A1) if the programme had not already been approved under this section.”

73 Financial resources etc

(1) Section 38 of the Petroleum Act 1998 (c. 17) (information and notices) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Secretary of State may, for a purpose specified in subsection (1A), give a notice to a person within subsection (1B) requiring the person, within a time specified in the notice—

- (a) to provide specified information relating to the person’s financial affairs;
- (b) to supply copies of specified documents, or documents of a specified description, relating to those affairs.

(1A) Those purposes are—

- (a) determining whether to give a notice under section 29 to a person in respect of an installation or pipeline;
- (b) determining whether to make a proposal under section 34(1) to impose a duty on a person under section 36;
- (c) where a person has made such a proposal, determining whether to impose the duty on the person proposed.

(1B) A person falls within this subsection if—

- (a) a notice under section 29(1) may be given to the person,
- (b) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering proposing, in accordance with section 34(1)(b), that the person should have a duty under section 36, or
- (c) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering whether to impose a duty on the person under section 36 in accordance with a proposal made under section 34(1)(b).”

(3) In subsection (2)—

- (a) for the words from “who has” to “that duty” substitute “falling within subsection (2A) will be capable of carrying out any abandonment programme which has been submitted (whether or not it is approved) or may be submitted in relation to an installation or pipeline”, and
- (b) in paragraph (a) after “information” insert “(which may relate to the estimated costs of abandonment of the installation or pipeline or to any other financial or other matter)”.

(4) After that subsection insert—

“(2A) A person falls within this subsection if—

- (a) a notice under section 29(1) has been given to the person, or
- (b) the person has a duty under section 36 to secure that an abandonment programme is carried out.”

(5) For subsection (4) substitute—

“(4) The Secretary of State may, after consulting the Treasury, give written notice to a person to whom subsection (4A) applies, requiring the person to take

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such action as may be specified in the notice within such time as may be so specified.

(4A) This subsection applies to a person if—

- (a) the person falls within subsection (2A), and
- (b) the Secretary of State is not satisfied that the person will be capable of carrying out any duty which has been, or is likely to be, imposed on the person by section 36.”

(6) After subsection (6) add—

“(7) It is an offence for a person to disclose information obtained by virtue of a notice under subsection (1) or (2) unless the disclosure—

- (a) is made with the consent of the person by or on behalf of whom the information was provided,
- (b) is for the purpose of the exercise of the Secretary of State’s functions under this Part, Chapter 3 of Part 2 of the Energy Act 2004 or Part 1 of the Energy Act 2008, or
- (c) is required by or under an enactment.”

74 Protection of abandonment funds from creditors

(1) After section 38 of the Petroleum Act 1998 (c. 17) insert—

“38A Protection of funds set aside for the purposes of abandonment programme

- (1) This section applies where any security for the performance of obligations under an approved abandonment programme has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) Subsection (1) applies whether the security is provided before or after the programme is approved.
- (3) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.
- (4) In this section “security” includes—
 - (a) a charge over a bank account or any other asset;
 - (b) a deposit of money;
 - (c) a performance bond or guarantee;
 - (d) an insurance policy;
 - (e) a letter of credit.
- (5) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider’s insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (6) For the purposes of subsection (5), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—

- (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
 - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (7) In subsection (6) “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation.

38B Directions to provide information about protected assets

- (1) The Secretary of State may direct a security provider to publish specified information about the protected assets.
- (2) A direction under this section may specify—
 - (a) the time when the information must be published, and
 - (b) the manner of publication.
- (3) If a security provider fails to comply with a direction, the Secretary of State, or a creditor of the security provider, may make an application to the court under this section.
- (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.
- (5) In this section—
 - “court”—
 - (a) in relation to an application in England and Wales or Northern Ireland, means the High Court, and
 - (b) in relation to an application in Scotland, means the Court of Session;
 - “security provider” means a person who has provided security in relation to which section 38A applies;
 - “the protected assets”, in relation to a security provider, means the security, and any property or rights in which it consists.”
- (2) This section has effect in relation to a trust or other arrangements established on or after 1st December 2007.

CHAPTER 4

WELLS

75 Information about decommissioning of wells

- (1) In Part 5 of the Petroleum Act 1998 (c. 17), before section 46 (Northern Ireland and Isle of Man shares of petroleum revenue) insert—

“45A Abandoned wells

- (1) This section applies in relation to a person who has drilled, or commenced drilling, a well in pursuance of a petroleum licence or a licence under section 4 of the Energy Act 2008 (gas storage and unloading licences).
 - (2) The Secretary of State may give a notice requiring the person—
 - (a) to provide specified information relating to the person’s financial affairs, or
 - (b) to supply copies of specified documents, or documents of a specified description, relating to those affairs.
 - (3) A notice under subsection (2) must specify the time within which the information or documents must be provided.
 - (4) Subsection (5) applies if—
 - (a) the person fails to provide information or documents required by such a notice within the period specified in the notice, or
 - (b) on receiving information or documents required by a notice under subsection (2) the Secretary of State is not satisfied that the person will be capable of plugging and abandoning the well.
 - (5) Where this subsection applies the Secretary of State may give the person a notice, after consulting the Treasury, requiring the person to take the action specified in the notice within the time so specified.
 - (6) The Secretary of State may not give a notice to a person under subsection (5) without first giving the person an opportunity to make written representations as to whether the notice should be given.
 - (7) It is an offence for a person to fail to comply with a notice under subsection (2) or (5) unless it is proved that the person exercised due diligence to avoid the failure.
 - (8) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
 - (9) Section 41 (other than subsection (5)) applies in relation to prosecutions for offences under this section as it applies in relation to prosecutions for offences under Part 4.
 - (10) In this section—

“petroleum licence” means a licence under section 2 of the Petroleum (Production) Act 1934 or section 3 above;
“well” includes a borehole.”
- (2) This section applies in relation to any well the drilling of which commences on or after the date on which this section comes into force.