

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Nuclear Regulation

Chapter 4: Functions of the ONR

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)*).