

## SCHEDULE 4

Article 8

### Transitional Provisions and Savings

## PART 1

### Interpretation

#### 1.—(1) In this Schedule—

“the 1978 Order” means the Health and Safety at Work (Northern Ireland) Order 1978(1);

“the 2005 Act” means the Fire (Scotland) Act 2005(2);

“the 2005 Order” means the Regulatory Reform (Fire Safety) Order 2005;

“ELCI Agreement” means, in so far as it relates to the administration and enforcement of the Employers’ Liability (Compulsory Insurance) Regulations 1998 in relation to employers who are required by regulation 5 of those Regulations to display a certificate of insurance at a place of business that is solely within a GB nuclear site, an authorised defence site or new nuclear build site, the agreement under section 13 of the 1974 Act between the HSE and the Secretary of State concerning the discharge of administrative and enforcement functions under the Employers’ Liability (Compulsory Insurance) Act 1969;

“enforcement officer” means an enforcement officer appointed under section 61(3) of the 2005 Act;

“fire inspector” means an inspector appointed under article 26 of the 2005 Order;

“HSE nuclear health and safety inspector” means an inspector appointed by the HSE or any other enforcing authority under section 19 of the 1974 Act acting within the transferred health and safety field of responsibility;

“nuclear inspector” means an inspector appointed by, or on behalf of, the HSE or the Secretary of State so far as acting for the purpose of carrying into effect any relevant provision;

“nuclear security inspector” means an inspector appointed by, or on behalf of, the Secretary of State under section 19 of the 1974 Act as applied by regulation 23 of the 2003 Regulations to carry into effect any of the provisions of those Regulations;

“relevant provision” means—

- (a) any provision of sections 1, 3 to 6, 22 and 24A of the 1965 Act;
- (b) any provision of regulations which, by virtue of Part 1 of Schedule 1 to this Order, is to be treated as a provision of nuclear regulations on and after 1st April 2014;
- (c) sections 7 to 9 of the 1974 Act as they apply before 1st April 2014 in relation to any duty or requirement imposed by a provision within paragraph (a) or (b);

“restated provision” means any of the following provisions as it has effect on and after 1st April 2014—

- (a) a provision of the 1965 Act (as replaced (with or without modification) by virtue of Schedule 12 to the 2013 Act);
- (b) a provision of Part 3 of the 2013 Act so far as it corresponds (with or without modification) to a provision of Parts 1 and 4 of the 1974 Act;

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(1) S.I. 1978/1039 (N.I. 9).

(2) 2005 asp 5.

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“superseded provision” means any of the following provisions as it has effect immediately before 1st April 2014—

- (a) a provision of the 1965 Act that is to be replaced (with or without modification) by virtue of a provision of Schedule 12 to the 2013 Act;
- (b) a provision of Parts 1 and 4 of the 1974 Act so far as it corresponds (with or without modification) to any provision of Part 3 of the 2013 Act;

“transferor”, in relation to a transferred function, means the person by whom that function was exercisable immediately before 1st April 2014;

“transferred function” means any function which the Secretary of State or the HSE has immediately before 1st April 2014—

- (a) which, by virtue of any provision of Part 3 of the 2013 Act or this Order, is to become exercisable by the ONR on 1st April 2014; or
- (b) to the extent that it corresponds to a function which the ONR is to have on and after 1st April 2014 under a restated provision;

“transferred health and safety field of responsibility” means the field of responsibility (within the meaning of Part 1 of the 1974 Act) of any enforcing authority (within the meaning of that Part) so far as it becomes the ONR’s field of responsibility on 1st April 2014 by virtue of Schedule 12 to the 2013 Act and Schedule 3 to this Order;

“United Kingdom person” has the meaning given in section 70 of the 2013 Act.

(2) In this Schedule “authorised defence site” and “new nuclear build site” have the meaning given in the Health and Safety (Enforcing Authority) Regulations 1998 (as amended by Schedule 3 to this Order).

(3) References in this Schedule to the transfer of a function are to its transfer by any provision of or made under Part 3 of the 2013 Act (including this Order) and include—

- (a) references to its becoming exercisable by a person by virtue of any such provision;
- (b) in the case of a function exercisable by any person immediately before 1st April 2014 which corresponds (to any extent, and with or without modification) to a function conferred on that or any other person by virtue of any provision of Part 3 of the 2013 Act (the “new function”), references to the new function’s being conferred.

(4) In this Schedule references to things done include references to things omitted to be done.

## PART 2

### General Transitional Provisions

#### **Continuity of the law: restatement of provisions of the 1965 Act and 1974 Act**

**2.** The repeal and re-enactment of provisions by Part 3 of the 2013 Act or by this Order does not affect the continuity of the law.

**3.—(1)** Any subordinate legislation made or other thing done, or having effect as if made or done, under or for the purposes of any superseded provision, if in force or effective immediately before 1st April 2014, has effect, so far as is required for continuing its effect on and after that date, as if made or done under or for the purposes of the corresponding restated provision.

(2) Sub-paragraph (1) is subject to Parts 1, 3 and 4 of Schedule 1 to this Order.

**4.** Any reference (whether express or implied) in any enactment, instrument or document passed or made before 1st April 2014—

- (a) to a restated provision, or
- (b) to things done or falling to be done under or for the purposes of a restated provision,

is to be read as including (in relation to times, circumstances or purpose in relation to which the corresponding superseded provision had effect) a reference to the corresponding superseded provision or (as the case may be) to things done or falling to be done under or for the purposes of the corresponding superseded provision.

5. Any reference (whether express or implied) in any enactment, instrument or document passed or made before 1st April 2014—

- (a) to a superseded provision, or
- (b) to things done or falling to be done under or for the purposes of a superseded provision,

is to be read as including (in relation to times, circumstances or purpose in relation to which the corresponding restated provision has effect) a reference to the corresponding restated provision or (as the case may be) to things done or falling to be done under or for the purposes of the corresponding restated provision.

#### **Continuity of the law: regulations treated as regulations under Part 3 of the 2013 Act**

6.—(1) Anything done before 1st April 2014 under or for the purposes of a provision of transposed regulations has effect, so far as is required for its continuing effect on and after that date, as if done under or for the purposes of that provision of transposed regulations as made under the 2013 Act.

(2) In this paragraph “provision of transposed regulations” means a provision which, by virtue of Part 1, 3 or 4 of Schedule 1 to this Order is treated on and after 1st April 2014 as a provision of regulations made under Part 3 of the 2013 Act.

#### **Penalties for offences committed before 1st April 2014**

7.—(1) Notwithstanding any provision made by Part 3 of the 2013 Act or paragraphs 17 and 18, where—

- (a) any superseded provision,
- (b) a relevant provision of the 1978 Order, or
- (c) any provision of legislation modified by Schedule 3 or 4 to this Order,

prescribed a penalty for an offence of any kind, that penalty continues to apply to offences of that kind committed before 1st April 2014.

(2) In this paragraph “relevant provision of the 1978 Order” means, to the extent it corresponds (with or without modification) to any provision of Part 3 of the 2013 Act, a provision of the 1978 Order applied for the purposes of the 2003 Regulations.

#### **Functions of the HSE and the Secretary of State**

8.—(1) Anything which immediately before 1st April 2014 is in the process of being done by or in relation to the transferor for the purposes of, or in connection with, a transferred function may be continued on or after that date by or in relation to the ONR.

(2) Anything done (or having effect as if done) by or in relation to the transferor for the purposes of, or in connection with, any transferred function before 1st April 2014 has effect, so far as is required for continuing its effect on and after that date, as if done by or in relation to the ONR.

(3) Any instrument or document made before 1st April 2014 has effect on and after that date, so far as is required for the purposes of or in consequence of the transfer of a transferred function, as

if references to the transferor (and references which are to be read as references to the transferor) were or included references to the ONR.

### **Investigations**

**9.—(1)** This paragraph applies where before 1st April 2014 the HSE authorised a person to investigate and make a special report under section 14(2) of the 1974 Act on a relevant matter.

(2) For the purposes of carrying out or continuing that investigation and the making of a special report on or after 1st April 2014 the authorisation is to be treated as an authorisation by the ONR under section 84 of the 2013 Act.

(3) If, immediately before 1st April 2014—

- (a) the person to whom the HSE gave the authorisation has made a special report to the HSE, but
- (b) the HSE had not caused the report, or a part of it, to be made public under section 14(5) of the 1974 Act,

the report is to be treated as if it had been made to the ONR under section 84(1) of the 2013 Act.

(4) If the person to whom the HSE gave the authorisation has not immediately before 1st April 2014 made a special report to the HSE, the ONR may direct that person to—

- (a) abandon the investigation without making a special report, or
- (b) continue the investigation in such manner as the ONR may direct.

(5) Where the HSE agreed before 1st April 2014 to exercise its power under section 14(6)(a) or (c) of the 1974 Act to pay remuneration or expenses to any person in respect of the investigation and special report, or to defray costs of the investigation and report, the ONR must pay such remuneration or expenses or defray the costs of the investigation and report as agreed except so far as they have been paid or defrayed before 1st April 2014 by the HSE.

(6) Sub-paragraph (5) does not affect the ONR's power under section 84(5) of the 2013 Act to make other payments of remuneration or expenses or to defray costs.

(7) For the purposes of this paragraph "relevant matter" means any accident, occurrence, situation or other matter which—

- (a) is relevant to any of the ONR's purposes (within the meaning of the 2013 Act) other than the nuclear site health and safety purposes; and
- (b) the HSE considered it necessary or desirable to investigate before 1st April 2014—
  - (i) for the purposes within paragraph (a); or
  - (ii) with a view to making regulations under section 15 of the 1974 Act so far as they could be made before that date for any of those purposes.

### **Inquiries**

**10.—(1)** This paragraph applies where before 1st April 2014 the HSE directed an inquiry to be held under section 14(2A) of the 1974 Act for any relevant purpose.

(2) Sections 85 and 86(1) to (3) of the 2013 Act apply in relation to that inquiry on or after 1st April 2014 as if the ONR had directed that the inquiry be held under section 85(1) of the 2013 Act.

(3) Where the HSE agreed before 1st April 2014 to exercise its power under section 14(6)(b) or (c) of the 1974 Act to pay remuneration or expenses to any person in respect of the inquiry or to defray costs of the inquiry, the ONR must pay such remuneration or expenses or defray the costs of the inquiry as agreed except so far as they have been paid or defrayed before 1st April 2014 by the HSE.

(4) Sub-paragraph (3) does not affect the ONR’s power under section 86(3) of the 2013 Act to make other payments of remuneration or expenses or to defray costs.

(5) For the purposes of this paragraph “relevant purpose” means a purpose which—

- (a) was, immediately before 1st April 2014, within the general purposes of Part 1 of the 1974 Act; but
- (b) on or after that date falls only within the ONR’s purposes (within the meaning of the 2013 Act).

### **Continuity of exercise of functions by inspectors**

**11.**—(1) Anything which immediately before 1st April 2014 is in the process of being done by or in relation to an HSE nuclear health and safety inspector may be continued on or after that date by or in relation to a health and safety inspector.

(2) Anything done (or having effect as if done) before 1st April 2014 by or in relation to an HSE nuclear health and safety inspector is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to a health and safety inspector.

(3) Any instrument or document made before 1st April 2014 has effect on and after that date so far as is required for the purposes or in consequence of the transfer of any function of an HSE nuclear health and safety inspector as if references to an HSE nuclear health and safety inspector (and references which are to be read as references to an HSE nuclear health and safety inspector) were or included references to a health and safety inspector.

(4) Anything which, immediately before 1st April 2014 is in the process of being done by or in relation to a nuclear inspector may be continued on or after that date by or in relation to an ONR inspector in the exercise of the ONR inspector’s powers or duties as such.

(5) Anything done (or having effect as if done) before 1st April 2014 by or in relation to a nuclear inspector is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to an ONR inspector in the exercise of the ONR inspector’s powers or duties as such.

(6) Any instrument or document made before 1st April 2014 has effect on and after that date so far as is required for the purposes or in consequence of the transfer of any function of a nuclear inspector as if references to a nuclear inspector (and references which are to be read as references to a nuclear inspector) were or included references to an ONR inspector.

(7) Anything which immediately before 1st April 2014 is in the process of being done by or in relation to—

- (a) an HSE working time inspector may be continued on or after that date by or in relation to an ONR working time inspector;
- (b) an HSE ELCI inspector may be continued on or after that date by or in relation to an ONR ELCI inspector.

(8) Anything done before 1st April 2014—

- (a) by or in relation to an HSE working time inspector is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to an ONR working time inspector;
- (b) by or in relation to an HSE ELCI inspector is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to an ONR ELCI inspector.

(9) Any instrument or document made before 1st April 2014 has effect on and after that date so far as is required for the purposes of or in consequence of the transfer of any function of an HSE working time inspector or an HSE ELCI inspector as if references to an HSE working time inspector or an HSE ELCI inspector (and references which are to be read as references to an HSE working

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time inspector or an HSE ELCI inspector) were or included references to an ONR working time inspector or (as the case may be) an ONR ELCI inspector.

(10) In this paragraph—

- (a) “HSE ELCI inspector” means an inspector authorised by the HSE in exercise of powers conferred on the Secretary of State by section 4(2)(b) of the Employers’ Liability (Compulsory Insurance) Act 1969 and pursuant to the ELCI Agreement;
- (b) “HSE working time inspector” means an inspector—
  - (i) appointed by the HSE under regulation 28(7) of and paragraph 1(1) of Schedule 3 to the Working Time Regulations 1998; and
  - (ii) acting within the field of responsibility of the HSE (within the meaning of those Regulations) so far as it becomes the ONR’s field of responsibility on 1st April 2014 by virtue of Schedule 3 to this Order;
- (c) “ONR ELCI inspector” means an inspector authorised by the ONR in exercise of powers conferred on the Secretary of State by section 4(2)(b) of the Employers’ Liability (Compulsory Insurance) Act 1969 and pursuant to an agreement under section 90 of the 2013 Act between the ONR and the Secretary of State;
- (d) “ONR working time inspector” means an inspector appointed by the ONR under regulation 28(7) of and paragraph 1(1) of Schedule 3 to the Working Time Regulations 1998.

#### **Continuity of exercise of fire safety functions**

**12.**—(1) Anything which immediately before 1st April 2014 is in the process of being done by or in relation to an HSE fire officer may be continued on or after that date by or in relation to an ONR fire officer.

(2) Anything done (or having effect as if done) before 1st April 2014 by or in relation to an HSE fire officer is, so far as is required for continuing its effect on and after that date, to have effect as if done by or in relation to an ONR fire officer.

(3) Any instrument or document made before 1st April 2014 has effect so far as is required for the purposes of or in consequence of the transfer of any function of an HSE fire officer as if references to an HSE fire officer (and references which are to be read as references to an HSE fire officer) were or included references to an ONR fire officer.

(4) Any arrangements made with the HSE pursuant to section 61(7) of the 2005 Act are, so far as is required for continuing their effect on and after that date, to have effect as if made with the ONR pursuant to section 61(7) of the 2005 Act as amended by virtue of Schedule 12 to the 2013 Act.

(5) In this paragraph—

- (a) “the transferred enforcement responsibility” means—
  - (i) in relation to premises in England and Wales, the duty of the HSE to enforce any provision of the 2005 Order so far as it becomes the ONR’s duty on 1st April 2014 by virtue of Schedule 12 to the 2013 Act;
  - (ii) in relation to premises in Scotland, the duty of the HSE to enforce any provision of the 2005 Act so far as it becomes the ONR’s duty on that date by virtue of Schedule 12 to the 2013 Act;
- (b) “HSE fire officer” means—
  - (i) in relation to premises in England and Wales, a fire inspector appointed by the HSE for the purposes of carrying out the transferred enforcement responsibility; or

- (ii) in relation to premises in Scotland, an enforcement officer appointed by HSE for the purposes of carrying out the transferred enforcement responsibility;
- (c) “ONR fire officer” means—
  - (i) in relation to premises in England and Wales, a fire inspector appointed by the ONR;
  - (ii) in relation to premises in Scotland, an enforcement officer appointed by the ONR.

### **Supplementary**

**13.—(1)** This Part of this Schedule—

- (a) is—
  - (i) subject to any provision made by the 2013 Act or this Order; and
  - (ii) without prejudice to any transfer scheme made under Schedule 11 to the 2013 Act;
- (b) does not apply in relation to—
  - (i) any appointment of an inspector (whether under section 19 of the 1974 Act or otherwise) made by, or on behalf of, the HSE or the Secretary of State;
  - (ii) any appointment of an enforcement officer by the HSE under section 61 of the 2005 Act;
  - (iii) any authorisation of an inspector by the HSE in exercise of powers conferred on the Secretary of State by section 4(2)(b) of the Employers’ Liability (Compulsory Insurance) Act 1969 and pursuant to the ELCI agreement;
  - (iv) any appointment of a member of HSE;
  - (v) any contract of employment made by the HSE.

(2) Any specific provision in Part 3 of this Schedule is not to be taken to affect the generality of the provisions of this Part.

## **PART 3**

### **Specific matters**

#### **CHAPTER 1**

##### **Enforcement and criminal proceedings**

#### **Improvement notices issued before 1st April 2014**

**14.** An improvement notice (within the meaning given in section 21 of the 1974 Act) which is in force or effective immediately before 1st April 2014 has effect on and after that date—

- (a) in the case of an improvement notice served by an HSE nuclear health and safety inspector, as an improvement notice served by a health and safety inspector under the 1974 Act;
- (b) in the case of an improvement notice served by a nuclear inspector, as an improvement notice given by an ONR inspector under paragraph 3 of Schedule 8 to the 2013 Act.

#### **Prohibition notices issued before 1st April 2014**

**15.** A prohibition notice (within the meaning given in section 22 of the 1974 Act) which is in force or effective immediately before 1st April 2014 has effect on and after that date—

- (a) in the case of a prohibition notice served by an HSE nuclear health and safety inspector, as a prohibition notice served by a health and safety inspector under the 1974 Act;
- (b) in the case of a prohibition notice served by a nuclear inspector, as a prohibition notice given by an ONR inspector under paragraph 4 of Schedule 8 to the 2013 Act.

#### **Prohibition notice appeals - directions**

**16.**—(1) Any relevant direction given by the employment tribunal, so far as is required for its continuing effect, is to have effect on and after 1st April 2014 as if made under paragraph 6(6) of Schedule 8 to the 2013 Act.

(2) In this paragraph “relevant direction” means a direction given by the employment tribunal—

- (a) before 1st April 2014; and
- (b) under section 24(3)(b) of the 1974 Act,

for the purpose of suspending the operation of a prohibition notice (within the meaning given in section 22 of the 1974 Act) served by a nuclear inspector until the relevant appeal was finally disposed of or withdrawn.

#### **Offences — proceedings commenced before 1st April 2014**

**17.**—(1) Any proceedings in connection with an offence or alleged offence which have been commenced by, or on behalf of, the HSE or (as the case may be) the Secretary of State under a superseded provision before 1st April 2014 may be continued and completed by or on behalf of the ONR as if the superseded provision continued to have effect on and after 1st April 2014.

(2) Any proceedings in connection with an offence or an alleged offence which have been commenced by an HSE nuclear health and safety inspector or a nuclear inspector under a superseded provision before 1st April 2014 may be continued and completed by a relevant inspector as if the superseded provision continued to have effect on and after that date.

(3) For the purposes of sub-paragraph (2), “relevant inspector” means—

- (a) in the case of proceedings commenced by an HSE nuclear health and safety inspector, a health and safety inspector;
- (b) in the case of proceedings commenced by a nuclear inspector, an ONR inspector.

#### **Offences — proceedings not commenced before 1st April 2014**

**18.**—(1) Where—

- (a) an offence has been, or is alleged to have been, committed under a superseded provision before 1st April 2014, but
- (b) proceedings have not been commenced before that date in connection with that offence, or alleged offence, by, or on behalf of, the HSE or the Secretary of State or by a HSE nuclear health and safety inspector or a nuclear inspector,

proceedings in connection with the offence or alleged offence under the superseded provision may be commenced under the 2013 Act by a relevant person in the same manner as if the offence had been committed under the corresponding restated provision.

(2) Sub-paragraph (1) does not apply in any case where it was determined before 1st April 2014 by the HSE, the Secretary of State, an HSE nuclear health and safety inspector or a nuclear inspector (as the case may be) not to commence proceedings in connection with the offence or alleged offence.

(3) In this paragraph “relevant person” means the ONR, an ONR inspector or a health and safety inspector (as the case may be).



### **Remedial orders made before 1st April 2014**

**19.**—(1) An existing remedial order, so far as is required for its continuing effect on and after 1st April 2014, is to have effect as an order made under paragraph 13 of Schedule 10 to the 2013 Act.

(2) In this paragraph “existing remedial order” means—

- (a) so far as this paragraph applies in England and Wales and Scotland, an order made, before 1st April 2014 under section 42(1) or (2) of the 1974 Act (including that section as it applied for the purposes of the 2003 Regulations) following a person being convicted of—
  - (i) an offence under sections 1, 3 to 6 or 22 of the 1965 Act;
  - (ii) an offence under section 33 of the 1974 Act—
    - (aa) so far as that offence corresponds (with or without modification) to an offence under any provision of Part 3 of the 2013 Act;
    - (bb) so far as that offence corresponds (with or without modification) to an offence under any provision of regulations treated as nuclear regulations under Part 1 of Schedule 1 to this Order; or
    - (cc) as it applied for the purposes of the 2003 Regulations;
  - (iii) an offence under regulation 25 of the 2003 Regulations;
- (b) so far as this paragraph applies in Northern Ireland, an order made, before 1st April 2014, under article 39 of the 1978 Order, as applied for the purposes of the 2003 Regulations, following a person being convicted of—
  - (i) in so far as it applied in Northern Ireland, an offence under regulation 25 of the 2003 Regulations;
  - (ii) an offence under Article 31 of the 1978 Order as it applied for the purposes of the 2003 Regulations.

## **CHAPTER 2**

### **Information**

#### **Requests for information**

**20.**—(1) A relevant notice requiring any person to furnish information to the transferor has effect on and after 1st April 2014 as a notice served by the ONR under section 97(1) of the 2013 Act.

(2) Despite sub-paragraph (1), a person is not, for the purposes of section 97(4) of the 2013 Act to be treated as having failed or refused to comply with a relevant notice if, before the period within which the information is required to be furnished, that person furnishes the information to the transferor.

(3) For the purposes of this paragraph a notice is a relevant notice if—

- (a) it was served, before 1st April 2014, by, or on behalf of, the transferor under—
  - (i) section 27(1) of the 1974 Act,
  - (ii) article 29 of the 1978 Order, or
  - (iii) section 2 of the Nuclear Safeguards Act 2000;
- (b) it required any person to furnish information to the transferor which the transferor needed to discharge any transferred function; and
- (c) the period within which the information was required to be furnished had not expired immediately before 1st April 2014.

**Disclosure of information relevant to transferred functions: transitional modifications to Schedule 9 to the 2013 Act**

21.—(1) Schedule 9 to the 2013 Act applies to transitional information, on and after 1st April 2014, as it applies to protected information (within the meaning given in paragraph 1(1) of that Schedule) but as if—

- (a) any reference to the original holder were a reference to the ONR;
- (b) in paragraph 7(2) (definition of appropriate consent)—
  - (i) where the information was obtained before 1st April 2014 by an HSE nuclear health and safety inspector or a nuclear inspector as a result of premises being entered in exercise of a power under section 20 of the 1974 Act or article 22 of the 1978 Order, the reference to the consent of a person having responsibilities in relation to the premises in paragraph (a) were a reference to the consent of the person having responsibilities in relation to those premises on and after 1st April 2014;
  - (ii) in any other case, the reference to the consent of the person from whom the information was obtained, or who provided it, as mentioned in paragraph 1(1) of Schedule 9 to the 2013 Act, were a reference to the consent of the person from whom the transitional information was obtained by or on behalf of the transferor, HSE nuclear health and safety inspector or nuclear inspector (as the case may be);
- (c) in any case where the information is nuclear security information, the following text were inserted at the start of each of paragraphs 3 and 4—

“Where the Nuclear Industries Security Regulations 2003 apply to transport in a ship which is not a United Kingdom ship within the United Kingdom or its territorial sea and the ship in question enters or has entered the port in question or an attempt is or has been made for it to do so,”.

(2) The modifications made by sub-paragraph (1)(c) above do not apply to acts done outside the United Kingdom by a person other than a United Kingdom person.

(3) Information is transitional information for the purposes of this paragraph if—

- (a) it was obtained by, or on behalf of, or provided to—
  - (i) the transferor before 1st April 2014, or in accordance with a notice served by the transferor before that date, for the purposes of carrying out, or facilitating the carrying out of, a transferred function;
  - (ii) an HSE nuclear health and safety inspector or a nuclear inspector, before 1st April 2014, for the purpose of carrying out, or facilitating the carrying out of, the inspector’s functions as such;
- (b) it is transferred from the transferor to the ONR (whether under a scheme made under Schedule 11 to the 2013 Act or otherwise) for the purpose of—
  - (i) enabling the ONR to carry out any transferred function; or
  - (ii) enabling ONR inspectors or health and safety inspectors to carry out their functions as such; and
- (c) it—
  - (i) was not originally provided in a form calculated to prevent the information from being identified as relating to a particular person or case;
  - (ii) had not immediately before 1st April 2014 been made available to the public—
    - (aa) in accordance with an obligation under the Freedom of Information Act 2000 (“the 2000 Act”), the Freedom of Information (Scotland) Act 2002

- or environmental information regulations (within the meaning given in section 39(1A) of the 2000 Act);
  - (bb) under the 1974 Act or the 1978 Order; or
  - (cc) lawfully from other sources.
- (4) Information ceases to be transitional information for the purposes of this paragraph if on or after 1st April 2014 it—
- (a) is disclosed as is mentioned in paragraph 16 of Schedule 9 to the 2013 Act; or
  - (b) is otherwise made available to the public by virtue of a disclosure in accordance with Part 3 of that Schedule or lawfully from other sources.
- (5) In this paragraph “nuclear security information” means transitional information which was obtained by, or on behalf of, or provided to—
- (a) the transferor before 1st April 2014 for the purpose of carrying out, or facilitating the carrying out of, any function under or in connection with—
    - (i) the 2003 Regulations;
    - (ii) any provision of the 1974 Act or the 1978 Order as applied for the purposes of the 2003 Regulations;
    - (iii) the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004;
    - (iv) the Nuclear Industries Security (Fees) Regulations 2005;
  - (b) a nuclear security inspector, before that date, for the purpose of carrying out, or facilitating the carrying out of, any function of the inspector’s functions as such.
- (6) Nothing in this paragraph affects any obligation imposed by, or under, any provision of primary legislation on the transferor, an HSE nuclear health and safety inspector or a nuclear inspector not to disclose transitional information.

### CHAPTER 3

Other transitionals in connection with primary legislation amended by or under the 2013 Act

#### **Nuclear Installations Act 1965**

**22.**—(1) Any nuclear site licence, and any variation of that licence, in force immediately before 1st April 2014 has effect so far as is required for continuing its effect on or after that date as if granted or made by the relevant appropriate national authority and as if granted or made under section 1 of the 1965 Act as amended by virtue of Schedule 12 to 2013 Act.

(2) Any condition attaching to a nuclear site licence immediately before 1st April 2014 has effect on or after that date as if the condition was attached by the relevant appropriate national authority and as if it was attached under section 4 of the 1965 Act as amended by virtue of Schedule 12 to the 2013 Act.

(3) In this paragraph “appropriate national authority” has the meaning given in section 26 of the 1965 Act (as amended by paragraphs 16 and 26 of Schedule 12 to the 2013 Act).

**23.**—(1) Relevant expenses which are not transitional expenses remain repayable to the HSE on and after 1st April 2014 despite the amendments made to section 24A of the 1965 Act by virtue of Schedule 12 to the 2013 Act.

(2) Relevant expenses which are transitional expenses are repayable to the ONR.

(3) In this paragraph—

- (a) “relevant expenses” means expenses repayable to the HSE, immediately before 1st April 2014, under section 24A(3) or (4) of the 1965 Act;

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- (b) relevant expenses are transitional expenses if—
  - (i) they are expenses to which section 24A of the 1965 Act applies and which are incurred by the HSE before 1st April 2014; and
  - (ii) an invoice relating to the period in which those expenses were incurred had not been sent or given before that date by the HSE to the person to whom the HSE considered those expenses to be attributable.

### **Health and Safety at Work etc. Act 1974 – civil liability**

**24.**—(1) A breach of duty continues to be actionable on and after 1st April 2014 if—

- (a) the duty breached was imposed by or under—
  - (i) the 2003 Regulations; or
  - (ii) the 2009 Regulations as they apply to the civil carriage of class 7 goods;
- (b) the breach occurred before 1st October 2013; and
- (c) the breach was actionable under section 47 of the 1974 Act immediately before 1st April 2014.

(2) Sub-paragraph (1) is without prejudice to any right of action or defence which otherwise exists or may be available.

(3) Any term of an agreement entered into before 1st April 2014 which purported to exclude or restrict any liability for such a breach continues to be void in relation to the breach mentioned in sub-paragraph (1).

### **Nuclear Safeguards Act 2000**

**25.** The provisions of section 4 of the Nuclear Safeguards Act 2000 continue in full force and effect on and after 1st April 2014 to the extent that they relate to a warrant issued under that section before 1st April 2014 but where the warrant has not been executed before that date.

### **Environment and Safety Information Act 1988**

**26.**—(1) Nothing in the 2013 Act or this Order affects the duties placed on the HSE by the Environment and Safety Information Act 1988 (“the 1988 Act”)—

- (a) to make an entry in the register it is required to maintain under section 1 of that Act (“the HSE register”) for any relevant notice;
- (b) to amend any such entry in accordance with section 3(3) or (4) of that Act;
- (c) to keep any such entry in the register for the period specified in section 3(5) of that Act;
- (d) by section 4 of that Act in relation to any notice to which sub-paragraph (3) applies.

(2) Nothing in the 2013 Act or this Order affects the right of appeal under section 4(3) of the 1988 Act of person affected by a relevant notice.

(3) Where as a result of any provision of this Order a relevant notice is to be treated for any purpose as a notice given by an ONR inspector under the 2013 Act or as a notice served by a health and safety inspector, the ONR must notify the HSE—

- (a) where there is a right of appeal in connection with that notice, if no appeal is brought within the time limit for doing so,
- (b) where an appeal has been brought in connection with that notice—
  - (i) when the appeal is finally disposed of, and
  - (ii) the outcome of the appeal,

- (c) when the ONR is satisfied that the relevant notice has been complied with, or
- (d) if that relevant notice is withdrawn or amended.

(4) The notice given by the ONR under sub-paragraph (3) must be given to the HSE before the expiry of the time limit specified in section 3 of the 1988 Act for making or amending the relevant entry in the HSE register.

(5) The HSE is to be treated as complying with the requirements of section 3(3) of the 1988 Act where it updates the relevant entry in the HSE register in consequence of a notification given by the ONR under sub-paragraph (3)(c).

(6) For the purposes of this paragraph “relevant notice” means a notice served, before 1st April 2014, by an inspector appointed under section 19 of the 1974 Act by the HSE—

- (a) under section 21 of the 1974 Act in connection with a contravention of—
  - (i) any relevant provision;
  - (ii) any superseded provision; or
  - (iii) any of the relevant statutory provisions (within the meaning of Part 1 of the 1974 Act) which is within the transferred health and safety field of responsibility; or
- (b) under section 22 of the 1974 Act in connection with any activities to which the provisions mentioned in paragraph (a) above applied.

## CHAPTER 4

### Fees and expenses

#### **Control of Major Accident Hazards Regulations 1999**

**27.**—(1) Despite Part 2 of this Schedule, any outstanding fee remains payable to the HSE in accordance with regulation 22 of the Control of Major Accident Hazards Regulations 1999 (“the 1999 Regulations”) but as if the amendments made to that regulation by this Order had not come into force.

(2) For the purposes of this paragraph, “outstanding fee” means a fee which is payable to the HSE immediately before 1st April 2014 by operator of an establishment which is a nuclear establishment.

(3) For the purposes of this paragraph—

- (a) “nuclear establishment” means an establishment which is, or is wholly or partly within—
  - (i) a GB nuclear site; or
  - (ii) a new nuclear build site.
- (b) “operator” has the meaning given by the 1999 Regulations.

#### **Nuclear Reactors (Environmental Impact for Decommissioning) Regulations 1999**

**28.**—(1) Any transitional expenses—

- (a) are to be treated on and after 1st April 2014 as expenses of the ONR; and
- (b) subject to sub-paragraph (2), the ONR shall require each licensee to repay the liability sum in accordance with regulation 15 of the 1999 Regulations.

(2) Where a licensee has made one or more relevant payments, the ONR may only require that licensee to repay so much of the relevant liability sum as exceeds the total amount of the relevant payments made by the licensee.

(3) Any relevant expenses which are not transitional expenses are recoverable by the HSE under regulation 15 of the 1999 Regulations as if the amendments to that regulation by Schedule 3 of this Order had not been made.

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(4) Nothing in this paragraph affects the liability of the HSE to make a repayment to a licensee in accordance with regulation 15(5) of the 1999 Regulations in any case where any relevant payment or payments made by the licensee exceed the liability sum.

(5) In this paragraph—

- (a) “the 1999 Regulations” means the Nuclear Reactors (Environmental Impact for Decommissioning) Regulations 1999;
- (b) “liability sum” means, in relation to a licensee, so much of the transitional expenses as appeared to the HSE, immediately before 1st April 2014, to be attributable to that licensee in accordance with regulation 15(2)(a) of the 1999 Regulations;
- (c) “relevant expenses” means expenses—
  - (i) incurred by the HSE immediately before 1st April 2014; and
  - (ii) to which regulation 15(1) of the 1999 Regulations applied immediately before that date;
- (d) “relevant payment” means, in relation to a licensee, a payment made by the licensee under regulation 15(2)(b) of the 1999 Regulations before 1st April 2014;
- (e) “transitional expenses” means any relevant expenses which, immediately before 1st April 2014, had not been invoiced to the licensees to whom HSE considered those expenses to be attributable.

#### **Nuclear Industries Security (Fees) Regulations 2005**

**29.**—(1) Any relevant fees which are not transitional fees are payable to the Secretary of State despite the amendments made to the Nuclear Industries Security (Fees) Regulations 2005 (“the 2005 Regulations”) by Schedule 3 to this Order.

(2) Any relevant fees which are transitional fees—

- (a) are payable to the ONR; and
- (b) are payable within 30 days from the date of the invoice sent or given by the ONR to the person who is required to pay those fees.

(3) Any transitional fees may be apportioned by the ONR between different persons for a function performed by the Secretary of State or an inspector (as the case may be) where such function is reasonably attributable to those different persons.

(4) The invoice sent or given by the ONR under sub-paragraph (2)(b) must include a statement of the functions performed by the Secretary of State during the final quarter of the financial year ending on 31st March 2014 for which fees were payable and the costs incurred in that quarter in performing those functions.

(5) For the purposes of this paragraph—

- (a) “relevant fees” means the fees payable to the Secretary of State under the 2005 Regulations immediately before 1st April 2014 in accordance with regulations 3 and 4 of those Regulations;
- (b) relevant fees are transitional fees if they relate to costs incurred by the Secretary of State in the final quarter of the financial year ending on 31st March 2014 in performing the functions for which the fees are payable.

#### **Health and Safety (Fees) Regulations 2012**

**30.** Paragraphs 31 and 32 make transitional provisions and savings in connection with the Health and Safety (Fees) Regulations 2012 (“the 2012 Regulations”).

**31.**—(1) A relevant fee which is not a transitional fee remains payable to the HSE on and after 1st April 2014 despite the amendments made to the 2012 Regulations by Schedule 3 to this Order.

(2) A relevant fee which is a transitional fee is—

- (a) payable to the ONR; and
- (b) payable within 30 days from the invoice sent or given by the ONR to the person who is required to pay those fees.

(3) The invoice sent by the ONR under sub-paragraph (2)(b) must include a statement of—

- (a) the period to which the invoice relates;
- (b) the work done by the HSE during that period; and
- (c) the costs incurred by the HSE during that period.

(4) In this paragraph—

- (a) “relevant fee” means a fee payable to the HSE, immediately before 1st April 2014, under regulation 16(1), (2) or (3) of the 2012 Regulations in accordance with regulations 12, 16 and 17 of those Regulations;
- (b) a relevant fee is a transitional fee if—
  - (i) it relates to costs reasonably incurred by the HSE for the performance of a function or carrying out of work (as the case may be) before 1st April 2014; and
  - (ii) an invoice relating to the period in which those costs were incurred had not been sent or given, before that date, by the HSE to the person liable to pay the fee.

**32.**—(1) Despite Part 2 of this Schedule, any outstanding fee remains payable to the HSE in accordance with the provisions of the 2012 Regulations but as if the amendments made to those Regulations by this Order had not come into force

(2) For the purposes of this paragraph, “outstanding fee” means a fee—

- (a) which was payable to the HSE, immediately before 1st April 2014, under any provision of the 2012 Regulations other than regulation 16 of those Regulations; and
- (b) relates to work done before 1st April 2014 in the performance of a transferred function by or on behalf of the HSE.

## CHAPTER 5

### Explosives licences

#### **Dangerous Substances in Harbour Areas Regulations 1987**

**33.**—(1) An explosives licence issued by the HSE for the purposes of Part 9 of the Dangerous Substances in Harbour Areas Regulations 1987 (“the 1987 Regulations”) in respect of a nuclear harbour which is in force immediately before 1st April 2014—

- (a) has effect on and after that date as an explosives licence issued by the ONR;
- (b) in the case of a licence for a specified period, the licence will remain in force, subject to the provisions of the 1987 Regulations, for so much of that period as falls after 1st April 2014.

(2) For the purposes of this paragraph—

- (a) a reference to an explosives licence includes a reference to—
  - (i) an amending licence;
  - (ii) a provisional explosives licence; and
  - (iii) a provisional amending licence;

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- (b) a harbour is a nuclear harbour if, immediately before 1st April 2014, it is or forms part of—
  - (i) a GB nuclear site;
  - (ii) an authorised defence site; or
  - (iii) a new nuclear build site.

### **Manufacture and Storage of Explosives Regulations 2005**

**34.**—(1) A licence (within the meaning given by the Manufacture and Storage of Explosives Regulations 2005 (“the 2005 Regulations”)) granted by the HSE in respect of an ONR regulated site which is in force immediately before 1st April 2014—

- (a) has effect on and after that date as if granted by the ONR;
- (b) in the case of a licence for a specified period, the licence will remain in force, subject to the provisions of the 2005 Regulations, for so much of that period as falls after 1st April 2014.

(2) For the purposes of this paragraph a site (within the meaning of the 2005 Regulations) is an ONR regulated site if on 1st April 2014 it, or any part of it is—

- (a) a GB nuclear site;
- (b) an authorised defence site; or
- (c) a new nuclear build site.

## CHAPTER 6

Other transitionals in connection with subordinate legislation amended by this Order

### **Nuclear Industries Security Regulations 2003**

**35.** Paragraphs 36 to 38 make transitional provisions in connection with the 2003 Regulations in consequence of the provisions made by this Order.

**36.**—(1) A relevant approval which is in force immediately before 1st April 2014 has effect on and after that date as an approval given by the ONR.

(2) In this paragraph an approval is a relevant approval if it was given by, or on behalf of, the Secretary of State for the purposes of any of the following provisions of the 2003 Regulations—

- (a) regulation 5;
- (b) regulation 6;
- (c) regulation 8;
- (d) regulation 9;
- (e) regulation 14;
- (f) regulation 16;
- (g) regulation 19;
- (h) regulation 20.

**37.** A notification given by, or on behalf of, the Secretary of State under regulation 7(2) of the 2003 Regulations immediately before 1st April 2014 has effect, so far as is required for its continuing effect, on and after that date as a notification given by the ONR.

**38.**—(1) Any direction—

- (a) issued by, or on behalf of, the Secretary of State under regulation 11(1), 21(1) or 22(7)(b) of the 2003 Regulations before 1st April 2014; and



(b) continuing in force on and after that date as a direction issued by the ONR,  
has effect subject to any 2001 Act direction issued on or after that date.

(2) In this paragraph “2001 Act direction” means a direction given by the Secretary of State on or after 1st April 2014 under regulations made under section 77(1) of the 2001 Act.

#### **Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004**

**39.**—(1) This paragraph applies in relation to the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004 (“the 2004 Regulations”).

(2) Any—

- (a) authorisation under regulation 4 of the 2004 Regulations, or
- (b) variation of such an authorisation,

in force immediately before 1st April 2014 has effect, on and after that date, as if granted by the relevant appropriate national authority under the 2004 Regulations as amended by this Order.

#### **Carriage of Dangerous Goods and Transportable Pressure Equipment Regulations 2009**

**40.** Paragraphs 41 to 43 makes transitional provisions and savings in connection with the 2009 Regulations in consequence of the provisions made by Schedule 3 to this Order.

**41.** An authorisation granted, or deemed to be granted, pursuant to regulation 12 of the 2009 Regulations by the Secretary of State for Energy and Climate Change which is in force immediately before 1st April 2014—

- (a) has effect, so far as is required for its continuing effect on and after that date, as an authorisation granted, or deemed to be granted (as the case may be) pursuant to that regulation by the ONR;
- (b) is subject to the same conditions as were in force immediately before that date.

**42.**—(1) A class 7 approval which is in force immediately before 1st April 2014—

- (a) has effect, so far as is required for its continuing effect on and after that date, as a certificate of approval issued by the ONR;
- (b) is subject to the same conditions as were in force immediately before that date.

(2) For the purposes of this paragraph—

- (a) “approval”—
  - (i) in relation to carriage by road, has the same meaning as in ADR,
  - (ii) in relation to carriage by rail, has the same meaning as in RID,
  - (iii) in relation to carriage by inland waterway, has the same meaning as in ADN;
- (b) “class 7 approval” means an approval issued by, or on behalf of, the Secretary of State for Energy and Climate Change before 1st April 2014 pursuant to regulation 26 of the 2009 Regulations.

**43.**—(1) Where—

- (a) the Secretary of State for Energy and Climate Change (“the Secretary of State”) is deemed to have performed a function by regulation 30 of the 2009 Regulations, and
- (b) action taken by the Secretary of State, as a consequence of the performance of that function, had effect immediately before 1st April 2014,

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the ONR is deemed to have performed the function under the same provision of ADR or RID as it was performed by the Secretary of State or (as the case may be) the equivalent provision of ADN.

(2) In this paragraph “ADR”, “RID” and “ADN” have the meanings given in section 73(3) of the 2013 Act.