

Status: Point in time view as at 17/12/2021.

Changes to legislation: Energy Act 2004, SCHEDULE 1 is up to date with all changes known to be in force on or before 27 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 1

Section 2

THE NUCLEAR DECOMMISSIONING AUTHORITY

PART 1

MEMBERS AND STAFF OF NDA

Tenure of office by non-executive members

- 1 (1) Subject to what follows, the chairman and each of the other non-executive members is to hold and vacate office in accordance with the terms of his appointment.
- (2) Each appointment must state the period for which it is made.
- (3) That period must not exceed five years; but a person is eligible for re-appointment (on any number of occasions) from the end of a term of office.
- (4) A non-executive member is not eligible to hold office as chief executive or otherwise to be a member of the staff of the NDA.
- (5) A non-executive member may at any time resign his office as the chairman or as a member of the NDA (or both) by giving notice of his resignation to the Secretary of State.
- (6) If the Secretary of State is satisfied that sub-paragraph (7) applies to the chairman or another non-executive member, the Secretary of State may, by giving him notice to that effect, remove him from office.
- (7) This sub-paragraph applies to a person if—
- (a) he is an undischarged bankrupt or has had his estate sequestrated without being discharged [^{F1}or a moratorium period under a debt relief order applies in relation to him (under Part 7A of the Insolvency Act 1986)];
 - (b) he is subject to a bankruptcy restrictions order or an interim bankruptcy restrictions order [^{F2}or a debt relief restrictions order or an interim debt relief restrictions order (under Schedule 4ZB of the Insolvency Act 1986)];
 - (c) he has made an arrangement with his creditors, or has entered into a trust deed for creditors, or has made a composition contract with his creditors;
 - (d) he has such a financial or other interest as is likely to affect prejudicially the carrying out by him of his functions as a member of the NDA;
 - (e) he is unfit for office by reason of misbehaviour; or
 - (f) he is otherwise incapable of carrying out, or unfit to carry out, the functions of his office.
- (8) Before exercising his power under sub-paragraph (6), the Secretary of State must consult the Scottish Ministers.

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(9) Oral notice is ineffective for the purposes of sub-paragraph (5) or (6).

Textual Amendments

- F1** Words in Sch. 1 para. 1(7)(a) inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, **Sch. 2 para. 50(2)(a)** (with art. 5)
- F2** Words in Sch. 1 para. 1(7)(b) inserted (1.10.2012) by [The Tribunals, Courts and Enforcement Act 2007 \(Consequential Amendments\) Order 2012 \(S.I. 2012/2404\)](#), art. 1, **Sch. 2 para. 50(2)(b)** (with arts. 5, 6)

Commencement Information

- I1** Sch. 1 para. 1 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, **Sch.**

Remuneration and pensions of non-executive members

- 2 (1) The NDA may pay—
- (a) to the chairman, and
 - (b) to each of the other non-executive members,
- such remuneration and allowances as the Secretary of State may determine.
- (2) The NDA may pay, or make provision for paying—
- (a) to or in respect of the chairman, and
 - (b) to or in respect of each of the other non-executive members,
- such sums by way of pensions, allowances or gratuities as the Secretary of State may determine.
- (3) Where—
- (a) a person ceases, otherwise than on the expiry of his term of office, to be a non-executive member, and
 - (b) it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation,
- the NDA may make a payment to him of such amount as the Secretary of State may determine.

Commencement Information

- I2** [Sch. 1 para. 2](#) in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, **Sch.**

Terms and conditions of executive members of the NDA

- 3 (1) The chief executive is to hold office on such terms and conditions (including terms and conditions as to remuneration) as the non-executive members determine.
- (2) Each of the other executive members (if any) is to hold office as a member, on such terms and conditions (including terms and conditions as to remuneration) as the non-executive members may determine in his case.
- (3) The terms and conditions on which an executive member other than the chief executive becomes or remains an employee of the NDA, or (without being an employee) a member of its staff, are also to be determined by the non-executive members.

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- (4) If the non-executive members so determine in the case of the chief executive or any of the other executive members, the NDA must—
 - (a) pay such pensions, allowances or gratuities to or in respect of the chief executive and each of those other members, or
 - (b) provide and maintain for the chief executive and those other members such pension schemes (whether contributory or not),as the non-executive members may determine.
- (5) If an executive member—
 - (a) is a participant in a pension scheme applicable to his membership of the NDA, and
 - (b) ceases to be an executive member without ceasing to be a member of the NDA's staff,he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if any service of his (after ceasing to be an executive member) as an employee of the NDA were service as an executive member.

Commencement Information

I3 Sch. 1 para. 3 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Constitution of NDA for initial period

- 4 (1) Until the end of the initial period the NDA is to consist of just those members who have been appointed.
- (2) As soon as practicable after his own appointment takes effect, the chairman must exercise the power to appoint a chief executive.
- (3) Appointments of members other than the chairman and chief executive may be made during the initial period only after the appointment of the chief executive has taken effect.
- (4) During the initial period the requirements of paragraph 9(1)—
 - (a) do not apply to a decision to which the chairman is a party if it is made when the chairman is the only non-executive member; but
 - (b) are not to be capable of being satisfied in relation to a decision made at any other time unless at least two non-executive members are parties to the decision.
- (5) The chairman must ensure that proper records are kept of everything he does, while he is the only non-executive member, in the exercise or performance of powers or duties conferred or imposed on the non-executive members.
- (6) In this paragraph “the initial period” means the period which begins with the commencement of so much of this Act as provides for the establishment of the NDA and ends with whichever of the following first occurs—
 - (a) the time when an appointment takes effect that brings the number of members of the NDA up to seven;

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- (b) the time specified as the end of the initial period in a notice given during that period by the Secretary of State to the NDA for the purposes of this paragraph.

Commencement Information

I4 Sch. 1 para. 4 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Staffing of the NDA

- 5 (1) The NDA—
- (a) may appoint such employees, in addition to those who are its members, as it may determine; and
 - (b) may make such other arrangements for the staffing of the NDA as it thinks fit.
- (2) The employees of the NDA who are not its members are to be employed on such terms and conditions, including terms and conditions as to remuneration, as it determines.
- (3) The NDA may, in the case of any of its employees who are not its members—
- (a) pay to or in respect of those employees such pensions, allowances or gratuities, or
 - (b) provide and maintain for them such pension schemes (whether contributory or not),
- as it determines.
- (4) If an employee of the NDA—
- (a) is a participant in a pension scheme applicable to his employment, and
 - (b) becomes an executive member,
- he may, if the Secretary of State so determines, be treated for the purposes of the pension scheme as if his service as a member were service as an employee of the NDA.

Commencement Information

I5 Sch. 1 para. 5 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

UKAEA pensions for NDA staff

- 6 A pension scheme maintained by the UKAEA under paragraph 7(2)(b) of Schedule 1 to the Atomic Energy Authority Act 1954 (c. 32) may apply to—
- (a) members of the NDA, and
 - (b) members of its staff,
- as it applies to persons to whom it applies apart from this paragraph.

Commencement Information

I6 Sch. 1 para. 6 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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PART 2

PROCEEDINGS OF NDA

Committees of the NDA and advisory committees

- 7 (1) The NDA may make such arrangements as it thinks fit—
- (a) for the carrying out of its functions by committees established by it; and
 - (b) for committees established by it to give it advice about matters relating to the carrying out of its functions.
- (2) The membership of every committee established by the NDA must include at least one person who is a member of the NDA.
- (3) Where the NDA—
- (a) establishes a committee for the purpose of giving it advice, and
 - (b) does not authorise it under paragraph 8 to do anything on the NDA's behalf,
- the membership of the committee may include persons (including persons constituting a majority of the committee) who are neither members of the NDA nor members of its staff.
- (4) In other cases every member of the committee must be either—
- (a) a member of the NDA; or
 - (b) a member of its staff.
- (5) Where a person who is neither a member of the NDA nor a member of its staff is a member of a committee, the NDA may pay to that person such remuneration and expenses as it determines.

Commencement Information

I7 Sch. 1 para. 7 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Delegation of functions

- 8 (1) Anything that is authorised or required by or under an enactment to be done by the NDA may be done on its behalf—
- (a) by a member of the NDA, or of its staff, who has been authorised by it for the purpose (whether generally or specifically); or
 - (b) by a committee established by the NDA which has been so authorised.
- (2) The NDA must not make arrangements for the final decision on any of the following to be made by a committee or by a member of the NDA or of its staff—
- (a) the NDA's strategy under section 11 or any modification of that strategy;
 - (b) its annual plan under section 13 or any modification of that plan;
 - (c) the arrangements for regulating the proceedings of the NDA;
 - (d) the further delegation of anything delegated to a committee or to a member of the NDA or of its staff.

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Commencement Information

18 Sch. 1 para. 8 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Quorums

- 9 (1) A decision of the NDA relating to a matter mentioned in sub-paragraph (2) is ineffective unless a majority of the members who—
- (a) were present at the meeting at which the decision was made, or
 - (b) otherwise had an opportunity of participating in the decision-making process,
- consisted of non-executive members.
- (2) Those matters are—
- (a) the NDA’s strategy under section 11 or any modification of that strategy;
 - (b) its annual plan under section 13 or any modification of that plan;
 - (c) the arrangements for regulating the proceedings of the NDA;
 - (d) the delegation of anything to a committee or to a member of the NDA or of its staff, or any further delegation.
- (3) A decision by the NDA for regulating its own proceedings may determine what, for the purposes of this paragraph, constitutes an opportunity of participating in the decision-making process.
- (4) A question for the purposes of this paragraph about whether a member—
- (a) was present at a meeting of the NDA, or
 - (b) satisfied the requirements that needed to be satisfied for him to be treated as having had an opportunity of participating in a decision,
- must be determined (if there are any) exclusively by reference to official minutes of the meeting or decision.
- (5) For this purpose the official minutes of a meeting or decision are those made in accordance with the arrangements made under paragraph 12.

Commencement Information

19 Sch. 1 para. 9 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Proceedings of the NDA and of their committees etc.

- 10 (1) The NDA may make such other arrangements as it thinks fit—
- (a) for regulating its own proceedings; and
 - (b) for regulating the proceedings of the committees it has established.
- (2) Arrangements under sub-paragraph (1) may include such arrangements (in addition to the provision made by paragraph 9) as the NDA thinks fit about quorums and the making of decisions by a majority.
- (3) The procedure for the carrying out of the separate functions which under this Act are conferred on the non-executive members must be in accordance with such arrangements as may be determined by a majority of the non-executive members.

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- (4) The NDA must publish, in such manner as it considers appropriate, the arrangements made under this paragraph.

Commencement Information

I10 Sch. 1 para. 10 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Authentication of NDA's seal

- 11 (1) Authentication of the application of the NDA's seal is to be by the signature of—
- (a) the chairman or another member of the NDA; or
 - (b) any other person authorised by it for the purpose (whether generally or specifically).
- (2) A document purporting to be—
- (a) duly executed under the seal of the NDA, or
 - (b) signed on behalf of the NDA,
- may be received in evidence and, except so far as the contrary is shown, is to be taken to be duly so executed or signed.
- (3) This paragraph does not extend to Scotland.

Commencement Information

I11 Sch. 1 para. 11 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Records of proceedings

- 12 (1) The NDA must make arrangements for the keeping of proper records of each of the following—
- (a) its proceedings;
 - (b) proceedings of the committees established by it;
 - (c) proceedings at meetings of the non-executive members; and
 - (d) anything done by a member of the NDA or of its staff in reliance on a delegation under paragraph 8.
- (2) The references in paragraphs 8 and 9 to arrangements for regulating the proceedings of the NDA include references to arrangements made under this paragraph with respect to such proceedings.

Commencement Information

I12 Sch. 1 para. 12 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Validity of proceedings

- 13 (1) The validity of proceedings of the NDA, of the non-executive members or of a committee established by the NDA shall not be affected by—
- (a) a vacancy in the membership of the NDA or of such a committee;

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- (b) a defect in the appointment of the chairman, of any other non-executive member, of the chief executive or of any other executive member;
 - (c) a failure of the Secretary of State to comply with the requirements of section 2(9); or
 - (d) a failure to comply with arrangements made under paragraph 10.
- (2) Nothing in sub-paragraph (1) validates—
- (a) the proceedings of a meeting which would still be inquorate even if defects and failures mentioned within sub-paragraph (1)(b) or (c) had not occurred; or
 - (b) a decision which (apart from this paragraph) is ineffective by virtue of paragraph 9.

Commencement Information

I13 Sch. 1 para. 13 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

PART 3

SUPPLEMENTAL

Public records

- 14 In paragraph 3 of Schedule 1 to the Public Records Act 1958 (c. 51) (administrative and departmental records of certain bodies to be public records), in Part 2 of the Table, at the appropriate place, insert— “ Nuclear Decommissioning Authority. ”

Commencement Information

I14 Sch. 1 para. 14 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Parliamentary Commissioner Act 1967

- 15 In Schedule 2 to the Parliamentary Commissioner Act 1967 (c. 13) (departments and authorities subject to investigation), at the appropriate place, insert— “ Nuclear Decommissioning Authority. ”

Commencement Information

I15 Sch. 1 para. 15 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Disqualification for House of Commons and Northern Ireland Assembly

- 16 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (bodies of which all members are disqualified), at the appropriate place, insert— “ The Nuclear Decommissioning Authority. ”;
- and a corresponding amendment shall be made in Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25).

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Commencement Information

I16 Sch. 1 para. 16 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Scottish devolution

- 17 The following provisions of the Scotland Act 1998 (c. 46) shall have effect as if the NDA were a cross-border public authority—
- (a) section 23(2)(b) (power of Scottish Parliament to require persons outside Scotland to attend and give evidence or produce documents);
 - (b) section 70(6) (Scottish Parliament not to require preparation of accounts by cross-border public authorities whose accounts are otherwise audited); and
 - (c) section 91(3)(d) (investigation of maladministration by cross-border public authorities in relation to Scottish matters).

Commencement Information

I17 Sch. 1 para. 17 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Freedom of information

- 18 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public authorities for the purposes of that Act), at the appropriate place, insert— “ The Nuclear Decommissioning Authority. ”

Commencement Information

I18 Sch. 1 para. 18 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

Interpretation of Schedule

- 19 In this Schedule “chairman”, “chief executive”, “executive member” and “non-executive member” mean, respectively, chairman, chief executive, executive member and non-executive member of the NDA.

Commencement Information

I19 Sch. 1 para. 19 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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