



# Energy Act 2023

## 2023 CHAPTER 52

### PART 14

#### CIVIL NUCLEAR SECTOR

### CHAPTER 4

#### GREAT BRITISH NUCLEAR

#### *Transfers and pension arrangements etc*

#### 324 Transfer schemes

- (1) The Secretary of State may make one or more schemes for the transfer of property, rights and liabilities—
  - (a) to a GBN body or a proposed GBN body from—
    - (i) a former GBN body;
    - (ii) a GBN body;
    - (iii) a proposed GBN body;
    - (iv) a Minister of the Crown or Crown body;
    - (v) a designated BNFL body;
    - (vi) an NDA body;
    - (vii) a UKAEA body;
    - (viii) a nominee of a person falling within any of sub-paragraphs (i) to (vii);
  - (b) to a former GBN body, a Minister of the Crown or Crown body, a designated BNFL body or a public body from—
    - (i) a former GBN body;
    - (ii) a GBN body.
- (2) The things that may be transferred under a transfer scheme include—
  - (a) rights and liabilities relating to a contract of employment;

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- (b) property, rights and liabilities that could not otherwise be transferred;
  - (c) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (d) criminal liabilities.
- (3) A transfer scheme may—
- (a) create rights, or impose liabilities, in relation to property, rights or liabilities transferred;
  - (b) make provision about the continuing effect of things done by a transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to a transferor in respect of anything transferred;
  - (d) make provision for references to a transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for shared ownership or use of the property;
  - (f) make provision for apportioning property, rights or liabilities;
  - (g) require a transferor, an associate of a transferor, or a transferee, to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme;
  - (h) make provision for transferring property, rights and liabilities irrespective of any requirement for consent that would otherwise apply;
  - (i) make provision for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
  - (j) make provision for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
  - (k) make provision for reimbursing any person in respect of expenditure reasonably incurred by the person in connection with the making of a transfer scheme;
  - (l) make provision that has the same or similar effect to the TUPE regulations;
  - (m) make other consequential, supplementary, incidental or transitional provision.
- (4) A transfer scheme may provide—
- (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (5) A transfer scheme may make provision requiring a transferor to provide such co-operation to a transferee as the transferee may reasonably require in connection with the implementation of the scheme.
- (6) The co-operation that may be required by virtue of [subsection \(5\)](#) includes, in particular, co-operation in relation to—
- (a) the provision of information;
  - (b) consultation with representatives of employees transferred by the scheme.
- (7) Any requirement imposed on a person by a transfer scheme is enforceable by the Secretary of State in civil proceedings—
- (a) for an injunction,

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- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (8) Before making a transfer scheme, the Secretary of State must consult—
- (a) the transferor (or, if there is more than one transferor, the transferors), and
  - (b) such other persons as the Secretary of State considers appropriate.
- (9) [Subsection \(8\)](#) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).
- (10) The making of a transfer scheme is not a trigger event for the purposes of the National Security and Investment Act 2021.
- (11) In this section—
- “associate” has the meaning given by section 1152 of the Companies Act 2006;
  - “company” means a company registered under the Companies Act 2006;
  - “Crown body” means any body corporate in which a Minister of the Crown holds, directly or indirectly, any shares or other interest;
  - “designated BNFL body” means a company designated for the purposes of Schedule 7 to the Energy Act 2004 or any body corporate in which a company designated for those purposes holds, directly or indirectly, any shares or other interest;
  - “former GBN body” means—
    - (a) a company formerly designated as Great British Nuclear, or
    - (b) any body corporate in which a company formerly designated as Great British Nuclear—
      - (i) holds, directly or indirectly, any shares or other interest, and
      - (ii) held, directly or indirectly, any shares or other interest, at a time at which it was designated as Great British Nuclear;
  - “GBN body” means Great British Nuclear or any body corporate in which Great British Nuclear holds, directly or indirectly, any shares or other interest;
  - “information” includes documents;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (see section 8(1) of that Act);
  - “NDA company” means the Nuclear Decommissioning Authority (established by section 1 of the Energy Act 2004) or any body corporate in which the Nuclear Decommissioning Authority holds, directly or indirectly, any shares or other interest;
  - “proposed GBN body” means a company that the Secretary of State proposes to designate as Great British Nuclear or any body corporate in which a company proposed to be designated for those purposes holds, directly or indirectly, any shares or other interest;
  - “public body” means a body established by an enactment (within the meaning of [Part 1](#) of this Act) or any body corporate in which a body established by an enactment holds, directly or indirectly, any shares or other interest;
  - “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 ([S.I. 2006/246](#));

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“UKAEA body” means the United Kingdom Atomic Energy Authority (established by section 1 of the Atomic Energy Authority Act 1954) or any body corporate in which the United Kingdom Atomic Energy Authority holds, directly or indirectly, any shares or other interest.

### **325 Transfer schemes: compensation**

- (1) A scheme under [section 324](#) may provide for a transferor or any person who has suffered loss or damage in consequence of the scheme to be entitled to compensation from the Secretary of State or a transferee under the scheme, in accordance with provision made by or under the scheme.
- (2) Where a person is entitled to compensation, the amount of compensation is to be the amount—
  - (a) agreed by the Secretary of State and the person, or
  - (b) in the absence of such agreement, determined by an independent valuer.
- (3) An independent valuer appointed for the purposes of [subsection \(2\)](#) must be appointed—
  - (a) by the Secretary of State and the person, or
  - (b) in the absence of such agreement, by the Secretary of State on behalf of both the Secretary of State and the person.
- (4) The Secretary of State may by regulations make provision about compensation under this section that corresponds or is similar to any provision about compensation that may be made by the Secretary of State by regulations under [paragraph 8\(4\)](#) of [Schedule 9](#).
- (5) Regulations under this section are subject to the negative procedure.

### **326 Transfer schemes: taxation**

- (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
  - (a) anything transferred under a scheme under [section 324](#), or
  - (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision that may be made under [subsection \(1\)\(a\)](#) includes, in particular, provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision that may be made under [subsection \(1\)\(b\)](#) includes, in particular, provision for—
  - (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer;

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- (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) In this section—
- (a) “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty reserve tax, stamp duty land tax or value added tax;
  - (b) “tax provision” means any provision—
    - (i) about a relevant tax, and
    - (ii) made by an enactment (within the meaning of [Part 1](#) of this Act);
  - (c) references to the transfer of a property include the grant of the lease.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

### **327 Transfer schemes: provision of information or assistance**

- (1) The Secretary of State may direct a person within [subsection \(2\)](#) to provide the Secretary of State with such specified information or assistance as the Secretary of State may reasonably require in connection with the making of a scheme under [section 324](#).
- (2) A person is within this subsection if—
- (a) property, rights or liabilities are likely to be transferred from or to the person by such a scheme, or
  - (b) the person is a body corporate that is likely to be transferred under such a scheme.
- (3) Paragraph [12\(4\)](#), [\(6\)](#), [\(7\)](#) and [\(8\)](#) of [Schedule 9](#) apply to a direction under this section as they apply to a direction under [sub-paragraph \(1\)](#) of that paragraph.
- (4) In this section—
- “assistance” includes assistance provided in a country or territory other than the United Kingdom;
  - “information” includes documents;
  - “specified” means specified in the direction.

### **328 Reimbursement and compensation in connection with designation**

The Secretary of State may reimburse a person in respect of expenditure reasonably incurred by the person in preparation for or in connection with the designation of a company under [section 317](#) (other than any expenditure incurred in connection with the making of a scheme under [section 324](#)).

### **329 Pension arrangements in connection with Great British Nuclear**

- (1) The Secretary of State may by regulations make provision about pension arrangements in relation to Great British Nuclear that corresponds or is similar to any provision about pension arrangements in relation to the ISOP that may be made by the Secretary

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of State by regulations under [paragraph 2](#) or [3](#) of [Schedule 10](#) (see [paragraph 4](#) of that Schedule for restrictions on how the power to make regulations under [paragraph 2](#) or [3](#) of that Schedule may be exercised).

- (2) Before making regulations under [subsection \(1\)](#) that make provision corresponding or similar to the provision that may be made by regulations under [paragraph 2\(1\)](#) of [Schedule 10](#), the Secretary of State must carry out a consultation corresponding to the consultation required by [paragraph 2\(5\)](#) of that Schedule.
- (3) Before making regulations under [subsection \(1\)](#) that make provision corresponding or similar to the provision that may be made by regulations under [paragraph 3\(1\)](#) of [Schedule 10](#), the Secretary of State must carry out a consultation corresponding to the consultation required by [paragraph 3\(4\)](#) of that Schedule.
- (4) Subsections [\(2\)](#) and [\(3\)](#) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).
- (5) The Secretary of State may direct a person within [subsection \(6\)](#) to provide the Secretary of State with specified pensions information or such specified assistance as the Secretary of State may reasonably require in preparation for or in connection with the exercise of the power conferred on the Secretary of State by [subsection \(1\)](#).
- (6) The following persons are within this subsection—
  - (a) the trustee of a qualifying pension scheme;
  - (b) any person who exercises functions on behalf of a person within paragraph (a);
  - (c) any person who is or has been an employer of a qualifying member of a qualifying pension scheme.
- (7) Sub-paragraphs [\(5\)](#) to [\(7\)](#) of [paragraph 5](#) of [Schedule 10](#) apply to a direction given under [subsection \(5\)](#) as they apply to a direction given under [sub-paragraph \(1\)](#) of that paragraph.
- (8) The exercise of the power conferred on the Secretary of State by [subsection \(1\)](#) is not a trigger event for the purposes of the National Security and Investment Act 2021.
- (9) In this section—
 

“pensions information” means information that—

  - (a) relates to pensions or other benefits under a qualifying pension scheme, or
  - (b) relates to the administration of a qualifying pension scheme in respect of pensions or other benefits under the scheme;

“qualifying member”, in relation to a qualifying pension scheme, means a person who is or has been a member (as defined by section 124(1) of the Pensions Act 1995) of the scheme;

“qualifying pension scheme” means a pension scheme that provides for the payment of pensions or other benefits to or in respect of employees or former employees of—

  - (a) a transferor in relation to a transfer scheme under [section 324](#), or
  - (b) an associate (as defined by section 1152 of the Companies Act 2006) of such a transferor;

“specified” means specified in the direction.
- (10) Regulations under this section are subject to the negative procedure.