STATUTORY INSTRUMENTS

2016 No. 562

NUCLEAR ENERGY

The Nuclear Installations (Liability for Damage) Order 2016

Made - - - - 4th May 2016
Coming into force in accordance with article 1(2), (4) and (5)

The Secretary of State, in exercise of the powers conferred by sections 76 and 192(4) of the Energy Act 2004(**1**), makes the following Order.

In accordance with section 192(3) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Nuclear Installations (Liability for Damage) Order 2016.

(2) Subject to paragraphs (4) and (5), this Order comes into force on the main commencement day.

(3) The Secretary of State must publish a notice of the date of the main commencement day as soon as possible after that day.

(4) This article and articles 2, 34 and 40 come into force on the twenty-first day after the day on which this Order is made, if earlier than the main commencement day.

(5) Articles 19 and 35 come into force on the twenty-first day after the day on which this Order is made, if earlier than the main commencement day, for the purpose only of the exercise of any power to make regulations under section 16(1) or 21(3) of the 1965 Act.

Interpretation

2. In this Order—

"the 1965 Act" means the Nuclear Installations Act 1965(**2**);

(**1**) 2004 c.20.
(**2**) 1965 c.57. The effect of the 1965 Act has been modified by the Atomic Weapons Establishment Act 1991 c.46, section 3 and the Schedule, paragraph 6. The effect of the 1965 Act has been modified in relation to England and Wales and Northern Ireland by the Congenital Disabilities (Civil Liability) Act 1976 c.28 ("the 1976 Act"), sections 3 and 4. Certain provisions of the 1976 Act are amended by this Order. The 1965 Act will be modified by the Defence Reform Act 2014 c.20, Schedule 1, paragraph 3 when that paragraph comes into force. The 1965 Act has been amended on a number of occasions. Relevant amendments are noted in the following provisions of this Order.

"the main commencement day" means the day on which the Protocols come into force in respect of the United Kingdom(**3**);

"the Protocols" means—

(a) the Protocol of 12th February 2004 to amend the Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982(**4**), and

(b) the Protocol of 12th February 2004 to amend the Convention of 31st January 1963 Supplementary to the Paris Convention of 29th July 1960 on Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982(**5**).

Duties of licensee of licensed site

3.—(1) Section 7 of the 1965 Act (duty of licensee of licensed site) is amended as follows.

(2) For subsection (1)(**6**) substitute—

"(1) Subject to subsection (4), where a nuclear site licence has been granted in respect of a site, the licensee has the duties set out in subsections (1A), (1C) and (1E).

(1A) It is the duty of the licensee to secure that no occurrence involving nuclear matter falling within subsection (1B) causes—

(a) injury to any person,

(b) damage to any property of any person other than the licensee, or

(c) significant impairment of the environment,

being injury, damage or impairment that arises out of or results from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of that nuclear matter.

(1B) The occurrences referred to in subsection (1A) are—

(a) any occurrence on the licensed site involving nuclear matter during the period of the licensee's responsibility;

(b) any occurrence elsewhere than on the licensed site involving nuclear matter that is not excepted matter and which, at the time of the occurrence, satisfies the requirement mentioned in section 7A(1).

(1C) It is the duty of the licensee to secure that no occurrence involving the emission of ionising radiations falling within subsection (1D) causes—

(a) injury to any person,

(b) damage to any property of any person other than the licensee, or

(c) significant impairment of the environment,

(**3**) It will be possible to find out the date on which the Protocols come into force in respect of the United Kingdom by referring to the relevant page on UK Treaties Online (http://treaties.fco.gov.uk/treaties/treaty.htm).

(**4**) The Protocol of 12th February 2004 has been published in the Miscellaneous Series No. 6 (2015) Cm. 9135; the Convention of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 was published in the Treaty Series No. 69 (1968), Cmnd. 3755; the Protocol of 16th November 1982 was published in the Treaty Series No. 6 (1989), Cm. 659. The Protocols and Conventions are also available via UK Treaties Online (http://treaties.fco.gov.uk/treaties/treaty.htm).

(**5**) The Protocol of 12th February 2004 has been published in the Miscellaneous Series No. 7 (2015) Cm. 9136; the Convention of 31st January 1963 Supplementary to the Paris Convention, as amended by the Additional Protocol of 28th January 1964 was published in the Treaty Series No. 44 (1975), Cmnd. 5948; the Protocol of 16th November 1982 was published in the Treaty Series No. 17 (1992), Cm. 1832. The Protocols and Conventions are also available via UK Treaties Online (http://treaties.fco.gov.uk/treaties/treaty.htm).

(**6**) Section 7(1) was amended by S.I. 1990/1918, the Schedule, paragraph 2(a).

being injury, damage or impairment that arises out of or results from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of the source of the emissions.

(1D) The occurrences referred to in subsection (1C) are—

(a) an emission of ionising radiations during the period of the licensee's responsibility from anything caused or suffered by the licensee to be on the site which is not nuclear matter;

(b) a discharge on or from the site of waste, being waste (of any form) that emits ionising radiations but is not nuclear matter, during the period of the licensee's responsibility.

(1E) It is the duty of the licensee to secure that no event happens that creates a grave and imminent threat of a breach of the duty under subsection (1A) or (1C)."

(3) Omit subsection (2) (description of occurrences mentioned in subsection (1)(a)).

(4) For subsection (3) substitute—

"(3) In determining the liability of the licensee of a licensed site by virtue of subsection (1A) or (1C) in respect of an occurrence, any such property as is mentioned in subsection (3B) which is on that site at the time of the occurrence is to be deemed to be the property of the licensee, notwithstanding that it is the property of some other person.

(3A) In determining the liability of the licensee of a licensed site by virtue of subsection (1E) in respect of an event, any such property as is mentioned in subsection (3B) which is on that site at the time of the event is to be deemed to be the property of the licensee, notwithstanding that it is the property of some other person.

(3B) The property referred to in subsections (3) and (3A) is—

(a) a nuclear installation;

(b) property other than a nuclear installation which is on the licensed site for the purpose of being used in connection with the operation, or the cessation of the operation, by the licensee of a nuclear installation which is or has been on that site;

(c) property other than a nuclear installation which is on the licensed site for the purpose of the construction of a nuclear installation on that site;

(d) an installation for the disposal of nuclear matter."

(5) After section 7 insert—

"**Occurrences not on a licensed site**

7A.—(1) The requirement referred to in section 7(1B)(b) is that the nuclear matter satisfies the condition in any of subsections (2) to (8) in relation to the licensee of the licensed site as licensee of that site.

(2) The condition in this subsection is that the nuclear matter—

(a) is in the course of carriage to the licensed site with the agreement of the licensee from a place in a country or territory that is not a relevant territory, and

(b) is not on another relevant site in the United Kingdom.

For these purposes the carriage of the matter is to be treated as starting once the matter has been loaded on to the means of transport intended to be used for its carriage from that country or territory.

(3) The condition in this subsection is that the nuclear matter—

(a) is in the course of carriage from the licensed site to a place in a country or territory that is not a relevant territory, and

(b) is not on another relevant site in the United Kingdom.

For these purposes the carriage of the matter is to be treated as coming to an end once the matter has been unloaded from the means of transport used for its carriage to that country or territory.

(4) The condition in this subsection is that the licensee has taken charge of the nuclear matter from a person authorised to operate a nuclear reactor comprised in a means of transport and the matter—

(a) is in the course of carriage to the licensed site, and

(b) is not on another relevant site in the United Kingdom.

(5) The condition in this subsection is that the nuclear matter—

(a) is in the course of carriage from the licensed site to a person authorised to operate a nuclear reactor comprised in a means of transport and in which the matter is intended to be used, and

(b) is not on another relevant site in the United Kingdom.

For these purposes the carriage of the matter is to be treated as coming to an end once that operator takes charge of the matter.

(6) The condition in this subsection is that—

(a) the nuclear matter was in the course of such carriage as is described in subsection (2), (3), (4) or (5),

(b) that course of carriage was not completed, and

(c) since ceasing to be in the course of such carriage, the nuclear matter has not been in such circumstances as are mentioned in subsection (9), (10) or (11).

(7) The condition in this subsection is that—

(a) the nuclear matter is in the course of carriage on behalf of the licensee as a licensee of the licensed site, otherwise than as described in any of subsections (2)(a), (3)(a), (4)(a) and (5)(a), and the licensee has a direct economic interest in the matter, or

(b) the nuclear matter was in the course of such carriage while being matter in which the licensee had a direct economic interest and, since ceasing to be in the course of such carriage or since ceasing to be matter in which the licensee had a direct economic interest, has not been in such circumstances as are mentioned in subsection (9), (10) or (11).

(8) The condition in this subsection is that the nuclear matter was on the licensed site and, since ceasing to be on that site, has not been in such circumstances as are mentioned in subsection (9), (10) or (11).

(9) The circumstances in this subsection are that the nuclear matter is on a relevant site other than the licensed site.

(10) The circumstances in this subsection are that the nuclear matter—

(a) is in the course of carriage to a relevant site other than the licensed site with the agreement of the operator of that site from a place in a country or territory that is not a relevant territory,

(b) is in the course of carriage from a relevant site other than the licensed site to a place in a country or territory that is not a relevant territory,

(c) is in the course of carriage on behalf of a person authorised to operate a nuclear reactor which is comprised in a means of transport and in which the nuclear matter is intended to be used or was used or was intended to be used, or

(d) is in the course of relevant carriage on behalf of a person other than the licensee of the licensed site, and otherwise than as described in paragraph (a), (b) or (c), and is matter in which that person has a direct economic interest.

(11) The circumstances in this subsection are that the nuclear matter—

(a) is within the territorial limits of a country or territory that is not a relevant territory, and

(b) is not in the course of such carriage as is described in any of subsections (2)(a), (3)(a), (4)(a) and (5)(a) or in the course of relevant carriage from one relevant site to another.

(12) Where the licensee of a licensed site operates the site on behalf of another person—

(a) carriage of nuclear matter that is undertaken or arranged by the licensee as licensee of the licensed site on behalf of that other person is to be treated as carriage on behalf of the licensee (and accordingly is to be treated as relevant carriage on behalf of the licensee for the purposes of this Act), and

(b) a requirement in this section that a person have a direct economic interest in nuclear matter that is in the course of carriage is to be treated as satisfied by the licensee when acting on behalf of another person as regards the carriage of nuclear matter if—

(i) that other person is the person on whose behalf the licensee is operating the licensed site, and

(ii) that other person has a direct economic interest in the nuclear matter.

(13) For the purposes of this section, a person who receives a financial or other benefit for or in connection with undertaking, or arranging for, the carriage of nuclear matter does not, for that reason only, have a direct economic interest in the matter."

Duties in respect of relevant disposal sites

4.—(1) In section 6 of the 1965 Act(**7**) (list of licensed sites)—

(a) in subsection (1), for the words from "showing" to the end substitute—

"showing—

(a) every site in respect of which a nuclear site licence has been granted, and

(b) every site which is or was a relevant disposal site.";

(b) in subsection (2)(a), after "part of a site" insert "falling within subsection (1)(a)";

(c) after subsection (2)(a) insert—

"(aa) need not show any site or part of a site falling within subsection (1)(b) in the case of which—

(i) no appropriate permit is for the time being in force; and

(ii) 30 years have passed since the date on which the appropriate environment authority gave notice to an operator of the site that in the opinion of that authority there has ceased to be any danger from ionising radiations from anything on the site or, as the case may be, part of it;";

(d) in the heading, after "licensed sites" insert "and relevant disposal sites".

(**7**) Section 6 was amended by the Energy Act 2013 c.32, section 116 and Schedule 12, Part 2, paragraph 21 (this amendment supersedes a previous amendment).