

*Draft Order laid before Parliament under sections 76 and 192(3) of the Energy Act 2004, for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2011 No.**

**NUCLEAR ENERGY**

**The Nuclear Installations (Liability for Damage) Order 2011**

*Made*   -   -   -   -   *\*\*\**

*Coming into force in accordance with article 1(2) and (4)*

The Secretary of State, in exercise of the powers conferred by sections 76 and 192(1) of the Energy Act 2004(a), 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 2011.

(2) Subject to paragraph (4), this Order comes into force on the day on which the Protocols come into force in respect of the United Kingdom.

(3) The Secretary of State is to give notice in the London, Edinburgh and Belfast Gazettes of the date on which the Protocols come into force in respect of the United Kingdom.

(4) This article and articles 2, 27 and 34 come into force on the Xth day after the day on which this Order is made, if earlier.

**Interpretation**

**2.** In this Order—

“the 1965 Act” means the Nuclear Installations Act 1965(b);

“the Protocols” means—

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

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

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(a) 2004 c. 20.

(b) 1965 c. 57.

### **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) substitute—

“(1) Subject to subsection (4), this section applies where a nuclear site licence has been granted to a person in respect of a site.

(1A) It is the duty of the licensee to secure that no such occurrence involving nuclear matter as is mentioned in subsection (2) 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) It is the duty of the licensee to secure that no ionising radiations emitted from a source mentioned in subsection (1C) during the period of the licensee’s responsibility cause—

- (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 source.

(1C) The emissions of ionising radiations referred to in subsection (1B) are emissions from—

- (a) anything caused or suffered by the licensee to be on the site which is not nuclear matter;
- (b) any waste discharged (in whatever form) on or from the site.

(1D) 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 (1B).”

(3) For subsection (2) substitute—

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

- (a) subject to section 7A(12), 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).”

(4) For subsection (3) substitute—

“(3) For the purposes of determining whether the licensee of a licensed site is liable for damage to property by virtue of subsection (1A) because of such occurrence as is mentioned in subsection (2), 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.

(3A) For the purposes of determining whether the licensee of a licensed site is liable by virtue of subsection (1D) because of an event creating a grave and imminent threat of a breach of the duty under subsection (1A) as it relates to damage to property, 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.

(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.”

(5) After section 7 insert—

**“7A Occurrences during carriage**

(1) The requirement referred to in section 7(2)(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 is in the course of carriage to the licensed site with the agreement of the licensee from a place in a country or territory outside the relevant territories.

For these purposes the carriage of the matter is to be treated as starting only after 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 is in the course of carriage from the licensed site to a place in a country or territory outside the relevant territories.

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—

- (a) 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
- (b) the matter is in the course of carriage to the licensed site.

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

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 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) to (5), and the licensee has a direct economic interest in the matter, or
- (b) the nuclear matter was in the course of such carriage and, since ceasing to be in the course of such carriage, has not been in such circumstances as are mentioned in subsection (9), (10) or (11).

(7) The condition in this subsection is that—

- (a) immediately before the nuclear matter ceased to be on the licensed site, the licensee was subject to the duty mentioned in section 7(1A) as regards the matter, and
- (b) since ceasing to be on that site, the nuclear matter has not satisfied any of the conditions in subsections (2) to (6) in relation to the licensee and has not been in such circumstances as are mentioned in subsection (9), (10) or (11).

(8) The condition in this subsection is that—

- (a) the nuclear matter has ceased to satisfy a condition in subsection (2), (3), (4) or (5) in relation to the licensee before the carriage described in that subsection has come to an end, and

- (b) since ceasing to satisfy that condition, it 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—
  - (a) is in the course of carriage on behalf of a person authorised to operate a nuclear reactor 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
  - (b) 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), and is matter in which that person has a direct economic interest.
- (10) The circumstances in this subsection are that—
  - (a) the nuclear matter is on a relevant site other than the licensed site, and
  - (b) the operator of that site is, or would be if the operator were a licensee of a licensed site and the site were that licensed site, subject to the duty in section 7(1A) as regards the matter.
- (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) to (5) or in the course of relevant carriage from one relevant site to another.
- (12) An occurrence on a licensed site involving nuclear matter is not to be treated as an occurrence falling within section 7(2)(a) if, at the time of the occurrence, the matter satisfies the requirement in subsection (1) of this section in relation to the operator of another relevant site.
- (13) In determining whether the requirement in subsection (1) is satisfied for the purposes of subsection (12), in a case where the operator is not a licensee of a licensed site acting as such, subsections (1) to (11) are to have effect as if that operator were the licensee of a licensed site and that operator’s site were a licensed site.
- (14) 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 of other United Kingdom operators**

- 4.—(1) In section 8 (duty of the UKAEA)—
  - (a) for “Section 7” substitute “Sections 7 and 7A”;
  - (b) for “section 7” substitute “sections 7 and 7A”.
- (2) In section 9 (duty of Crown in respect of certain sites), for “section 7” substitute “sections 7 and 7A”.

**Duties of certain foreign operators**

- 5.—(1) Section 10 of the 1965 Act (duty of certain foreign operators) is amended as follows.
- (2) For subsection (1) substitute—
  - “(1) It is the duty of a relevant foreign operator to secure that no occurrence involving nuclear matter which is not excepted matter and satisfying the conditions in subsections (2) and (4) causes—
    - (a) injury to any person,
    - (b) damage to any property of any person other than that operator, 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.

(1A) It is the duty of a relevant foreign operator to secure that no event happens that creates a grave and imminent threat of a breach of the duty under subsection (1).”

(3) For subsection (2) substitute—

“(2) The condition in this subsection is that the occurrence is—

- (a) an occurrence taking place wholly or partly within United Kingdom limits; or
- (b) an occurrence taking place outside those limits which also involves nuclear matter in respect of which a duty is imposed on any person by section 7, 8 or 9.

(3) The area within United Kingdom limits consists of—

- (a) the area within the territorial limits of the United Kingdom, and
- (b) the area within the limits of the United Kingdom’s relevant maritime zone (and those limits are to be treated as applying to sea, sea bed, subsoil and airspace).

(4) The condition in this subsection is that the nuclear matter at the time of the occurrence would, if the relevant foreign operator were the licensee of a licensed site and that operator’s site were a licensed site, satisfy the requirement in section 7A(1) in relation to the relevant foreign operator.”

### **Cost of measures of reinstatement**

6.—(1) After section 11 of the 1965 Act insert—

*“Cost of measures of reinstatement*

#### **11A Cost of measures of reinstatement**

(1) Where as a result of a breach of a duty imposed by section 7, 8, 9 or 10 there is significant impairment of the environment, a qualifying public authority may make a claim under this Act for compensation in respect of the reasonable cost of measures of reinstatement relating to that impairment to the extent that they are relevant measures of reinstatement.

(2) Subsection (1) is subject to subsection (3) and sections 11B and 11D.

(3) Compensation is not payable by virtue of a claim under subsection (1) in respect of the cost of measures of reinstatement that benefit or would benefit property if the property is such that damage to it would not constitute damage in breach of a duty imposed by section 7, 8, 9 or (as the case may be) 10.

(4) A public authority is a qualifying public authority, in relation to a particular significant impairment of the environment, if it may in the exercise of its functions—

- (a) take, or arrange for the taking of, measures of reinstatement in relation to that impairment of the environment, or
- (b) pay (otherwise than under this Act) costs incurred by another public authority in taking, or arranging for the taking of, measures of reinstatement in relation to that impairment.

(5) A relevant measure of reinstatement, in relation to significant impairment of the environment, is a measure reasonably taken for the purpose of—

- (a) reinstating or restoring what has been destroyed or damaged as part of that impairment, or
- (b) establishing the equivalent of what has been destroyed or damaged as part of that impairment.

(6) A measure of reinstatement is reasonably taken for the purposes of this section if taking that measure is appropriate and proportionate in the circumstances.

(7) In this section—

“holder of a public office” means—

- (a) a person holding an office under the Crown,
- (b) a person holding an office created or continued in existence by a public general Act or by legislation passed by the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, or
- (c) a person holding an office the remuneration in respect of which is paid out of money provided by Parliament, the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly;

“local authority” means—

- (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in relation to Scotland, a council for any local government area constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994;
- (c) in relation to Wales, a county council, a county borough council or a community council;
- (d) in relation to Northern Ireland, a district council.

“public authority” means a holder of a public office or a public body;

“public body” includes a government department (including the Welsh Assembly Government, any part of the Scottish Administration and a Northern Ireland department) and a local authority.

### **11B Approval of measures of reinstatement**

(1) Compensation under this Act is payable by virtue of a claim under section 11A(1) only if the claim relates to measures of reinstatement approved by—

- (a) the Secretary of State under this section, or
- (b) if a decision under this section is appealed under section 11D, the court that determines the appeal under section 11D.

(2) A public authority may apply to the Secretary of State for approval under this section before or after the measures of reinstatement are taken.

(3) The public authority must publish a notice of its application.

(4) The notice must be published in a manner that appears to the authority to be appropriate for bringing it to the attention of—

- (a) the person whose breach, or alleged breach, of a duty imposed by section 7, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment;
- (b) the owner of land that is or would be affected by the measures of reinstatement;
- (c) any person who appears to the authority to be in occupation of all or part of such land.

(5) A notice of an application for approval must specify the measures of reinstatement for which approval is sought.

(6) The Secretary of State may approve a measure of reinstatement under this section only if satisfied that—

- (a) there is significant impairment of the environment;
- (b) the measure is, in relation to that impairment, a relevant measure of reinstatement within the meaning of section 11A;
- (c) the amount claimed in respect of the cost of the measure is reasonable;
- (d) the public authority applying for approval in relation to a measure of reinstatement is a qualifying public authority within the meaning of section 11A as regards that measure.

(7) The Secretary of State may refuse to approve measures of reinstatement on the ground that the applicant, or the public authority whose costs the applicant has paid or proposes to pay, is or was not the appropriate public authority to take the measures or to arrange for them to be taken.

(8) The Secretary of State may approve some but not others of the measures to which the application relates.

(9) A decision by the Secretary of State under this section is not to be taken as determining—

- (a) whether or not there was a breach of a duty under section 7, 8, 9 or 10, or
- (b) whether or not the impairment of the environment arises out of or results from a breach of such a duty.

(10) The Secretary of State must publish a notice of a decision made under this section.

(11) For each of the measures of reinstatement to which the application relates, the notice of decision must—

- (a) state whether or not approval is refused on the ground referred to in subsection (7), and
- (b) in a case where approval is not refused on that ground, specify the reasons why the Secretary of State is or is not satisfied as to the matters in subsection (6).

(12) If the Secretary of State makes a claim for compensation under section 11A(1), the Secretary of State must appoint a person to carry out the functions of the Secretary of State under this section in respect of an application for approval.

(13) Approval by the appointed person is to be treated as approval by the Secretary of State for the purposes of subsection (1).

(14) In this section—

“creditor” and “heritable security” have the same meaning as in the Conveyancing and Feudal Reform (Scotland) Act 1970;

“owner”, in relation to land in England and Wales or Northern Ireland, means a person (other than a mortgagee in possession) who, whether in the person’s own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rate, would be so entitled if the land were so let;

“owner”, in relation to land in Scotland, means a person (other than the creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted.

### **11C Representations**

(1) Persons who satisfy the requirements of subsection (2) may make representations to the Secretary of State as regards the measures of reinstatement for which approval is sought by an application under section 11B.

(2) A person satisfies the requirements of this subsection if the person is—

- (a) the person whose breach, or alleged breach, of a duty imposed by section 7, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment;
- (b) the owner of land that is or would be affected by the measures of reinstatement;
- (c) a person who is in occupation of all or part of such land.

(3) The Secretary of State may invite other persons to make representations as regards the measures of reinstatement.

(4) The Secretary of State must publish a notice of the arrangements for making representations under this section in respect of an application under section 11B.

(5) “Owner”, in relation to land, has the meaning given by section 11B.

### **11D Appeals against decisions**

(1) The following persons may appeal to the appropriate court against a decision of the Secretary of State on an application under section 11B—

- (a) where approval of a measure of reinstatement is refused, the public authority that applied for approval of the measure;
- (b) where approval of a measure of reinstatement is granted, the person whose breach, or alleged breach, of a duty imposed by section 7, 8, 9 or 10 caused, or is alleged to have caused, the impairment of the environment.

(2) A decision of the Secretary of State to refuse approval on the ground referred to in section 11B(7) may not be appealed under this section.

(3) Subject to subsection (2), the court may on an appeal under this section determine whether or not to approve the measures of reinstatement to which the appeal relates.

(4) Section 11B(6) applies in relation to a determination of the court as it applies in relation to a decision of the Secretary of State under section 11B.

(5) The appropriate court is the court that has, or but for section 16(3E) would have had, jurisdiction in accordance with section 16B to determine a claim by virtue of section 7, 8, 9 or 10 for compensation under this Act in respect of the cost of the measures of reinstatement in question.

(6) A decision of a person appointed under section 11B(12) may be appealed in the same way as a decision of the Secretary of State.

### **11E Measures of reinstatement and relevant foreign law**

(1) Where approval of measures of reinstatement relating to significant impairment of the environment is required by any relevant foreign law made for purposes corresponding to section 11B(1), sections 11B to 11D are to apply to applications for such approval as they apply to applications for the approval required by section 11B(1).

(2) Where sections 11B to 11D apply by virtue of subsection (1)—

- (a) references to a breach of duty under section 7, 8, 9 or 10 are to be treated as references to the corresponding occasion of compensation under the relevant foreign law, and
- (b) references to the appropriate court are to be treated as references to the High Court.

### **11F Measures of reinstatement outside the United Kingdom**

Schedule 1A (approval of measures of reinstatement in places outside the United Kingdom) has effect.”

(2) After Schedule 1 to the 1965 Act there is inserted the Schedule 1A set out in the Schedule to this Order.

### **Loss of income derived from the environment**

7. After section 11F of the 1965 Act (inserted by article 6) insert—

*“Loss of income derived from the environment*

### **11G Loss of income derived from the environment**

(1) Where as a result of a breach of a duty imposed by section 7, 8, 9 or 10 there is significant impairment of the environment, a claim may be made under this Act for compensation in respect of a person’s loss of income that satisfies the requirements of subsection (2).

- (2) The requirements are—
- (a) that the loss is of income derived from a direct economic interest in any use or enjoyment of the part of the environment that is significantly impaired as a result of the breach, and
  - (b) that the loss of income is attributable to the effect of the impairment on the use or enjoyment of that part of the environment.
- (3) Compensation under this Act is not payable by virtue of a claim under subsection (1) if the loss of income in question is a loss in relation to which a claim for compensation under this Act in respect of damage to property—
- (a) may be or has been made, or
  - (b) could have been made, but for the property being such that damage to it would not constitute damage in breach of a duty imposed by section 7, 8, 9 or (as the case may be) 10.
- (4) Compensation under this Act is not payable by virtue of a claim under subsection (1) if the loss of income relates to the use or enjoyment of the relevant site of the person in breach of duty or part of it.”

### **Cost of preventive measures**

8. After section 11G of the 1965 Act (inserted by article 7) insert—

*“Cost of preventive measures*

#### **11H Cost of preventive measures**

- (1) This section applies where there is a breach of a duty imposed by section 7, 8, 9 or 10.
- (2) A claim may be made for compensation under this Act in respect of the reasonable cost of preventive measures reasonably taken after the breach of duty.
- (3) Subject to subsections (4) to (6), a claim may be made for compensation under this Act in respect of injury to a person or damage to property caused by preventive measures reasonably taken after the breach of duty.
- (4) The compensation that may be claimed under subsection (3) does not include compensation in respect of so much of any injury or damage as is caused by an act or omission done maliciously or negligently.
- (5) The compensation that may be claimed under subsection (3) does not include compensation in respect of damage to property where the property is such that damage to it would not constitute damage in breach of a duty imposed by section 7, 8, 9 or (as the case may be) 10.
- (6) The payment of compensation in respect of injury to a person or damage to property otherwise than under this Act by or on behalf of a person who takes preventive measures does not prevent the making of a claim under subsection (3) if and to the extent that such payment does not make full compensation in respect of the injury or damage in question.
- (7) A reference in subsection (2) or (3) to a preventive measure reasonably taken after a breach of duty includes a reference to such part of a preventive measure as is so taken.
- (8) A preventive measure is a measure taken in order to minimise or prevent—
- (a) injury to a person or damage to property constituting a breach of a duty imposed by section 7, 8, 9 or 10, or
  - (b) significant impairment of the environment occasioning costs or losses in respect of which a claim under section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A may be made.
- (9) A preventive measure is reasonably taken for the purposes of this section if taking that measure is appropriate and proportionate in the circumstances.”

## **Right to compensation with respect to injury, damage and significant impairment of the environment**

9.—(1) Section 12 of the 1965 Act (right to compensation) is amended as follows.

(2) For subsection (1) substitute—

“(1) Where any injury or damage has been caused in breach of a duty imposed by section 7, 8, 9 or 10, compensation is payable in accordance with section 16 wherever the injury or damage was incurred.

(1A) Where any significant impairment of the environment has been caused in breach of a duty imposed by section 7, 8, 9 or 10, such compensation as may be claimed by virtue of section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A is payable in accordance with section 16 wherever the impairment arises.

(1B) Where preventive measures are taken after a breach of a duty imposed by section 7, 8, 9 or 10, such compensation as may be claimed by virtue of section 11H(2) is payable in accordance with section 16 wherever the preventive measures are taken.

(1C) Where any injury to a person or damage to property is caused by preventive measures taken after a breach of a duty imposed by section 7, 8, 9 or 10, such compensation as may be claimed by virtue of section 11H(3) is payable in accordance with section 16 wherever the injury or damage was incurred.

(1D) Subsections (1) to (1C) are subject to—

- (a) section 13(1), (3), (4) and (4A),
- (b) section 15, and
- (c) section 17(1).

(1E) Where injury, damage or significant impairment of the environment is caused or threatened in breach of a duty imposed by section 7, 8, 9 or 10, no liability other than that imposed by subsections (1) to (1C) is incurred by any person in respect of a matter for which compensation may be claimed by virtue of a duty imposed by section 7, 8, 9 or (as the case may be) 10.

(1F) Subsection (1E) is subject to—

- (a) subsections (1G), (3) and (4), and
- (b) section 21(2).

(1G) Subsection (1E) does not affect such liability as may be incurred in relation to—

- (a) a preventive measure or part of a preventive measure in respect of which a claim for compensation under section 11H(2) may not be made, or
- (b) such injury or damage as is excluded from a claim for compensation under this Act by section 11H(4).”

(3) For subsection (2) substitute—

“(2) Subject to subsection (3), any injury, damage or significant impairment of the environment which, though not caused in breach of a duty imposed by section 7, 8, 9 or 10, is not reasonably separable from injury, damage or significant impairment so caused, is to be deemed for the purposes of subsections (1) to (1C) to have been so caused.”

(4) In subsection (3) (effect of subsection (2) on cases involving an emission of ionising radiations that is not a breach of duty under the Act)—

- (a) for “any injury or damage” substitute “any injury, damage or significant impairment of the environment”;
- (b) for “same injury or damage” substitute “same injury, damage or significant impairment of the environment”.

(5) In subsection (3A) (special provision for property on site), for the words from “if in” to “been enacted” substitute “if in section 7(1A)(b) and (1B)(b) the words “other than the licensee” or in section 10(1)(b) the words “other than that operator” had not been enacted”.

(6) After subsection (3A) insert—

“(3B) Subject to subsection (4), where compensation for damage to any property would have been payable by virtue of a claim under section 11H(3) if section 11H(5) had not been enacted no liability which, apart from this subsection, would have been incurred by any person in respect of that damage is to be so incurred except in pursuance of an agreement to incur liability in respect of such damage entered into in writing before the occurrence of the damage.”

(7) In subsection (4) (saving for conventions on international carriage)—

- (a) for “section 13(5) of this Act” substitute “section 13(5ZA)”;
- (b) for “subsection (1)(b) or in subsection (3A) of this section” substitute “subsection (1E), (3A) or (3B)”.

(8) In the heading of section 12, omit “by virtue of ss. 7 to 10”.

### **Exclusion of rights to compensation in certain cases**

**10.**—(1) Section 13 of the 1965 Act (exclusion, extension or reduction of compensation in certain cases) is amended as follows.

(2) For subsection (1) substitute—

“(1) Compensation is not payable under this Act in the case of a breach of a duty imposed by section 7, 8, 9 or 10 if—

- (a) the breach of duty consisted of an occurrence such as is mentioned in section 7(2)(b) or 10(1) which took place wholly within the limits relating to a single relevant territory other than the United Kingdom;
- (b) the breach of duty consisted of an event creating a grave and imminent threat of such breach of duty as is mentioned in paragraph (a) and the event took place wholly within the limits relating to a single relevant territory other than the United Kingdom;
- (c) the injury, damage or significant impairment of the environment caused by the breach of duty was incurred within the territorial limits of a country or territory which is not a qualifying territory;
- (d) the injury, damage or significant impairment of the environment caused by the breach of duty was incurred in, under or above the sea outside the territorial limits of such a country or territory but not—
  - (i) within the territorial limits of a qualifying territory,
  - (ii) in or above the sea within the exclusive economic zone of any qualifying territory, or
  - (iii) on the continental shelf of any qualifying territory; or
- (e) in relation to compensation that would but for this subsection be claimed under section 11H(2) or (3), the preventive measures in question were or would be taken in a place by reference to which compensation is excluded by paragraph (c) or (d).

(1A) For the purposes of subsection (1), the limits relating to a country are—

- (a) its territorial limits;
- (b) the limits of its relevant maritime zone (which are to be treated as applying to sea, sea bed, subsoil and airspace).

(1B) Subsection (1) is subject to subsections (2) and (5ZA).”

(3) For subsection (2) substitute—

“(2) In the case of a breach of duty imposed by section 7, 8, 9 or 10—

- (a) subsection (1)(d), and
- (b) subsection (1)(e), so far as it relates to subsection (1)(d),

are not to apply to injury or damage incurred by, or by persons or property on, a ship or aircraft registered in a qualifying territory.”

(4) In subsection (3) (certain liability by virtue of section 10 to depend on agreement in writing)—

- (a) for “in respect of injury or damage caused by” substitute “in the case of”, and
- (b) for the words from “as is” to “that section” substitute “as satisfies the condition in section 10(4) by reference to section 7A(2)”.

(5) For subsection (4) substitute—

“(4) The duty as regards occurrences imposed by section 7(1A) or (1B), 8, 9, 10(1) or 11—

- (a) does not impose on the person subject to that duty any liability with respect to injury, damage or impairment of the environment caused by an occurrence which constitutes a breach of that duty if the occurrence, or the fact that the occurrence causes the injury, damage or impairment of the environment, is attributable to hostile action in the course of any armed conflict, including any armed conflict within the United Kingdom; but
- (b) does impose such a liability where the occurrence, or the fact that the occurrence causes the injury, damage or significant impairment of the environment, is attributable to a natural disaster, notwithstanding that the disaster is of such an exceptional character that it could not reasonably have been foreseen.

(4A) The duty as regards events imposed by section 7(1D), 8, 9 or 10(1A)—

- (a) does not impose any liability on the person subject to that duty if the event is attributable to hostile action in the course of any armed conflict, including any armed conflict within the United Kingdom; but
- (b) does impose such a liability where the event is attributable to a natural disaster, notwithstanding that the disaster is of such an exceptional character that it could not reasonably have been foreseen.”

### **Extension of rights to compensation in certain cases**

**11.**—(1) Section 13 of the 1965 Act is further amended as follows.

(2) For subsection (5) substitute—

“(5) Subsection (5ZA) applies where, after a breach of a duty imposed by section 7, 8, 9 or 10, a person (“A”) other than the person subject to that duty makes a payment to another person (“B”) in respect of a matter arising from that breach for which a claim for compensation under this Act could have been made and—

- (a) the payment is made in pursuance of any of the international conventions referred to in the Acts mentioned in section 12(4), or
- (b) the payment is made in accordance with a law of a country which is not a relevant territory.

(5ZA) Where this subsection applies, A may make such claim for compensation under this Act as would have been available to A if (apart from this subsection) the matter in respect of which the payment was made to B had been a matter for which A could have made a claim for compensation under this Act.

(5ZB) A claim for compensation under this Act made by A by virtue of subsection (5ZA) is not to be treated as a relevant claim (within the meaning of section 16A) unless it would have been such a claim if made by B.”

(3) In subsection (5A) (limit on claims by virtue of subsection (5))—

- (a) for “subsection (5) of this section” substitute “subsection (5ZA)”, and

- (b) for “paragraph (b)” to the end substitute “subsection (5)(b), is subject to the limit on liability under section 16(1), (1ZA), (1ZB) or (2) that is applicable to the person subject to the duty.”

### **Reduction of compensation in certain cases**

**12.** In section 13 of the 1965 Act, for subsection (6) (reduction of compensation for deliberate or reckless injury etc) substitute—

“(6) The amount of compensation payable to or in respect of any person under this Act by virtue of a breach of a duty imposed by section 7, 8, 9 or 10 may be reduced in accordance with subsection (7).

(7) The amount may be reduced if, but only if, and to the extent that, the injury, damage or significant impairment of the environment in respect of which the compensation is, or would but for this subsection be, payable to or in respect of the person is attributable to—

- (a) an act or omission of that person done with the intention of causing harm to any person or property or to any part of the environment, or
- (b) an act or omission of that person done with reckless disregard for the consequences of the act or omission.”

### **Liens etc in respect of ships and aircraft excluded**

**13.—**(1) Section 14 of the 1965 Act (protection for ships and aircraft) is amended as follows.

(2) In subsection (1), for the words from the beginning to “shall not” substitute “A claim under this Act falling within subsection (1A) is not to”.

(3) After subsection (1) insert—

“(1A) The claims are—

- (a) a claim in respect of an occurrence mentioned in section 7(2)(b), 10(1) or 11 which constitutes a breach of a person’s duty under section 7, 8, 9, 10 or 11;
- (b) a claim in respect of a breach of duty under section 7(1D), 8, 9 or 10(1A) that is constituted by an event creating a grave and imminent threat of a breach of duty under section 7, 8, 9 or 10 consisting of such occurrence as is mentioned in section 7(2)(b) or 10(1).”

### **Time for bringing claims under sections 7 to 11**

**14.—**(1) Section 15 of the 1965 Act (time for bringing claims under sections 7 to 11) is amended as follows.

(2) In subsection (1), for the words from the beginning to “section 16(3) of this Act,” substitute “Except where the claim falls within subsection (3) and subject to section 16(3E),”.

(3) In subsection (1), for “thirty years” substitute “10 years”.

(4) At the end of the section insert—

“(3) A claim in respect of injury caused by a breach of duty under section 7, 8, 9, 10 or 11 or by preventive measures taken after a breach of duty under section 7, 8, 9 or 10 may be made at any time before, but is not to be entertained if made at any time after, the expiration of 30 years from the relevant date.”

(5) After subsection (3) (inserted by paragraph (4)) insert—

“(4) Subsections (1) and (3) are subject to subsection (5).

(5) A claim made after the expiration of the period mentioned in subsection (1) or (as the case may be) subsection (3) may be entertained if the conditions in subsections (6) and (7) are satisfied.

(6) The condition is that the European Nuclear Energy Tribunal has determined that a court in the United Kingdom has jurisdiction in respect of that claim or description of claim.

(7) The condition is that the claim is brought—

- (a) within the period specified by the Tribunal, or
- (b) if the Tribunal does not specify a period, within the period of 28 days beginning with the day after the day on which the Tribunal made its determination.”

### **Nuclear matter that is stolen, lost, jettisoned or abandoned**

**15.**—(1) In section 15 of the 1965 Act, omit subsection (2) (twenty-year limitation period where breach of duty involved nuclear matter that is stolen, lost, jettisoned or abandoned).

(2) In section 19(1)(c) of the 1965 Act, omit sub-paragraph (ii) and the “and” preceding it.

### **Satisfaction of claims by operator**

**16.**—(1) Section 16 of the 1965 Act (satisfaction of claims by virtue of sections 7 to 10) is amended as follows.

(2) For subsection (1) (liability of a United Kingdom operator) substitute—

“(1) The liability of a person to pay compensation under this Act by virtue of a duty imposed on that person by section 7, 8 or 9 does not require that person to make in respect of any one occurrence or event constituting a breach of that duty payments by way of compensation exceeding in the aggregate, apart from payments in respect of interest or costs—

- (a) in the case of an occurrence or event on a prescribed licensed site constituting a breach of duty by the licensee as licensee of that site, the equivalent in sterling of 70 million euros;
- (b) in the case of an occurrence or event involving nuclear matter which is not excepted matter and which is in the course of such carriage as may be prescribed where that occurrence or event constitutes a breach of duty by a licensee as licensee of a licensed site, the equivalent in sterling of 80 million euros;
- (c) in any other case, the equivalent in sterling of 1,200 million euros.

(1ZA) If the amount payable by a person in respect of claims for compensation under this Act in respect of any one occurrence or event constituting a breach of a duty imposed on that person by section 7, 8 or 9 reaches, in the aggregate and apart from interest or costs, the equivalent in sterling of 700 million euros, that person is not required to satisfy further claims for compensation except to the extent that they are relevant claims.

(1ZB) If—

- (a) the amount so payable by a person reaches, in the aggregate and apart from interest or costs, the amount that is the limit on liability established by the law of a relevant reciprocating territory for purposes corresponding to those of subsection (1ZA), and
- (b) that amount is less than the amount specified in subsection (1ZA),

that person is not required to satisfy further claims for compensation to the extent that they are referable to that relevant reciprocating territory.”

(3) In subsection (1A) (power of Secretary of State to alter amounts)—

- (a) for “either or both of the amounts specified in subsection (1) of this section” substitute “any amount specified in subsection (1), (1ZA) or (3B)”, and
- (b) after “beginning before”) insert “or any event happening before”.

(4) In subsection (2) (liability of a relevant foreign operator for breach of a duty imposed by section 10), after “occurrence” in both places where it occurs insert “or event”.

## Satisfaction of claims by Secretary of State etc

17.—(1) Section 16 of the 1965 Act is further amended as follows.

(2) For subsection (3) (the use of United Kingdom and foreign public funds to satisfy claims for compensation) substitute—

“(3) A claim by virtue of a duty imposed on a person by virtue of section 7, 8, 9 or 10—

- (a) to the extent to which, by virtue of subsection (1) or (2), though duly established, it is not or would not be payable by that person;
- (b) which is a claim the full satisfaction of which out of funds otherwise required to be, or to be made, available for the purpose is prevented by section 21(1),

may be the subject of proceedings for compensation under this Act brought against the appropriate authority.

(3A) Payments of compensation under this Act made by the appropriate authority in such proceedings are not to exceed in the aggregate, apart from payments in respect of interest or costs, the amount of the sums made available for the purpose under section 18.

(3B) If the amount payable in respect of claims for compensation under this Act in respect of any one occurrence or event constituting a breach of a duty imposed on a person by section 7, 8, 9 or 10 reaches, in the aggregate and apart from interest or costs, the equivalent in sterling of 700 million euros, the appropriate authority is not required to satisfy further claims for compensation except to the extent that they are relevant claims.

(3C) If the amount so payable reaches, in the aggregate and apart from interest or costs, the amount that is the limit on liability established by the law of a relevant reciprocating territory for purposes corresponding to those of subsection (3B), the appropriate authority is not required to satisfy further claims for compensation to the extent that they are referable to that relevant reciprocating territory.

(3D) Subsection (3E) has effect in relation to—

- (a) a claim falling within subsection (3) to the extent that, leaving aside payments in respect of interest or costs, it is not or would not be satisfied out of sums made available for the purpose under section 18 or by means of a relevant foreign contribution;
- (b) a claim that is to any extent not satisfied because of—
  - (i) subsection (1ZA) or (1ZB),
  - (ii) a relevant foreign law made for purposes corresponding to those of subsection (1ZA) or (1ZB) which is given effect by subsection (2), or
  - (iii) subsection (3B) or (3C),to the extent that it is not satisfied;
- (c) a claim which is made after the expiration of the period applicable to that claim under section 15(1) or (3) and is not a claim entertained in accordance with section 15(5).

(3E) If the claim is established to the satisfaction of the appropriate authority, it is to be satisfied by the appropriate authority—

- (a) to such extent as Parliament may determine, and
- (b) out of funds provided by such means as Parliament may determine.

Provision made by Parliament under this subsection may make different provision for different sorts of claim.”

(3) In subsection (4) (resolution of legal questions relating to compensation beyond the requirements of the Paris and the Brussels Supplementary Conventions)—

- (a) for “subsection (3) of this section” substitute “subsection (3E)”;

- (b) for the words from “the appropriate court” to “the claim” substitute “the court that would have had jurisdiction in accordance with section 16B to determine the claim but for subsection (3E)”.
- (4) After subsection (4) insert—
  - “(4A) For the purposes of subsections (3) to (4), the appropriate authority is—
    - (a) in the case of a claim by virtue of section 9 where the government department concerned is a part of the Scottish Administration, the Scottish Ministers;
    - (b) in any other case, the Secretary of State.”
- (5) Omit subsection (5).

**Section 16 of the 1965 Act: supplementary**

18. After section 16 of the 1965 Act insert—

**“16A Section 16: supplementary**

- (1) This section applies for the purposes of section 16.
- (2) A claim for compensation under this Act in the case of a breach of a duty imposed by section 7, 8, 9 or 10 is referable to a particular relevant reciprocating territory if the claim could not be made but for its being a relevant reciprocating territory.
- (3) A claim for compensation under this Act is a relevant claim if—
  - (a) the injury or damage for which compensation is claimed is such injury or damage as is mentioned in subsection (4),
  - (b) the significant impairment of the environment by reference to which compensation is claimed by virtue of section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A is such significant impairment of the environment as is mentioned in subsection (4), or
  - (c) the preventive measures by reference to which compensation is claimed by virtue of section 11H(2) or (3) are preventive measures relating to such injury, damage or significant impairment of the environment as is mentioned in subsection (4).
- (4) The injury, damage and significant impairment of the environment referred to in subsection (3) are—
  - (a) injury, damage or significant impairment of the environment that is incurred within the territorial limits of the United Kingdom or a specified relevant territory;
  - (b) injury, damage or significant impairment of the environment that is incurred in or above the exclusive economic zone or on the continental shelf of the United Kingdom or a specified relevant territory in connection with the exploitation or exploration of the natural resources of that exclusive economic zone or continental shelf;
  - (c) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by, or by persons or property on, a ship or aircraft registered in the United Kingdom or a specified relevant territory;
  - (d) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by a national of the United Kingdom or a specified relevant territory;
  - (e) injury or damage that is incurred outside the territorial limits of any country or territory by, or by persons or property on, an artificial island, installation or structure that is subject to the jurisdiction of the United Kingdom or a specified relevant territory.
- (5) A relevant territory is a specified relevant territory if the conditions in subsection (6) are satisfied in relation to it.
- (6) The conditions are—

- (a) that the law of the relevant territory provides in pursuance of a relevant international agreement for sums additional to those referred to in section 18(1)(a) to be made available out of public funds;
- (b) that the maximum aggregate amount of compensation for which it provides in respect of an occurrence or event in pursuance of that relevant international agreement is equal to or more than that specified in section 18(1A).”

**Jurisdiction of courts in the United Kingdom**

19. After section 16A of the 1965 Act (inserted by article 18) insert—

**“16B Jurisdiction of courts in the United Kingdom**

(1) This section has effect for determining which of the High Court of Justice, the Court of Session or the High Court of Justice in Northern Ireland has jurisdiction in the case of—

- (a) a claim by virtue of a duty imposed on a person by section 7, 8, 9 or 10, or
- (b) an application for the determination of a question relating to such a claim.

(2) The High Court of Justice has jurisdiction if the claim relates to an occurrence or event constituting a breach of duty that takes place wholly or, subject to subsection (6), partly within England and Wales.

(3) The Court of Session has jurisdiction if the claim relates to an occurrence or event constituting a breach of duty that takes place wholly or, subject to subsection (6), partly within Scotland.

(4) The High Court of Justice of Northern Ireland has jurisdiction if the claim relates to an occurrence or event constituting a breach of duty that takes place wholly or, subject to subsection (6), partly within Northern Ireland.

(5) In subsections (2) to (4), a reference to England and Wales, Scotland or Northern Ireland includes a reference to—

- (a) any part of the territorial sea adjacent to that area of the United Kingdom, and
- (b) any part of the relevant maritime zone adjacent to that area of the United Kingdom and the sea bed and subsoil within, and the airspace above, such part of that zone.

(6) If apart from this subsection more than one court would have jurisdiction under subsections (2) to (4) in the case of a claim or application, one of those courts is to have exclusive jurisdiction and which of the High Court of Justice, the Court of Session or the High Court of Justice in Northern Ireland has exclusive jurisdiction is to be determined by reference to which of England and Wales, Scotland and Northern Ireland is most affected by the breach of duty.

(7) For the purposes of subsection (6), the effect on an area is to be measured by reference to the likely value of claims for compensation under this Act in respect of—

- (a) injury, damage or significant impairment of the environment incurred in the area;
- (b) the cost of preventive measures taken in the area;
- (c) injury or damage caused by preventive measures that is incurred in the area.

(8) In subsection (6), a reference to England and Wales, Scotland or Northern Ireland includes a reference to—

- (a) any part of the territorial sea adjacent to that area of the United Kingdom,
- (b) any part of the exclusive economic zone adjacent to that area of the United Kingdom and the sea bed and subsoil within, and the airspace above, such part of that zone, and
- (c) (so far as it extends beyond the exclusive economic zone) any part of the continental shelf adjacent to that area of the United Kingdom.

(9) If none of subsections (2) to (4) applies in the case of a claim or application, the court that has jurisdiction is—

- (a) if the claim relates to a person’s breach of duty as the licensee or occupier of a relevant site in England and Wales, the High Court of Justice;
- (b) if the claim relates to a person’s breach of duty as the licensee or occupier of a relevant site in Scotland, the Court of Session;
- (c) if the claim relates to a person’s breach of duty as the licensee or occupier of a relevant site in Northern Ireland, the High Court of Justice in Northern Ireland.

(10) But subsection (11) applies if, in consequence of a single occurrence or event that constitutes two or more breaches of duty under section 7, 8, 9 or 10, more than one court would have jurisdiction under subsection (9).

(11) Where this subsection applies, the court that has jurisdiction is the court that would have had jurisdiction under subsection (9) if the breach of duty likely to have the most effect were the only breach of duty.

(12) For the purposes of subsection (11), the effect of a breach of duty is to be measured by reference to the likely value of claims for compensation under this Act.

(13) The High Court of Justice has jurisdiction in the case of a claim or application which falls under a relevant international agreement to be determined by a court in the United Kingdom but to which none of subsections (2) to (4) and (9) applies.

(14) The jurisdiction of a court under this section is subject to sections 16(3E) and 17(1).

(15) In this section “territorial sea” means the territorial sea of the United Kingdom.”

#### **Jurisdiction of courts in the United Kingdom: consequential provision**

**20.**—(1) Section 17 of the 1965 Act (jurisdiction, shared liability and foreign judgments) is amended as follows.

(2) In subsection (1) (jurisdiction of court in United Kingdom excluded by certificate of Secretary of State)—

- (a) omit “or any part thereof”;
- (b) omit “or, as the case may be, of some other part of the United Kingdom”;
- (c) omit “or, as the case may be, that part thereof”.

(3) Omit subsection (2) (evidence of jurisdiction within the United Kingdom).

#### **Shared liability and foreign judgments**

**21.**—(1) Section 17 of the 1965 Act is further amended as follows.

(2) In subsection (3) (two or more persons in breach of a duty imposed under the Act or relevant foreign law: liability of the persons to be joint and several and claims to be satisfied by the persons to a certain extent before recourse to UK public funds is allowed)—

- (a) for “the same injury or damage” substitute “the same injury, damage or significant impairment of the environment or the same grave and imminent threat of injury, damage or impairment”;
- (b) for “relating to that injury or damage” substitute “relating to that matter”;
- (c) in paragraph (a) and in the words following paragraph (b), for “that injury or damage” (in both places) substitute “that matter”;
- (d) for paragraph (b) substitute—

“(b) until claims against each of those persons in respect of the occurrence or event by virtue of which the person in question is liable for that matter have been satisfied to the extent mentioned in subsection (3A),”;

(e) in the words following paragraph (b), for “sub-paragraph (i) of this paragraph” substitute “subsection (3A)(a)”.

(3) After subsection (3) insert—

“(3A) The claims referred to in subsection (3)(b) are to be satisfied—

- (a) in the case of a licensee, the Authority or the Crown up to an aggregate amount that is equal to the amount applicable under section 16(1)(a), (b) or (c) to the person in question in the circumstances in question;
- (b) in the case of a relevant foreign operator, up to such aggregate amount as may be provided for by the relevant foreign law made for purposes corresponding to section 19(1).

(3B) A person is not required under subsection (3A) to satisfy a claim for compensation to the extent that it is excluded by section 16(1ZA) or (1ZB) or (as the case may be) by the relevant foreign law made for purposes corresponding to section 16(1ZA) or (1ZB).”

(4) In subsection (5) (defence to recovery of sums due under foreign judgments), in paragraph (a), “injury or damage” substitute “injury, damage or impairment of the environment or a grave and imminent threat of injury, damage or impairment of the environment”.

### **Notice to Secretary of State of proceedings**

22. After section 17 of the 1965 Act insert—

#### **“17A Notice to the Secretary of State of proceedings**

[...]”

### **Representations by Secretary of State**

23. After section 17A of the 1965 Act (inserted by article 22) insert—

#### **“17B Representations by the Secretary of State**

[...]”

### **Proceedings brought by other countries**

24. After section 17B of the 1965 Act (inserted by article 23) insert—

#### **“17C Proceedings brought by other countries**

[...]”

### **General cover for compensation**

25.—(1) Section 18 of the 1965 Act (general cover for compensation by virtue of sections 7 to 10) is amended as follows.

(2) In subsection (1) (obligation of the United Kingdom to make funds available for satisfying claims within the Paris Convention and Brussels Supplementary Convention and calculation of the sums to be made available)—

- (a) after “occurrence”, in each place it occurs, insert “or event”;
- (b) for “subject to subsections (2) to (4B) of this section” substitute “subject to subsections (1C) to (4B)”;
- (c) for “made within the relevant period” substitute “made within the period applicable to the claim”.

(3) After subsection (1) insert—

“(1ZA) For the purposes of subsection (1) the period applicable to a claim is—

- (a) in the case of a claim that is not a claim in respect of injury, the period of 10 years beginning with the relevant date;
- (b) in the case of a claim in respect of injury, the period of 30 years beginning with the relevant date;
- (c) in the case of a claim that may be entertained in accordance with section 15(5), a period beginning with the relevant date and ending in accordance with section 15(7)(a) or (b);
- (d) in the case of a claim by virtue of such a relevant foreign law as is mentioned in subsection (1) that may be entertained in accordance with provisions of that law made for purposes corresponding to section 15(5) to (7), the period applying to that claim by virtue of such provisions of that law.

“The relevant date” has the meaning given by section 15(1).”

(4) In subsection (1A) (the aggregate amount of money to be made available from United Kingdom funds and other sources described in subsection (1))—

- (a) for “300 million special drawing rights” substitute “1,500 million euros”;
- (b) in paragraph (a), after “the occurrence” insert “or the day of the event”;
- (c) in paragraph (b), after “the occurrence” insert “or event”.

(5) In subsection (1B) (power to increase the aggregate amount)—

- (a) for “special drawing rights” substitute “euros”;
- (b) after “beginning before” insert “or an event happening before”.

(6) After subsection (1B) insert—

“(1C) Subsection (1) does not apply to a claim that need not be satisfied because of—

- (a) section 16(1ZA) or (1ZB),
- (b) a relevant foreign law made for purposes corresponding to those of section 16(1ZA) or (1ZB) which is given effect by section 16(2), or
- (c) section 16(3B) or (3C),

to the extent that it need not be satisfied.

(1D) Subsection (1) does not apply to a claim that need not be satisfied because of a relevant foreign law that is made for purposes corresponding to those of the provisions referred to in subsection (1C), to the extent that it need not be satisfied.”

(7) In subsection (2) (no contribution from United Kingdom funds for claims that are available under a relevant foreign law but are not claims within the Paris Convention)—

- (a) for “injury or damage” substitute “injury, damage or significant impairment of the environment”;
- (b) for the words from “in respect” to the end substitute “if—
  - (a) the injury, damage or significant impairment of the environment is incurred within the territorial limits of a country or territory which is not a qualifying territory,
  - (b) the injury, damage or significant impairment of the environment is incurred in, under or above the sea outside the territorial limits of such a country or territory but not—
    - (i) within the territorial limits of any qualifying territory,
    - (ii) in or above the sea within the exclusive economic zone of any qualifying territory, or
    - (iii) on the continental shelf of any qualifying territory,
  - (c) in relation to compensation that would but for this subsection be claimed under such provision of the relevant foreign law as is made for purposes corresponding to

section 11H, the measures in question were or would be taken in a place by reference to which compensation is excluded by paragraph (a) or (b).

(2A) The exceptions that have effect by virtue of paragraph (b), or paragraph (c) so far as it relates to paragraph (b), do not apply to injury or damage incurred by, or by persons or property on, a ship or aircraft registered in a qualifying territory.”

(8) In subsection (4) (no contribution from United Kingdom funds for claims based on a relevant foreign law but not made within a limitation period imposed by that law)—

- (a) for “made within the relevant period” substitute “made within the period referred to in paragraph (a) or (as the case may be) paragraph (b) of subsection (1ZA)”;
- (b) after “international agreement.” insert—

“A claim is not to be left out of account for the purposes of subsection (1) if it may be entertained as described in subsection (1ZA)(d) and is made within the period applicable to that claim.”

(9) Omit subsection (4A).

(10) In subsection (4B) (limited contribution from United Kingdom funds where claims fall to be adjudicated in a country that is party only to the Paris Convention)—

- (a) for “make the provision mentioned in subsection (4A)(a) of this section” substitute “provide in pursuance of a relevant international agreement for sums additional to those referred to in subsection (1)(a) to be made available out of public funds”;
- (b) after “any occurrence” insert “or event”;
- (c) in paragraph (b), for the words from “were substituted” to the end substitute “were substituted a reference to the amount specified in section 16(1ZA) or, if more than one such person were liable, to that amount multiplied by the number of those persons.”

(11) Omit subsection (6).

### **Special cover for licensee’s liability**

**26.**—(1) Section 19 (special cover for licensee’s liability) is amended as follows.

(2) In subsection (1) (provision by licensee for meeting claims in cover periods)—

- (a) for “the required amount” substitute “the appropriate required amount or amounts”;
- (b) in paragraph (c), for the words from “a claim made” to the end substitute “a claim made within the period applicable to the claim (as defined for the purposes of section 18(1));”
- (c) in the words following paragraph (c), for “the relevant period aforesaid” substitute “that period”.

(3) For subsection (1A) substitute—

“(1A) In this section—

“required amount”, in relation to the provision to be made by a licensee in respect of a cover period, means an aggregate amount equal to the amount applicable under paragraph (a), (b) or (as the case may be) (c) of section 16(1) to the licensee, as licensee of the site in question, in respect of an occurrence or event within that period;

“the appropriate required amount”, in relation to a claim which has been or may be duly established against a licensee as licensee of a licensed site, means the required amount appropriate to the claim.”

(4) In subsection (2) (definition of “cover period”), for “section 7(2)(b) or (c) of this Act” substitute “section 7(2)(b)”.

(5) In subsection (2A) (effect of change in amounts or regulations under section 16)—

- (a) for “section 16(1) of this Act” substitute “section 16(1)(a), (b) or (c)”;
- (b) in paragraph (a), for “section 16(1)” substitute “section 16(1)(a) or (b)”;
- (c) omit the “or” immediately following paragraph (a);

(d) in paragraph (b), for “such regulations” substitute “regulations under section 16(1)(a)”;

(e) at the end of paragraph (b) insert—

“or

(c) an alteration relating to the licensee’s carriage of nuclear matter which brings it within, or takes it outside, the description prescribed by regulations under section 16(1)(b),”.

(6) After subsection (2B) insert—

“(2C) The current cover period continues to run (and no new cover period begins) if the licensee of a licensed site becomes subject during the current cover period to an amount applicable under section 16(1)(b) or (c) otherwise than as described in subsection (2A).”

(7) In subsection (4) (discretion to direct that a new cover period begin)—

(a) after “occurrence” insert “or event”;

(b) after “occurrences” insert “or events”.

(8) In section 20 (furnishing of information relating to licensee’s cover), in subsection (1) (notice by licensee when reach three-fifths of maximum liability), for the words from “upon its appearing” to “and where” substitute—

“upon its appearing to the licensee that claims such as are mentioned in section 19(1) made in respect of any cover period falling within the period of the licensee’s responsibility have reached a notice level.

(1A) For the purposes of subsection (1), claims reach a notice level if the aggregate amount of claims appropriate to a particular required amount reaches three-fifths of that required amount.

In this subsection “required amount” has the same meaning as in section 19.

(1B) Where”.

### **Power to make arrangements with respect to licensee’s cover**

**27.**—(1) After section 20 of the 1965 Act insert—

#### **“20A Power to make arrangements with respect to licensee’s cover**

(1) The Secretary of State may make arrangements with any person for the purpose of enabling the licensee of a licensed site to make the provision required by section 19(1).

(2) The arrangements that may be made under subsection (1) include—

(a) the provision of insurance or reinsurance;

(b) the provision of an indemnity or guarantee.

(3) The power under subsection (1) does not include a power to make grants.

(4) Arrangements made by the Secretary of State under subsection (1) are to be on such terms as the Secretary of State considers appropriate.

(5) The Secretary of State is not to make arrangements under subsection (1) except with the consent of the Treasury.

(6) Sums received by the Secretary of State under arrangements made under subsection (1) are to be paid into the Consolidated Fund.

(7) Sums required by the Secretary of State for fulfilling obligations arising under arrangements made under subsection (1) are to be paid out of money provided by Parliament.

(8) If any sum required by the Secretary of State for fulfilling obligations under arrangements made under subsection (1) is not paid out of money provided by Parliament, it is to be charged on and paid out of the Consolidated Fund.

(9) Where money is paid in reliance on subsection (8), the Secretary of State must as soon as is reasonably practicable lay a report before Parliament specifying the amount paid and the arrangements under which the amount fell to be paid.”

(2) After section 20A of the 1965 Act (inserted by paragraph (1)) insert—

**“20B Statement on arrangements**

(1) As soon as reasonably practicable after making arrangements under section 20A(1), the Secretary of State is to lay before Parliament a statement about the arrangements.

(2) A statement under subsection (1) is to set out—

- (a) the licensee for whose benefit the arrangements are made;
- (b) the nature of the arrangements;
- (c) the amount that may be required to discharge the Secretary of State’s obligations under the arrangements.

(3) While the arrangements continue, the Secretary of State is to make a further statement about the arrangements as soon as reasonably practicable after the end of each report period.

(4) A statement under subsection (3) is to set out—

- (a) any changes in the arrangements;
- (b) the amount that may be required to discharge the Secretary of State’s obligations under the arrangements.

(5) “Report period”, in relation to arrangements made under section 20A(1), means—

- (a) the period of two years beginning with the day on which the statement under subsection (1) was laid before Parliament, and
- (b) each successive period of two years.”

(3) If this article comes into force before articles 3 to 26, 28 to 33 and 35, the reference in section 20A(1) of the 1965 Act to the provision required by section 19(1) of the 1965 Act is to be treated until the coming into force of those articles as a reference to the provision that would be required by section 19(1) after the coming into force of those articles.

**Cover for compensation in respect of damage to means of carriage**

**28.**—(1) Section 21 of the 1965 Act (supplementary provisions with respect to cover for compensation in respect of carriage) is amended as follows.

(2) In subsection (1) (claims in respect of damage to the means of carriage to be satisfied after other claims)—

- (a) after “an occurrence” insert “or event”;
- (b) after “of that occurrence” insert “or the day of that event”;
- (c) for “5 million special drawing rights” substitute “80 million euros”;
- (d) for “injury or damage caused by that occurrence” substitute “injury, damage or significant impairment of the environment caused by that occurrence or a grave and imminent threat of injury, damage or significant impairment of the environment caused by that event”.

(3) In subsection (1A) (increase in amount in subsection (1))—

- (a) for “special drawing rights” substitute “euros”;
- (b) after “beginning before)” insert “or any event happening before”.

(4) In subsection (2) (relevant foreign operator may be sued regardless of section 12)—

- (a) after “occurrence” insert “or event”;
- (b) for “section 12(1)(b) of this Act” substitute “section 12(1E)”.

### **Reporting of occurrences and events**

**29.**—(1) Section 22 (reporting of dangerous occurrences) is amended as follows.

(2) In subsections (1) and (2), after “occurrence”, in each place where it occurs, insert “or event”.

(3) In the heading, for “and inquiries into dangerous occurrences” substitute “dangerous occurrences and events”.

### **Registration in connection with certain occurrences and events**

**30.**—(1) Section 23 (registration in connection with certain occurrences) is amended as follows.

(2) In subsections (1) and (2), after “occurrence”, in each place where it occurs, insert “or event”.

(3) In the heading, at the end insert “and events”.

### **Amounts in euros**

**31.** For section 25B of the 1965 Act (special drawing rights) substitute—

#### **“25B Amounts in euros**

For the purpose of determining the equivalent in sterling on a particular day of a sum expressed in euros, the sum in euros is to be converted into its equivalent in sterling using the London closing exchange rate for the euro and sterling for that day.”

### **Interpretation of the 1965 Act**

**32.**—(1) Section 26 of the 1965 Act (interpretation) is amended as follows.

(2) In subsection (1)—

(a) in the definition of “occurrence”—

(i) after “16(1) and (1A),” insert “16B,”;

(ii) after “of this Act” insert “and subsection (2B) of this section”;

(b) in the definition of “relevant carriage”, in paragraph (e), after “be used” insert “or was used or was intended to be used”;

(c) in the definition of “relevant territory”, after “agreement” insert “, and includes a territory for the international relations of which such a country is responsible where the benefits of that relevant international agreement have for the time being been extended to the territory”;

(d) in the definition of “territorial limits”, for “waters” substitute “sea”.

(3) In subsection (1), at the appropriate place insert—

““continental shelf”, in relation to a country or territory, means—

(a) in the case of the United Kingdom, an area designated under section 1(7) of the Continental Shelf Act 1964;

(b) an area outside its territorial sea within which rights are exercisable in relation to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;”;

““exclusive economic zone” means, subject to subsection (1A)—

(a) in the case of the United Kingdom, any area for the time being designated by an Order in Council under section 41(3) of the Marine and Coastal Access Act 2009, or

(b) in the case of another country or a territory, the exclusive economic zone established by that country or territory in accordance with international law;”;

““preventive measure” has the meaning given by section 11H;”;

““qualifying territory” means—

(a) a relevant territory,

(b) a country or territory that has no nuclear installation within its territorial limits or its exclusive economic zone or on its continental shelf, or

(c) a relevant reciprocating territory;”;

““relevant maritime zone”, in relation to a country or territory, means—

(a) its exclusive economic zone, or

(b) in the case of a country or territory which has not established an exclusive economic zone (including the United Kingdom until the coming into force of the first Order in Council made under section 41(3) of the Marine and Coastal Access Act 2009), a zone which—

(i) is adjacent to the territorial sea of that country or territory, and

(ii) extends no more than 200 nautical miles from the baselines determined by that country in accordance with international law as the baselines from which its territorial sea is measured,

and which has been identified by that country or territory in accordance with a relevant international agreement for the purposes of establishing jurisdiction under such an agreement;”;

““relevant reciprocating territory” means a country that is not a relevant territory but whose law—

(a) with a view to reciprocating benefits conferred as regards it by parties to the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocols of 16 November 1982 and 2004, confers benefits as regards the parties to the Convention on a basis corresponding to the basis required of a party to the Convention, disregarding for these purposes the Convention’s limits on the amount of liability, and

(b) is based on principles identical to those of that Convention;”;

““significant impairment of the environment” does not include damage to the environment which is not significant enough to be eligible for compensation under this Act as damage to property, whether or not the part affected is property in respect of which such compensation can be sought;”.

(4) After subsection (1) insert—

“(1A) References in this Act to the exclusive economic zone of a country or territory, except in the definitions of “exclusive economic zone” and “relevant maritime zone” in subsection (1), include references to any zone which—

(a) is adjacent to the territorial sea of that country or territory, and

(b) extends no more than 200 nautical miles from the baselines determined by that country or territory in accordance with international law as the baselines from which its territorial sea is measured, and

in which the country or territory exercises some of the rights that are exercisable under Part V of the United Nations Convention on the Law of the Sea (Cmnd 8941).”

(5) After subsection (2) insert—

“(2A) If the presence of nuclear matter in a place is the consequence of an occurrence such as is mentioned in section 7, 10 or 11, that presence is not to be treated as constituting a separate occurrence for the purposes of any of those sections.”

(6) After subsection (2A) (inserted by paragraph (5)) insert—

“(2B) A country or territory is not to be treated, in relation to an occurrence or event in respect of which one or more persons incur liability by virtue of section 7, 8, 9 or 10 or by virtue of any relevant foreign law made for purposes corresponding to those of any of those sections, as—

- (a) a country or territory that has no nuclear installation within its territorial limits or its exclusive economic zone or on its continental shelf, or
- (b) a relevant reciprocating territory,

unless it fell within that description at the time of the occurrence or event.”

(7) In subsection (3), in paragraph (c), after “country” insert “or territory”.

(8) In subsection (3), in paragraph (c), after “relevant territory” insert—

“; or

- (d) a country or territory has at any time no nuclear installation within its territorial limits or its exclusive economic zone or on its continental shelf; or
- (e) a country is at any time a relevant reciprocating territory; or
- (f) a place is within an exclusive economic zone or relevant maritime zone or on the continental shelf of a country or territory”.

### **Consequential amendments**

33. [...]

### **Transitional provision**

34.—(1) Nothing in this Order applies in relation to—

- (a) an occurrence or event happening before the day mentioned in article 1(2), or
- (b) an occurrence that begins before that day.

(2) [Provision for new cover periods to start on that day.]

### **Repeals and revocations**

35. [...]

Signatory text

Address  
Date

*Name*  
Parliamentary Under Secretary of State  
Department

## **SCHEDULE**

Article 6

### **Measures of reinstatement outside the United Kingdom**

The following is the Schedule to be inserted as Schedule 1A to the 1965 Act—

## “SCHEDULE 1A

### MEASURES OF REINSTATEMENT OUTSIDE THE UNITED KINGDOM

#### *Measures of reinstatement*

**1.**—(1) Where as a result of a breach of a duty imposed by section 7, 8, 9 or 10 there is significant impairment of the environment within the territorial limits, in or above the exclusive economic zone, or on the continental shelf of a qualifying territory other than the United Kingdom, a person may make a claim under this Act for compensation in respect of the reasonable cost of measures of reinstatement relating to that impairment, to the extent that they are relevant measures of reinstatement.

(2) Sub-paragraph (1) is subject to paragraphs 2 to 4.

(3) A relevant measure of reinstatement, in relation to significant impairment of the environment, is a measure reasonably taken for the purpose of—

- (a) reinstating or restoring what has been destroyed or damaged as part of that impairment, or
- (b) establishing the equivalent of what has been destroyed or damaged as part of that impairment.

(4) A measure of reinstatement is reasonably taken for the purposes of this paragraph if taking that measure is appropriate and proportionate in the circumstances.

#### *Persons able to take measures*

**2.** No compensation under this Act is payable by virtue of a claim under paragraph 1 unless the person taking the relevant measures of reinstatement is entitled to take the measures in question under the law of the qualifying territory.

#### *Approval of measures of reinstatement*

**3.** Compensation under this Act is payable by virtue of a claim under paragraph 1 only if the claim relates to measures of reinstatement approved by—

- (a) a person who is competent to do so under such law of the qualifying territory as is made for purposes corresponding to section 11B (a “competent authority”), or
- (b) if the decision of the competent authority is appealed under paragraph 4, the appropriate court.

#### *Appeals against decisions*

**4.**—(1) The following persons may appeal to the appropriate court against a decision of a competent authority to approve or not to approve a measure of reinstatement—

- (a) the person who requires the approval of the competent authority for the measure;
- (b) the person whose breach or alleged breach of a duty imposed by section 7, 8, 9 or 10 caused or is alleged to have caused the impairment of the environment.

(2) Where an appeal is made under this paragraph, the competent authority concerned is entitled to appear and be heard.

(3) The court may on an appeal under this paragraph determine whether or not to approve the measure in question.

(4) The court may not approve a measure unless it is satisfied that—

- (a) there is within the territorial limits, in or above the exclusive economic zone, or on the continental shelf of the qualifying territory a significant impairment of the environment that falls to be compensated under a relevant international agreement,
- (b) the measure is, in relation to that impairment of the environment, a relevant measure of reinstatement within the meaning of paragraph 1,
- (c) the amount claimed in respect of the cost of the measure is reasonable, and

- (d) the payment of compensation under this Act by virtue of a claim under paragraph 1 is not prevented by paragraph 2.

*The appropriate court*

5. For the purposes of this Schedule, the appropriate court in the case of a particular measure of reinstatement is the court in the United Kingdom that has, or but for section 16(3E) would have had, jurisdiction in accordance with section 16B to determine any claim made under paragraph 1 in respect of that measure.”

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*