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*Number 20 of 2014*

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**Radiological Protection (Miscellaneous Provisions) Act 2014**

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[No. 20.]

*Radiological Protection (Miscellaneous Provisions) Act 2014.*

[2014.]



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## **RADIOLOGICAL PROTECTION (MISCELLANEOUS PROVISIONS) ACT 2014**

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AMENDMENT TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

## ACTS REFERRED TO

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Dumping At Sea Act 1996 (No. 14)  
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Interpretation Act 2005 (No. 23)  
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Organisation of Working Time Act 1997 (No. 20)  
Parental Leave Acts 1998 and 2006  
Protection of Employees (Part-Time Work) Act 2001 (No. 45)  
Radiological Protection (Amendment) Act 2002 (No. 3)  
Radiological Protection Act 1991 (No. 9)  
Radiological Protection Acts 1991 to 2002  
Redundancy Payments Acts 1967 to 2012  
Unfair Dismissals Acts 1977 to 2007



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Number 20 of 2014

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## **RADIOLOGICAL PROTECTION (MISCELLANEOUS PROVISIONS) ACT 2014**

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An Act to provide for the dissolution of the Radiological Protection Institute of Ireland and the transfer of all its functions, assets, liabilities and staff to the Environmental Protection Agency; to give effect to the Amendment to the Convention on the Physical Protection of Nuclear Material done at Vienna on 8 July 2005; to amend the Radiological Protection Act 1991, the Environmental Protection Agency Act 1992 and certain other enactments; and to provide for matters connected therewith.

[23rd July, 2014]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### GENERAL

#### **Short title, collective citation and commencement**

1. (1) This Act may be cited as the Radiological Protection (Miscellaneous Provisions) Act 2014.
- (2) The Radiological Protection Acts 1991 to 2002 and this Act may be cited together as the Radiological Protection Acts 1991 to 2014.
- (3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions and for the repeal of different provisions of the Act of 1991 effected by *section 3*.

#### **Interpretation**

2. In this Act—

“Act of 1991” means the Radiological Protection Act 1991;

“Act of 1992” means the Environmental Protection Agency Act 1992;

“Agency” means the Environmental Protection Agency;

“dissolution day” means the day appointed under *section 4*;

“dissolved body” has the meaning assigned to it by *section 5*;

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“Minister” means the Minister for the Environment, Community and Local Government.

### **Repeals**

3. The following provisions of the Act of 1991 are repealed:

- (a) Part II, other than sections 7, 8 and 9, and
- (b) the First Schedule.

## **PART 2**

### **DISSOLUTION OF THE RADIOLOGICAL PROTECTION INSTITUTE OF IRELAND**

#### **Dissolution day**

4. The Minister may, by order, appoint a day to be the dissolution day for the purposes of this Act.

#### **Dissolution of the Radiological Protection Institute of Ireland**

5. On the dissolution day, the Radiological Protection Institute of Ireland (in this Act referred to as the “dissolved body”) shall stand dissolved.

#### **Transfer of functions to Environmental Protection Agency**

6. (1) All functions that, immediately before the dissolution day, were vested in the dissolved body by or under any enactment shall on that day stand transferred to the Agency.
- (2) References in any enactment (other than this Act) passed before the dissolution day, or in any instrument made before the dissolution day under an enactment, to the Radiological Protection Institute of Ireland shall, on and after the dissolution day, be construed as references to the Agency.
- (3) References in any enactment or in any instrument under an enactment that, immediately before the dissolution day, were to be construed as references to the Radiological Protection Institute of Ireland shall, on and after the dissolution day, be construed as references to the Agency.

#### **Transfer of land and other property**

7. (1) On the dissolution day, all lands that, immediately before that day, were vested in the dissolved body and all rights, powers and privileges relating to or connected with such lands shall, without any conveyance or assignment, stand vested in the Agency for all the estate or interest therein that, immediately before the dissolution day, was vested in the dissolved body, but subject to all trusts and equities affecting the lands continuing to subsist and being capable of being performed.



- (2) On the dissolution day, all property (other than land), including choses-in-action, that immediately before that day, was vested in the dissolved body shall stand vested in the Agency without any assignment.
- (3) Every chose-in-action vested in the Agency by virtue of *subsection (2)* may, on and after the dissolution day, be sued on, recovered or enforced by the Agency in its name, and it shall not be necessary for the Agency, or the dissolved body, to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

**Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by dissolved body**

8. (1) All rights and liabilities of the dissolved body arising by virtue of any contract or commitment (expressed or implied) entered into by it before the dissolution day shall on that day stand transferred to the Agency.
- (2) Every right and liability transferred by *subsection (1)* to the Agency may, on and after the dissolution day, be sued on, recovered or enforced by or against the Agency in its name, and it shall not be necessary for the Agency or the dissolved body to give notice to any person of the transfer of any such right or liability.
- (3) Every lease, licence, wayleave or permission granted by the dissolved body in relation to land or other property vested in the Agency by or under this Act, and in force immediately before the dissolution day, shall continue in force on and after that day as if granted by the Agency.

**Liability for loss occurring before dissolution day**

9. (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance, before the dissolution day, of the functions transferred to the Agency by this Act shall, on and after that day, lie against the Agency and not against the dissolved body.
- (2) Any legal proceedings pending immediately before the dissolution day, to which the dissolved body is a party, that relate to a function of the dissolved body transferred by this Act, shall be continued on and after that day, with the substitution in the proceedings of the Agency, in so far as they so relate, for the dissolved body.
- (3) Where, before the dissolution day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, on and after the dissolution day, in so far as they are enforceable against the dissolved body, be enforceable against the Agency and not the dissolved body.
- (4) Any claim made or proper to be made by the dissolved body in respect of any loss or injury arising from the act or default of any person before the dissolution day shall, on and after that day, where the claim relates to functions transferred to the Agency by this Act, be regarded as having been made by or proper to be made by the Agency and

may be pursued and sued for by the Agency as if the loss or injury had been suffered by the Agency.

#### **Provisions consequent upon transfer of functions, assets and liabilities to Agency**

- 10.** (1) Anything commenced and not completed before the dissolution day by or under the authority of the dissolved body may, in so far as it relates to a function transferred to the Agency by *section 6*, be carried on or completed on or after the dissolution day by the Agency.
- (2) Every instrument made under an enactment and every document (including any certificate) granted or made by the dissolved body shall, if and in so far as it was operative immediately before the dissolution day, have effect on and after that day as if it had been granted or made by the Agency.
- (3) References to the Radiological Protection Institute of Ireland in the memorandum or articles of association of any company and relating to a function transferred by *section 6* shall, on and after the dissolution day, be construed as references to the Agency.
- (4) Any money, stocks, shares or securities transferred by *section 7* that, immediately before the dissolution day, were standing in the name of the dissolved body shall, on and after that day, on the request of the Agency, be transferred into its name.
- (5) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested in the Agency under *section 7* or *8* shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.

#### **Final accounts and final report of dissolved body**

- 11.** (1) The Agency shall, in respect of the period specified under *subsection (3)*, prepare final accounts of the dissolved body.
- (2) The Agency shall, not later than 6 months after the dissolution day, submit the final accounts of the dissolved body to the Comptroller and Auditor General for audit and shall, immediately after the audit, present a copy of the accounts and a copy of the Comptroller and Auditor General's report on the accounts to the Minister who shall, as soon as practicable thereafter, cause copies of those accounts and that report to be laid before each House of the Oireachtas.
- (3) For the purposes of *subsection (1)*, the Minister may specify a period that is longer or shorter than a financial year of the dissolved body.
- (4) The Agency shall, not later than 12 months after the dissolution day, prepare and submit to the Minister the final report of the activities of the dissolved body and the Minister shall, as soon as practicable thereafter, cause a copy of the final report to be laid before each House of the Oireachtas.

#### **Transfer of members of staff of dissolved body**

- 12.** (1) Save in accordance with a collective agreement negotiated with a recognised trade

union or staff association, the Agency shall on the dissolution day accept into its employment each person who, immediately before that day, was a member of the staff of the dissolved body, on such terms and conditions of service relating to remuneration as are not less favourable to him or her than the terms and conditions of service relating to remuneration to which the person was subject immediately before that day.

- (2) The terms and conditions to which a person is subject upon his or her becoming a member of the staff of the Agency in accordance with *subsection (1)* shall be deemed to have been determined by the Agency in accordance with section 29(2)(b) of the Act of 1992.
- (3) In relation to persons transferred to the staff of the Agency under *subsection (1)*, previous service with the dissolved body shall be reckonable for the purposes of, but subject to any exclusions in, the Redundancy Payments Acts 1967 to 2012, the Protection of Employees (Part-Time Work) Act 2001, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973 to 2005, the Parental Leave Acts 1998 and 2006 and the Unfair Dismissals Acts 1977 to 2007.

### **Superannuation**

13. (1) Save in accordance with a collective agreement negotiated with a recognised trade union or staff association and approved by the Minister with the consent of the Minister for Public Expenditure and Reform, the entitlement to any superannuation benefit of, or in respect of, a person who was accepted into the employment of the Agency in accordance with *section 12* shall be determined, and the benefit shall be calculated and paid, by the Agency in accordance with such scheme, arrangements or enactments in relation to superannuation as applied to the person immediately before the dissolution day and, for that purpose, his or her pensionable service with the Agency shall be aggregated with his or her previous pensionable service.
- (2) Save in accordance with a collective agreement negotiated with a recognised trade union or staff association and approved by the Minister with the consent of the Minister for Public Expenditure and Reform, the entitlement to any superannuation benefit of, or in respect of, a person who is a former member of the staff of the dissolved body or An Bord Fuinnimh Núicléigh (including those former members of staff of the dissolved body or An Bord Fuinnimh Núicléigh who are deceased) shall be determined, and the benefit shall be calculated and paid, by the Agency in accordance with such scheme, arrangements or enactments in relation to superannuation as applied in respect of the person immediately before the dissolution day.

### **Transitional arrangements regarding chief executive officer of dissolved body**

14. (1) Notwithstanding section 24 of the Act of 1992, the person standing appointed as the chief executive officer of the dissolved body immediately before the dissolution day shall, on that day, become a director of the Agency for a term ending not later than 30 April 2016, subject to the same terms and conditions (including terms and conditions in relation to remuneration and superannuation) as applied to that person immediately

before the dissolution day.

- (2) A person who becomes a director of the Agency under *subsection (1)* shall be paid out of moneys at the disposal of the Agency.
- (3) Subsections (8), (10) and (12) of section 24 of the Act of 1992 shall apply to a person who becomes a director of the Agency under *subsection (1)*.

#### **Savers for certain matters**

**15.** (1) A licence, authorisation, consent, approval or certificate granted, given or issued by or on behalf of the dissolved body under—

- (a) section 30 of the Act of 1991,
- (b) section 52 of the Harbours Act 1996,
- (c) the Carriage of Dangerous Goods by Road Act 1998,
- (d) the Containment of Nuclear Weapons Act 2003,
- (e) the Nuclear Test Ban Act 2008, or
- (f) regulations made under section 3 of the European Communities Act 1972,

and in force immediately before the dissolution day shall continue in force on and after that day as if granted, given or issued by the Agency for the period (if any) specified therein or, if earlier, until duly revoked, withdrawn or suspended by the Agency.

- (2) An application made to the dissolved body before the dissolution day for a licence, an amendment of a licence or the renewal of a licence under an order or regulations made under section 30 of the Act of 1991 or under regulations made under section 3 of the European Communities Act 1972 shall, where the application was not determined by the dissolved body before the dissolution day, on and after that day be treated as an application to the Agency for a licence, an amendment of a licence or the renewal of a licence under that order or those regulations, as the case may be.
- (3) An application for an authorisation or a request for consent made to the dissolved body before the dissolution day under the European Communities (Supervision and Control of Certain Shipments of Radioactive Waste and Spent Fuel) Order 2009 (S.I. No. 86 of 2009) shall, where the application or request was not determined by the dissolved body before the dissolution day, on and after that day be treated as an application or request to the Agency for an authorisation or consent under those regulations.
- (4) An application made to the dissolved body before the dissolution day for an approval or a certificate under the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 (S.I. No. 651 of 2010), shall, where the application was not determined by the dissolved body before the dissolution day, on and after that day, be treated as an application to the Agency for an approval or a certificate under those regulations.
- (5) An application made to the dissolved body before the dissolution day for approval

under the Radiological Protection Act 1991 (Ionising Radiation) Order 2000 (S.I. No. 125 of 2000) shall, where the application was not determined by the dissolved body before the dissolution day, on and after that day be treated as an application to the Agency for an approval under that order.

- (6) A code of practice prepared and issued by the dissolved body before the dissolution day under section 8(f) of the Act of 1991 shall, where it was in effect immediately before the dissolution day, remain in effect on and after that day as if prepared and published by the Agency under that section of that Act as amended by *section 16*.
- (7) The register of services maintained by the dissolved body under Article 24 of the Radiological Protection Act 1991 (Ionising Radiation) Order 2000 (S.I. No. 125 of 2000) shall, on and after the dissolution day, continue to be maintained by the Agency and a dosimetry service that, immediately before the dissolution day, stands entered on that register shall, on and after the dissolution day, remain on that register in accordance with that Order.
- (8) Every charge determined before the dissolution day by the dissolved body under section 10 of the Act of 1991 shall, where it was in operation immediately before the dissolution day, have effect on and after that day as if it had been determined by the Agency under section 49 of the Act of 1992.
- (9) A person standing appointed immediately before the dissolution day—
  - (a) as an inspector under—
    - (i) section 28 of the Act of 1991,
    - (ii) section 6 of the Carriage of Dangerous Goods by Road Act 1998,
    - (iii) section 5 of the Radiological Protection (Amendment) Act 2002,
    - (iv) regulation 22 of the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 (S.I. No. 651 of 2010), or
    - (v) regulation 11 of the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 (S.I. No. 349 of 2011),
  - (b) as an authorised officer under section 6 of the Containment of Nuclear Weapons Act 2003 or section 8 of the Nuclear Test Ban Act 2008,
  - (c) under regulation 4(5) of the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 (S.I. No. 651 of 2010),
  - (d) as an inspection body under regulation 9(4) of the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 (S.I. No. 651 of 2010),
  - (e) as an examination body under regulation 15(12) of the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 (S.I. No. 651 of 2010),
  - (f) under regulation 10(3) of the European Communities (Carriage of Dangerous

Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 (S.I. No. 349 of 2011), or

- (g) under regulation 10(10)(a) of the European Communities (Carriage of Dangerous Goods by Road and Use of Transportable Pressure Equipment) Regulations 2011 (S.I. No. 349 of 2011),

shall, on and after the dissolution day, continue to stand so appointed for the unexpired period (if any) to which the appointment relates or, if earlier, until the appointment is duly revoked.

### PART 3

#### AMENDMENTS CONSEQUENT UPON DISSOLUTION OF RADIOLOGICAL PROTECTION INSTITUTE OF IRELAND

##### CHAPTER 1

###### **Amendment of section 8 of Act of 1991**

16. Section 8 of the Act of 1991 is amended in paragraph (f) by the substitution of “to prepare and publish, in accordance with section 76 of the Environmental Protection Agency Act 1992, codes of practice” for “to prepare and issue codes of practice”.

###### **Amendment of section 9 of Act of 1991**

17. Section 9 of the Act of 1991 is amended—

- (a) in subsection (1)(a) by the insertion of “relating to radiological protection and” after “such additional functions”, and
- (b) by the insertion of the following subsection after subsection (5):

“(6) In this section, ‘radiological protection’ has the meaning assigned to it by section 3 of the Environmental Protection Agency Act 1992.”.

###### **Amendment of section 36 of Act of 1991**

18. Subsection (1) of section 36 of the Act of 1991 is amended—

- (a) in paragraph (b) by the insertion of “or” after “consequences,”,
- (b) in paragraph (c)(ii) by the deletion of “or”, and
- (c) by the deletion of paragraph (d).

##### CHAPTER 2

###### **Amendment of section 3 of Act of 1992**

19. Section 3 of the Act of 1992 is amended by the insertion of the following definitions:

“ ‘ionising radiation’ has the same meaning as it has in the Radiological

Protection Act 1991;

‘radiological protection’ means the prevention, limitation, elimination, abatement or reduction of the harmful effects of ionising radiation;”.

**Amendment of section 16 of Act of 1992**

**20.** Section 16 of the Act of 1992 is amended—

- (a) by the substitution of “authorised person or inspector” for “authorised person” in each place where it occurs, and
- (b) by the substitution of “of the Agency” for “appointed by the Agency”.

**Amendment of section 19 of Act of 1992**

**21.** Section 19 of the Act of 1992 is amended by the substitution of the following subsection for subsection (3):

“(3) The Agency shall consist of a Director General and five other Directors.”.

**Amendment of section 21 of Act of 1992**

**22.** Section 21 of the Act of 1992 is amended—

- (a) in subsection (2) by the insertion of the following paragraph:

“(g) such person having relevant experience in relation to radiological protection as the Minister shall appoint.”,

and

- (b) by the deletion of subsection (6).

**Amendment of section 24 of Act of 1992**

**23.** Section 24 of the Act of 1992 is amended in paragraph (b) of subsection (3) by the insertion of “or radiological protection matters” after “environmental matters”.

**Amendment of section 25 of Act of 1992**

**24.** Section 25 of the Act of 1992 is amended in paragraph (b) of subsection (6) by the insertion of “(other than a licence or revised licence under section 30 of the Radiological Protection Act 1991 or under regulations relating to radiological protection made under section 3 of the European Communities Act 1972)” after “revised licence”.

**Amendment of section 27 of Act of 1992**

**25.** Section 27 of the Act of 1992 is amended in subsection (5)—

- (a) in paragraph (a) by the insertion of “or radiological protection” after “environmental protection”,

- (b) in paragraph (b) by the insertion of “or radiological protection” after “environmental protection”, and
- (c) in paragraph (e) by the substitution of “education or research relating to environmental matters or radiological protection” for “environmental education or research”.

**Amendment of section 28 of Act of 1992**

**26.** Section 28 of the Act of 1992 is amended—

- (a) in subsection (2)—
  - (i) in subparagraph (iv) of paragraph (a) by the insertion of “or radiological protection” after “environmental protection”,
  - (ii) in subparagraph (vii) of paragraph (a) by the insertion of “or radiological protection” after “environmental protection”, and
  - (iii) in subparagraph (iv) of paragraph (b) by the insertion of “or matters relating to radiological protection” after “environmental matters”,and
- (b) in subsection (3) by the insertion of “or radiological protection” after “environmental protection”.

**Amendment of section 45 of Act of 1992**

**27.** Section 45(1) of the Act of 1992 is amended in paragraph (a) by the insertion of “relating to environmental protection” after “any function or any service”.

**Amendment of section 53 of Act of 1992**

**28.** Section 53 of the Act of 1992 is amended—

- (a) in subsection (1) by the insertion of “in relation to environmental protection” after “such additional functions”, and
- (b) in subsection (3) by the insertion of “in relation to environmental protection” after “supplementary functions”.

**Amendment of section 55 of Act of 1992**

**29.** Section 55 of the Act of 1992 is amended—

- (a) in subsection (1) by the insertion of “or radiological protection” after “environmental protection”,
- (b) in subsection (2)(a)—
  - (i) in subparagraph (i) by the insertion of “or radiological protection” after “environmental protection”,



- (ii) in subparagraph (ii) by the insertion of “or radiological protection” after “environmental protection”,
  - (iii) in subparagraph (iii) by the insertion of “or radiological protection” after “environmental protection”,
  - (iv) in subparagraph (iv) by the insertion of “or radiological protection” after “environmental protection”,
  - (v) in subparagraph (v) by the substitution of “issues or problems relating to environmental matters or radiological protection” for “environmental issues or problems”,
- and
- (c) in subsection (4) by the insertion of “or radiological protection” after “environmental protection”.

**Amendment of section 66 of Act of 1992**

**30.** Section 66 of the Act of 1992 is amended—

- (a) in subsection (1)(a) by the insertion of “or radiological” after “environmental”, and
- (b) in subsection (2)—
  - (i) by the insertion of “or radiological” after “environmental”, and
  - (ii) by the substitution of “of the Agency” for “under this Act”.

**Amendment of section 76 of Act of 1992**

**31.** Section 76 of the Act of 1992 is amended in subsection (1)(b) by the insertion of “or radiological protection, in particular matters referred to in section 8(f) of the Radiological Protection Act 1991” after “environmental protection”.

**Amendment of section 79 of Act of 1992**

**32.** Section 79 of the Act of 1992 is amended in subsection (1) by the insertion of “or radiological protection” after “environmental protection”.

CHAPTER 3

**Amendment of Dumping At Sea Act 1996**

**33.** Section 4 of the Dumping At Sea Act 1996 is amended by the deletion of subsections (3) and (4).

**Amendment of European Communities Regulations**

**34.** (1) The European Communities (Water Policy) Regulations 2003 (S.I. No. 722 of 2003) are amended by the deletion of “the Radiological Protection Institute of Ireland” from

the First Schedule.

- (2) The European Communities Environmental Objectives (Surface Waters) Regulations 2009 (S.I. No. 272 of 2009) are amended by the deletion of “the Radiological Protection Institute of Ireland” from Schedule 1.
- (3) The European Communities Environmental Objectives (Groundwater) Regulations 2010 (S.I. No. 9 of 2010) are amended by the deletion of “the Radiological Protection Institute of Ireland” from Schedule 1.
- (4) The European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) are amended by the deletion of the following paragraph from the definition of “public authority” in regulation 2(1):

“(n) Radiological Protection Institute of Ireland.”.

#### PART 4

#### AMENDMENTS REQUIRED BY REASON OF AMENDMENT TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

##### **Amendment of section 2 of Act of 1991**

**35.** Section 2 of the Act of 1991 is amended by—

- (a) the substitution of the following definition for the definition of “nuclear material”:

“ ‘nuclear material’ means—

- (a) plutonium, except that with isotopic concentration exceeding 80 per cent in plutonium-238,
- (b) uranium-233,
- (c) uranium enriched in the isotope 235 or 233,
- (d) uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue, or
- (e) any material containing one or more of the foregoing,

that is not being used or intended to be used for the security or defence of the State or of any other state;”

- (b) the substitution of the following definition for the definition of “the Protection Convention”:

“ ‘the Protection Convention’ means the Convention on the Physical Protection of Nuclear Material and Nuclear Facilities done at Vienna on the 26th day of October, 1979 (amended by the Convention of 2005), the text whereof is, for convenience of reference, set out in the Fourth Schedule to this Act;”

and

(c) the insertion of the following definitions:

“ ‘Act of 2001’ means the Criminal Justice (Theft and Fraud Offences) Act 2001;

‘the Convention of 2005’ means the Amendment to the Convention on the Physical Protection of Nuclear Material done at Vienna on the 8th day of July 2005 (the text whereof is, for convenience of reference, set out in the *Schedule* to the *Radiological Protection (Miscellaneous Provisions) Act 2014*);

‘damage to the environment’ includes damage to all or any of the following:

- (a) the quality of air or the atmosphere;
- (b) the quality of water, including coastal and marine areas;
- (c) the quality of soil;
- (d) land;
- (e) landscapes and natural sites;
- (f) biological diversity, including any component of such diversity, and genetically modified organisms;
- (g) health and safety of persons and conditions of human life;
- (h) cultural sites and built environment; and
- (i) the interaction between all or any of the matters specified in paragraphs (a) to (h);

‘licence holder’ means a holder of a nuclear facility licence or a nuclear material licence;

‘nuclear facility’ means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of where such facility is not being used or intended to be used for the security or defence of the State or of any other state;

‘nuclear facility licence’ means a licence, consent or authorisation granted by or on behalf of the Institute under—

- (a) section 30,
- (b) the Radiological Protection Act 1991 (Ionising Radiation) Order 2000 (S.I. No. 125 of 2000),
- (c) the European Communities (Foodstuffs Treated With Ionising Radiation) Regulations 2000 (S.I. No. 297 of 2000),
- (d) the European Communities (Supervision and Control of Certain

Shipments of Radioactive Waste and Spent Fuel) Order 2009 (S.I. No. 86 of 2009), or

- (e) the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 (S.I. No. 651 of 2010),

in respect of a nuclear facility;

‘nuclear material licence’ means a licence, consent or authorisation granted by or on behalf of the Institute under—

- (a) section 30,
- (b) the Radiological Protection Act 1991 (Ionising Radiation) Order 2000 (S.I. No. 125 of 2000),
- (c) the European Communities (Foodstuffs Treated With Ionising Radiation) Regulations 2000 (S.I. No. 297 of 2000),
- (d) the European Communities (Supervision and Control of Certain Shipments of Radioactive Waste and Spent Fuel) Order 2009 (S.I. No. 86 of 2009), or
- (e) the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 (S.I. No. 651 of 2010),

in respect of the use, storage or transportation of nuclear material;

‘sabotage’ means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly—

- (a) endanger human health, or
- (b) harm the environment,

by exposure to radiation or release of radioactive substances;

‘theft’ has the same meaning as it has in the Act of 2001;

‘unlawfully obtained’ has the same meaning as it has in the Act of 2001;

‘uranium enriched in the isotope 235 or 233’ means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;”.

#### **Amendment of section 8 of Act of 1991**

**36.** Section 8 of the Act of 1991 is amended by the substitution of the following paragraph for paragraph (a):

“(a) to exchange information and to co-operate with—

- (i) the relevant authorities of other states, and
- (ii) international organisations concerned with the physical

protection of nuclear material and nuclear facilities,  
in relation to the protection of nuclear material and nuclear facilities and related matters, including in particular where there has been a theft of or the threat of the theft of nuclear material or the sabotage of or the threat of sabotage of nuclear facilities,”.

**Amendment of section 27 of Act of 1991**

37. Section 27 of the Act of 1991 is amended in subsection (1) by the substitution of the following paragraph for paragraph (c):

“(c) the competent authority for the purposes of Article 2A(2)(b) of the Protection Convention.”.

**Amendment of section 29 of Act of 1991**

38. Section 29 of the Act of 1991 is amended in subsection (3) by the substitution of the following paragraph for paragraph (b):

“(b) to take with him a member of the Garda Síochána—  
(i) if he has reasonable grounds to apprehend any obstruction in the execution of his duties; or  
(ii) to assist in carrying out an inspection under subsection (7) of section 34B;”.

**Amendment of section 30 of Act of 1991**

39. Section 30 of the Act of 1991 is amended—

(a) in subsection (4) by the substitution of “Subject to subsections (4B) to (4E), a licence granted pursuant to an order made under this section” for “A licence granted pursuant to an order made under this section”, and

(b) by the insertion of the following subsections after subsection (4A):

“(4B) A nuclear facility licence shall be subject to such conditions as the Institute may attach to it specifying requirements for the purpose of the prevention of—

(i) the sabotage of the nuclear facility in respect of which the licence is granted; and

(ii) the theft and unlawful obtaining of nuclear material from that nuclear facility.

(4C) A nuclear material licence shall be subject to such conditions as the Institute may attach to it specifying requirements for the purposes of the prevention of sabotage, theft or unlawful obtaining of the nuclear material in respect of which the licence is granted during the use, storage or transportation of that nuclear material.

- (4D) In determining the conditions referred to in subsections (4B) and (4C), the Institute shall take account of the latest guidelines and standards relating to the physical protection of nuclear material and nuclear facilities issued by relevant international bodies.
- (4E) (a) The Minister may, after consultation with the Institute, by order specify such class or classes of nuclear material or defined quantities (by mass) of nuclear material in relation to which a nuclear material licence shall not be subject to conditions specifying requirements for the purposes of the prevention during use, storage or transportation of the sabotage, theft and unlawful obtaining of such nuclear material.
- (b) The Minister shall, in making an order under this subsection, take into account—
- (i) the nature of the nuclear material being specified,
  - (ii) the quantity of the nuclear material being specified,
  - (iii) the potential for harmful radiological effects to a person, property or the environment should the nuclear material being specified be used for the purposes of, or in connection with, the commission of an offence, and
  - (iv) the current assessment by the Institute, in consultation, as necessary, with the Garda Síochána and any other authority the Institute considers appropriate, of the threat of the theft of the nuclear material being specified.
- (c) A nuclear material licence relating to nuclear material specified by order under this subsection shall be subject to such conditions, as the Institute may attach to it, other than conditions specifying requirements for the purposes of the prevention during use, storage or transportation of the sabotage, theft and unlawful obtaining of such nuclear material.
- (d) Any nuclear material specified by order under this subsection shall be protected by the licence holder in accordance with codes of practice, safety guidelines and recommendations relating to that nuclear material issued by the Institute.”.

#### **Insertion of new sections 34A and 34B in Act of 1991**

**40.** The Act of 1991 is amended by the insertion of the following sections after section 34:

##### **“Contingency plans**

**34A.** (1) The Institute shall, from time to time, prepare plans (in this section referred to as ‘contingency plans’) setting out the procedures to be implemented in the event that there is a theft of or an accident or loss involving any nuclear material in or over the State.

- (2) The Institute may amend or revoke a contingency plan.
- (3) The Institute shall consult with the Minister prior to the preparation, amendment or revocation of a contingency plan.
- (4) The Institute may, prior to the preparation, amendment or revocation of a contingency plan, consult with the Minister for Defence, the Minister for Justice and Equality, the Minister for Health or such other Ministers of the Government or persons as the Institute considers appropriate.
- (5) A licence holder shall, if so directed by the Institute, furnish to the Institute such information as the Institute may require for the purposes of the preparation of a contingency plan.
- (6) It shall be a condition of a nuclear facility licence and of a nuclear material licence that the licence holder shall assist and co-operate with the Institute in the implementation of a contingency plan.

#### **Quality assurance**

- 34B.** (1) The Institute shall, following consultation with the Minister, formulate specifications (in this section referred to as ‘standard specifications’) for measures to prevent—
- (a) the theft, unlawful obtaining or intentional dispersal of nuclear material, and
  - (b) the sabotage of nuclear facilities.
- (2) The Institute may revoke or amend a standard specification.
- (3) In formulating, revoking or amending a standard specification, the Institute shall take account of the latest guidelines and standards relating to the physical protection of nuclear material and nuclear facilities issued by relevant international bodies.
- (4) In formulating, revoking or amending a standard specification for the purposes of paragraph (a) of subsection (1), the Institute shall take account of—
- (a) the nature of the nuclear material to which the standard specification relates,
  - (b) the quantity of the nuclear material to which the standard specification relates,
  - (c) the potential for harmful radiological effects to a person, property or the environment should nuclear material to which the standard specification relates be used for the purposes of, or in connection with, the commission of an offence, and
  - (d) the current assessment by the Institute, in consultation, as necessary, with the Garda Síochána and any other authority the Institute considers appropriate, of the threat of the theft of nuclear

material to which the standard specification relates.

- (5) In formulating, revoking or amending a standard specification for the purposes of paragraph (b) of subsection (1), the Institute shall take account of—
  - (a) the nature of the nuclear facilities to which the standard specification relates,
  - (b) the potential for harmful radiological effects to a person, property or the environment should a nuclear facility to which the standard specification relates be damaged or its operation be interfered with, and
  - (c) the current assessment by the Institute, in consultation, as necessary, with the Garda Síochána and any other authority the Institute considers appropriate, of the threat of a nuclear facility to which the standard specification relates being damaged or its operation being interfered with.
- (6) It shall be a condition of a nuclear facility licence and of a nuclear material licence that the licence holder shall comply with all standard specifications applicable to the subject matter of the licence.
- (7) The Institute shall carry out inspections of—
  - (a) nuclear facilities,
  - (b) the places at which nuclear materials are being used or stored, and
  - (c) vehicles being used to transport nuclear materials,to verify compliance with standard specifications.
- (8) Inspections of each nuclear facility and each place at which nuclear materials are being used or stored shall be carried out not less than once in every 12 month period.
- (9) Inspections of vehicles being used to transport nuclear materials shall be carried out when the Institute considers it appropriate to do so, taking into account the latest guidelines and standards relating to the physical protection of nuclear material and nuclear facilities issued by relevant international bodies.
- (10) The Institute may request the Garda Síochána—
  - (a) to advise the Institute in relation to the verification of compliance with standard specifications, and
  - (b) to assist the Institute in carrying out an inspection under subsection (7).
- (11) Where the Institute is satisfied following an inspection under subsection (7) that a licence holder is not in compliance with a standard specification, the Institute may issue a direction in writing to



that licence holder specifying the remedial action required to comply with the requirements specified in the standard specification concerned and the timeframe for compliance with the direction.

- (12) A licence holder shall comply with a direction under subsection (11) within such period as may be specified in the direction.
- (13) Remedial action under subsection (11) may include similar, alternative or additional actions to be taken by the licence holder concerned to comply with the requirements specified in the standard specification concerned.
- (14) A licence holder that is aggrieved by a direction issued under subsection (11) may, within the period of 30 days beginning on the day on which the direction is served on it, appeal to the High Court against the direction and, in determining the appeal, the judge may make any order he or she considers appropriate, including confirming the direction with or without modification, or cancelling the direction.
- (15) A person who appeals under subsection (14) shall at the same time notify the Institute of the appeal and the grounds for the appeal and the Institute shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.
- (16) Where an appeal under subsection (14) is taken, and the direction is not cancelled, the direction shall take effect on the later of—
- (a) the day next following the day on which the direction is confirmed on appeal or the appeal is withdrawn, or
  - (b) the day specified in the direction.
- (17) Where there is no appeal under subsection (14), the direction shall take effect on the later of—
- (a) the end of the period for making an appeal, or
  - (b) the day specified in the direction.
- (18) It shall be a condition of a nuclear facility licence and of a nuclear material licence that the licence holder shall comply with a direction issued to it under subsection (11).”.

#### **Amendment of section 36 of Act of 1991**

**41.** Section 36 of the Act of 1991 is amended by—

- (a) the insertion of the following subsections after subsection (1):

“(1A) A person shall not disclose confidential information that is made available to the State by another state party to the Protection Convention by virtue of the provisions of that convention unless that state party has authorised that disclosure.

- (1B) A person shall not disclose information relating to—
  - (a) any measure intended to prevent the theft, unlawful obtaining or unauthorised dispersal of nuclear material, or
  - (b) any measure intended to prevent the sabotage of nuclear facilities, unless duly authorised or as required by law.”,
- (b) the substitution of the following subsection for subsection (2):
  - “(2) A person who contravenes a provision of subsection (1), (1A) or (1B) shall be guilty of an offence.”,
- and
- (c) in subsection (3), the substitution of “In this section” for “In subsection (1) of this section”.

**Amendment of section 38 of Act of 1991**

**42.** Section 38 of the Act of 1991 is amended—

- (a) by the substitution of the following subsection for subsection (1):
  - “(1) a person who—
    - (a) receives, possesses, uses, transfers, alters, disposes of, disperses, discharges, emits or introduces nuclear material with the intention to cause—
      - (i) death or serious injury to any person,
      - (ii) substantial damage to property, or
      - (iii) damage to the environment,
    - or
    - (b) receives, possesses, uses, transfers, alters, disposes of, disperses, discharges, emits or introduces nuclear material and is reckless as to whether his or her receipt, possession, use, transfer, alteration, disposal, dispersal, discharge, emission or introduction of nuclear material could cause—
      - (i) death or serious injury to any person,
      - (ii) substantial damage to property, or
      - (iii) damage to the environment,
    - or
    - (c) steals nuclear material, or
    - (d) embezzles or fraudulently obtains nuclear material, or
    - (e) imports or exports nuclear material without lawful authority, or

- (f) damages or interferes with the operation of a nuclear facility with the intention to cause—
  - (i) death or serious injury to any person,
  - (ii) substantial damage to property, or
  - (iii) damage to the environment,
 by exposure to ionising radiation or by the release of radioactive substances, or
- (g) damages or interferes with the operation of a nuclear facility and is reckless as to whether his or her damage to or interference with the operation of a nuclear facility could cause—
  - (i) death or serious injury to any person,
  - (ii) substantial damage to property, or
  - (iii) damage to the environment,
 by exposure to ionising radiation or by the release of radioactive substances, or
- (h) does any act constituting an unlawful demand for nuclear material by the threat of the use of force, by the use of force, or by threat of any kind, or
  - (i) threatens—
    - (i) to use nuclear material to cause death or serious injury to any person, or substantial damage to property or damage to the environment, or to commit any offence under paragraph (f), or
    - (ii) to commit an offence under paragraph (c), (f) or (g) in order to compel any person, an international organisation or state to do, or refrain from doing, any act,
 shall be guilty of an offence.”,

and

- (b) by the substitution in subsection (8) of the following definition for the definition of “steals”:

“ ‘steals’ has the same meaning as it has in the Act of 2001.”.

#### **Amendment of section 40 of Act of 1991**

**43.** Subsection (2) of section 40 of the Act of 1991 is amended—

- (a) in paragraph (b) by the substitution of “€225,000” for “£100,000”, and
- (b) in paragraph (c) by the substitution of “€2,250,000” for “£1,000,000”.

## PART 5

## MISCELLANEOUS PROVISIONS

**Amendment of section 2 of Act of 1991**

44. Section 2 of the Act of 1991 is amended by the substitution of the following definition for the definition of “ionising radiation”:

“ ‘ionising radiation’ means the transfer of energy in the form of particles or electromagnetic waves of a wavelength of 100 nanometers or less, or a frequency of  $3 \times 10^{15}$  Hertz or more, capable of producing ions directly or indirectly.”.

**Amendment of section 7 of Act of 1991**

45. Section 7 of the Act of 1991 is amended by the insertion of the following subsections after subsection (3):

“(4) The Institute may have custody of, produce, process, handle, hold, store, use, manufacture, import, distribute, transport, export or otherwise dispose of radioactive substances, nuclear devices or irradiating apparatus for any purpose in connection with a function conferred on the Institute by or under—

- (a) paragraph (a) or (b) of subsection (1),
  - (b) subsection (2),
  - (c) section 29,
  - (d) section 6 of the Carriage of Dangerous Goods by Road Act 1998,
  - (e) section 7 of the Containment of Nuclear Weapons Act 2003,
  - (f) Regulation 22 of the European Communities (Transport of Dangerous Goods by Rail) Regulations 2010 (S.I. No. 651 of 2010), or
  - (g) Regulation 12 of the European Communities (Carriage of Dangerous Goods by Road and Use of Pressure Equipment) Regulations 2011 (S.I. No. 349 of 2011).
- (5) The Institute shall not require a licence under section 30 to have custody of, produce, process, handle, hold, store, use, manufacture, import, distribute, transport, export or otherwise dispose of radioactive substances, nuclear devices or irradiating apparatus for any purpose in connection with a function specified in subsection (4).
- (6) Any custody, production, processing, handling, holding, storing, using, manufacture, import, distribution, transport, export or disposal by the Institute, prior to the commencement of *section 45* of the *Radiological Protection (Miscellaneous Provisions) Act 2014*, of radioactive

substances, nuclear devices or irradiating apparatus for any purpose in connection with a function specified in subsection (4) that would, but for this subsection, be invalid by reason only of a contravention of an order made under section 30 of this Act shall be, and shall be deemed always to have been, valid and effectual for all purposes.

- (7) If subsection (6) would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.”.

#### **Amendment of section 3 of Act of 1992**

46. Section 3 of the Act of 1992 is amended by the insertion of the following definition:

“ ‘radioactive substance’ has the same meaning as it has in the Radiological Protection Act 1991;”.

#### **Amendment of section 52 of Act of 1992**

47. Section 52 of the Act of 1992 is amended by the insertion of the following subsections after subsection (2):

- “(3) The Agency may have custody of, produce, process, handle, hold, store, use, manufacture, import, distribute, transport, export or otherwise dispose of radioactive substances for any purpose in connection with its functions under paragraph (b) of subsection (1).
- (4) The Agency shall not require a licence under section 30 of the Radiological Protection Act 1991 to have custody of, produce, process, handle, hold, store, use, manufacture, import, distribute, transport, export or otherwise dispose of radioactive substances for any purpose in connection with its functions under paragraph (b) of subsection (1).
- (5) Any custody, production, processing, handling, holding, storing, using, manufacture, import, distribution, transport, export or disposal by the Agency, prior to the commencement of *section 47* of the *Radiological Protection (Miscellaneous Provisions) Act 2014*, of radioactive substances for any purpose in connection with its functions under paragraph (b) of subsection (1) that would, but for this subsection, be invalid by reason only of a contravention of an order made under section 30 of the Radiological Protection Act 1991 shall be, and shall be deemed always to have been, valid and effectual for all purposes.
- (6) If subsection (5) would, but for this subsection, conflict with a constitutional right of any person, the operation of that subsection shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.”.

## SCHEDULE

## Section 35(c)

## AMENDMENT TO THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

1. The Title of the Convention on the Physical Protection of Nuclear Material adopted on 26 October 1979 (hereinafter referred to as “the Convention”) is replaced by the following title:

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL  
AND NUCLEAR FACILITIES

2. The Preamble of the Convention is replaced by the following text:

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

CONVINCED of the need to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,

BEARING IN MIND that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of goodneighbourliness and friendly relations and co-operation among States,

CONSIDERING that under the terms of paragraph 4 of Article 2 of the Charter of the United Nations, “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,”

RECALLING the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,

DESIRING to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,

DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime,

BELIEVING that physical protection plays an important role in supporting nuclear non-proliferation and counter-terrorism objectives,

DESIRING through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities used for peaceful purposes,

CONVINCED that offences relating to nuclear material and nuclear facilities are a

matter of grave concern and that there is an urgent need to adopt appropriate and effective measures, or to strengthen existing measures, to ensure the prevention, detection and punishment of such offences,

DESIRING to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,

CONVINCED that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,

RECOGNIZING that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,

RECOGNIZING also that effective physical protection of nuclear material and nuclear facilities used for military purposes is a responsibility of the State possessing such nuclear material and nuclear facilities, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

HAVE AGREED as follows:

3. In Article 1 of the Convention, after paragraph (c), two new paragraphs are added as follows:
  - (d) “nuclear facility” means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material;
  - (e) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances.
4. After Article 1 of the Convention, a new Article 1A is added as follows:

*Article 1A*

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

5. Article 2 of the Convention is replaced by the following text:
  1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to such nuclear material while in international

nuclear transport.

2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.
3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.
4. (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.  
  
(b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.  
  
(c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.  
  
(d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.
5. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.
6. After Article 2 of the Convention, a new Article 2A is added as follows:

*Article 2A*

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:
  - (a) protecting against theft and other unlawful taking of nuclear material in use, storage and transport;
  - (b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; when the material is located outside its territory, that State Party shall act in accordance with article 5;
  - (c) protecting nuclear material and nuclear facilities against sabotage; and
  - (d) mitigating or minimizing the radiological consequences of sabotage.
2. In implementing paragraph 1, each State Party shall:
  - (a) establish and maintain a legislative and regulatory framework to govern physical protection;



- (b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and
  - (c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.
3. In implementing the obligations under paragraphs 1 and 2, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

**FUNDAMENTAL PRINCIPLE A: *Responsibility of the State***

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

**FUNDAMENTAL PRINCIPLE B: *Responsibilities During International Transport***

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

**FUNDAMENTAL PRINCIPLE C: *Legislative and Regulatory Framework***

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

**FUNDAMENTAL PRINCIPLE D: *Competent Authority***

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

**FUNDAMENTAL PRINCIPLE E: *Responsibility of the License Holders***

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g., operators or shippers).

**FUNDAMENTAL PRINCIPLE F: *Security Culture***

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

**FUNDAMENTAL PRINCIPLE G: *Threat***

The State's physical protection should be based on the State's current evaluation of the threat.

**FUNDAMENTAL PRINCIPLE H: *Graded Approach***

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities.

**FUNDAMENTAL PRINCIPLE I: *Defence in Depth***

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

**FUNDAMENTAL PRINCIPLE J: *Quality Assurance***

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.

**FUNDAMENTAL PRINCIPLE K: *Contingency Plans***

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

**FUNDAMENTAL PRINCIPLE L: *Confidentiality***

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.
- (b) Nuclear material which is not subject to the provisions of this article pursuant to subparagraph (a) should be protected in accordance with prudent management practice.

7. Article 5 of the Convention is replaced by the following text:

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.
2. In the case of theft, robbery or any other unlawful taking of nuclear material or

credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

- (a) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations;
- (b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container or recovering unlawfully taken nuclear material and shall:
  - (i) co-ordinate their efforts through diplomatic and other agreed channels;
  - (ii) render assistance, if requested;
  - (iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, co-operate as follows:
  - (a) if a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State, the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage;
  - (b) in the case of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof;
  - (c) if in the context of sub-paragraphs (a) and (b), a State Party requests assistance, each State Party to which a request for assistance is directed shall promptly decide and notify the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the

assistance requested and the scope and terms of the assistance that may be rendered;

- (d) co-ordination of the co-operation under sub-paragraphs (a) to (c) shall be through diplomatic or other agreed channels. The means of implementation of this co-operation shall be determined bilaterally or multilaterally by the States Parties concerned.
4. States Parties shall co-operate and consult, as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.
  5. A State Party may consult and co-operate, as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities.
8. Article 6 of the Convention is replaced by the following text:
    1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States that are not parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.
    2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities.
  9. Paragraph 1 of Article 7 of the Convention is replaced by the following text:
    1. The intentional commission of:
      - (a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment;
      - (b) a theft or robbery of nuclear material;
      - (c) an embezzlement or fraudulent obtaining of nuclear material;
      - (d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;

- (e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances, unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated;
- (f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
- (g) a threat:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in sub-paragraph (e),
  - (ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;
- (h) an attempt to commit any offence described in sub-paragraphs (a) to (e);
- (i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);
- (j) an act of any person who organizes or directs others to commit an offence described in sub-paragraphs (a) to (h); and an act which contributes to the commission of any offence described in sub-paragraphs (a) to (h) by a group of persons acting with a common purpose; such act shall be intentional and shall either:
  - (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence described in sub-paragraphs (a) to (g), or
  - (ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g),

shall be made a punishable offence by each State Party under its national law.

10. After Article 11 of the Convention, two new articles, Article 11A and Article 11B, are added as follows:

*Article 11A*

None of the offences set forth in article 7 shall be regarded for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

*Article 11B*

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 7 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

11. After Article 13 of the Convention, a new Article 13A is added as follows:

*Article 13A*

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes that is undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

12. Paragraph 3 of Article 14 of the Convention is replaced by the following text:

3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

13. Article 16 of the Convention is replaced by the following text:

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.
2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

14. Footnote b/ of Annex II of the Convention is replaced by the following text:

<sup>b/</sup> Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 gray/hour (100 rads/hour) at one metre unshielded.

15. Footnote e/ of Annex II of the Convention is replaced by the following text:

<sup>e/</sup> Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 gray/hour (100 rads/hour) at one metre unshielded.