

The Energy Act 2008

Consultation on The Financing of Nuclear
Decommissioning and Waste Handling
Regulations

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Department of Energy and Climate Change.

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Consultation on The Financing of Nuclear Decommissioning and Waste Handling Regulations 2010

This is a consultation on the draft regulations that are derived from Part 3, Chapter 1 of the Energy Act 2008. They seek to put in place regulations:

- to recover the costs associated with the consideration of a Funded Decommissioning Programme (FDP), including the costs of obtaining advice in relation to the FDP or in relation to the information about the FDP;
- amending the procedure as set out in the Energy Act 2008 for modifying an approved FDP;
- on reporting requirements;
- on the verification of a FDP; and
- to define the content of a Funded Decommissioning Programme.

This is also a consultation on a draft Order to make certain matters associated with a FDP designated technical matters.

The purpose of this consultation is to seek views on whether or not the proposals within this document provide clarity for both operators of new nuclear power stations and the public on the financing arrangements the operator of a new nuclear power station will have to put in place to meet the full costs of decommissioning and their full share of waste management costs.

Sections 2 – 6 of this document describe the policy intent behind each regulation with the draft regulations and draft Order set out in Annex A. The regulations will be made using the negative procedure whilst the Order will be made using the affirmative procedure.

Subject to Parliamentary procedure it is the Government's intention for the draft regulations to come into effect as soon as possible after the completion of the Parliamentary process. This is because of the need to give potential operators of new nuclear power stations clarity and understanding as to their duties under the Act and to allow for the implementation of a cost recovery process.

Running in conjunction with this consultation is a consultation on the fixed unit price for the disposal of spent fuel¹. Respondee may find it useful to read that consultation before responding to this one. Additionally respondee may find it helpful to revisit the draft Funded Decommissioning Programme guidance before responding to this consultation².

¹ *Consultation on a methodology to determine a Fixed Unit Price for waste disposal and updated cost estimates for nuclear decommissioning, waste management and waste disposal*, http://www.decc.gov.uk/en/content/cms/consultations/nuc_waste_cost/nuc_waste_cost.aspx, URN 10D/577

² Department for Business, Enterprise and Regulatory Reform, *Energy Bill 2008, Consultation on Funded Decommissioning Programme Guidance for New Nuclear Power Stations*, February 2008, URN 08/637, <http://www.berr.gov.uk/files/file44486.pdf>

Section 1: Aim of this consultation

Introduction

- 1.1 In *A White Paper on Nuclear Power* the Government confirmed its commitment to put in place legislation to ensure that operators of new nuclear power stations have secure financing arrangements in place to meet the full costs of decommissioning and their full share of waste management costs.
- 1.2 The Energy Act 2008 (“the Act”) requires the operator of any new nuclear power station to submit a Funded Decommissioning Programme (FDP) for approval by the Secretary of State before the construction of the new nuclear power station begins. The Objective of the FDP is to ensure that sufficient funds are set aside during the electricity generating lifetime of the new nuclear power station, so that the operator is able to meet in full and as and when necessary:
 - a. the full costs of decommissioning the installation; and
 - b. their full share of the costs of safely and securely managing and disposing of their waste³.
- 1.3 The programme must contain:
 - a. a Decommissioning and Waste Management Plan (DWMP) which must set out the steps⁴ the operator will take to treat, store, manage and dispose of any hazardous material during the operation of the station;
 - b. the steps to decommission the installation and clean up the site, including the steps to manage and dispose of the waste (including spent fuel) produced through its subsequent decommissioning and the estimated costs of taking these steps⁵;
 - c. a Funding Arrangement Plan (FAP) which must set out how the operator intends to meet the costs of the designated technical matters and the details of the financial security to be put in place to meet the costs identified.
- 1.4 Amongst other things the Act gives the Secretary of State the power to approve the programme, approve it subject to modifications or conditions, or to reject it. The Act makes it a criminal offence for the operator not to comply with an approved programme. It also gives the Secretary of State powers to:
 - a. require information from the operator and any other persons with obligations under the programme;

³ Department for Business, Enterprise and Regulatory Reform, *Energy Bill 2008, Consultation on Funded Decommissioning Programme Guidance for New Nuclear Power Stations*, Paragraph 5.2.2, February 2008, URN 08/637, <http://www.berr.gov.uk/files/file44486.pdf>

⁴ Referred to as the ‘technical matters’ in the Act, see Section 45(5).

⁵ Referred to as the ‘designated technical matters’ in the Act, see 45(7)(c). Designated technical matters are the steps that need to be taken to decommission the installation and clean up the site (which includes the management and disposal of waste) once the station has ceased generation for the final time. The costs of these steps need to be estimated and the operator will have to meet the costs of designated technical matters from the independent Fund.

- b. obtain information from other bodies corporate “associated”⁶ with the operator; and
 - c. to direct persons in breach of an obligation under the programme to take the action necessary to comply with their obligations⁷.
- 1.5 The Act enables the Secretary of State to require operators to carry out reviews of the FDP as specified in regulations⁸.
- 1.6 The Act gives the Secretary of State powers to make guidance and regulations about the preparation, content and implementation of a programme and the modification of an approved FDP⁹.
- 1.7 The Act also ensures that operators must inform the Secretary of State of any modification to a FDP or any modification of the conditions to which the programme is subject and seek approval for them¹⁰. It also allows the Secretary of State to propose a modification to an approved FDP or to the conditions to which it is subject.
- 1.8 The Government issued draft guidance in February 2008 to assist operators in understanding their obligations under the Act and what is required for an FDP to be approved. The draft guidance is not intended to be unduly prescriptive but instead sets out the principles which the Secretary of State will expect to see satisfied in the FDP. The draft guidance gives information on ways in which the operator might satisfy those principles.
- 1.9 The draft guidance sets out the steps which operators should address when setting out their plans for waste management, disposal and decommissioning. It also sets out the definitions and assumptions the Secretary of State considers to be sensible for ensuring a safe and prudent means of carrying out those activities. It also includes information on those costs which operators would be expected to meet from operational expenditure and those costs which are to be met by the Fund.
- 1.10 The draft guidance includes detail on the subjects which an operator should address in its programme, such as information on Fund¹¹ governance, the investment policy for a Fund, review and reporting requirements, when and how payments can be made from the Fund, and when and how a Fund can be wound up.
- 1.11 The draft guidance sets out the Government’s intention to put in place regulations:
- a. to recover the costs associated with the consideration of a FDP, including the costs of obtaining advice in relation to the FDP or in relation to the information about the FDP;

⁶ See Section 67 for the meaning of associated.

⁷ See Section 58 of the Act.

⁸ See draft regulation 7.

⁹ See Section 54 of the Act.

¹⁰ See Section 4 of this document.

¹¹ Fund means an entity constituted for the purpose of accumulating, managing and investing moneys obtained from the operator for the purpose of the Objective and includes, as the context permits or requires, any person which is a member of, or is responsible for the management of that entity.

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- b. to amend the procedure for modifying an approved FDP;
 - c. on reporting requirements; and
 - d. on the verification of a FDP.
- 1.12 It also sets out the Government's intention to make an Order to make certain matters associated with a FDP designated technical matters.
- 1.13 It is intended that the draft guidance will be published in its final form later in 2010 and that it will take account of comments received as part of this consultation and the *Consultation on a methodology to determine a Fixed Unit Price for waste disposal and updated cost estimates for nuclear decommissioning, waste management and waste disposal*¹². Because the guidance is statutory guidance a copy of the finalised version will be laid in the libraries of both Houses of Parliament. The Secretary of State must have regard to the guidance in exercising the powers to approve a programme; approve a programme with modifications or subject it to conditions or to make a proposed modification to a programme or the conditions subject to which it is approved¹³.

Approval of a FDP and the role of the Nuclear Liabilities Financing Assurance Board

- 1.14 The FDP will be submitted for approval to the Secretary of State. The Government will undertake an initial assessment of the FDP as submitted and any supporting documents, including verification reports¹⁴.
- 1.15 Using the initial assessment undertaken by the Government, the Nuclear Liabilities Financing Assurance Board (NLFAB) will review the FDP and where necessary engage with the operator on the content of the FDP. The NLFAB may request additional information or further specialist advice.
- 1.16 Once the NLFAB has the required material and any expert advice it requires, it will provide independent scrutiny and advice on the technical suitability of a FDP submitted by the operator of new nuclear power station. It will also provide advice to the Secretary of State on the regular reviews and ongoing scrutiny of financing arrangements. The costs of the NLFAB will be recovered by the Secretary of State using the cost recovery provisions set out in the draft regulations.
- 1.17 The Act allows the Secretary of State to rely on an independent third party assessment of the elements of the FDP. Whilst the NLFAB is an independent third party it is not the intention of the NLFAB to undertake the detailed verification work set out in Section 3 of this document. Instead the Secretary of State envisages the NLFAB will consider any independent third party verification submitted with the FDP as part of its overall advice to the Secretary of State.

¹² *Consultation on a methodology to determine a Fixed Unit Price for waste disposal and updated cost estimates for nuclear decommissioning, waste management and waste disposal*, http://www.decc.gov.uk/en/content/cms/consultations/nuc_waste_cost/nuc_waste_cost.aspx, URN 10D/577.

¹³ See Section 54(7) of the Act.

¹⁴ See Section 3 of this document.

How to respond

- 1.18 We want to hear from members of the public, the nuclear industry, legal and other institutions that may be involved in new nuclear power stations, non-governmental organisations (NGOs) and any other organisation or body with an interest in the requirement for operators of new nuclear power stations to have secure financing arrangements in place to meet the full costs of decommissioning and their full share of waste management costs.
- 1.19 When responding please state whether you are responding as an individual, a company or representing the views of an NGO. If you are responding on behalf of an organisation, please make it clear where the organisation's interests lie and, where applicable, how you assembled the views of members. A response form is included at Annex B.
- 1.20 The closing date for responses is **18 June 2010**. Responses should be submitted by post or email to:
- Ailsha Dilmohamed
Office for Nuclear Development
Department of Energy and Climate Change
Area 3D
3 Whitehall Place
London
SW1A 2AW
Email: decomguidance@decc.gsi.gov.uk
- 1.21 Questions about any issues raised in the consultation document should be directed to Ailsha Dilmohamed at the above address.

Confidentiality and data protection

- 1.22 Your response may be made public by the Government. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisations' IT system or included as a general statement in a fax cover sheet will be taken to apply only to information in the response for which confidentiality has been specifically requested. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.23 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (including the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 1.24 If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

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- 1.25 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Additional copies

- 1.26 You may make copies of this document without seeking permission. An electronic version is available on the DECC website¹⁵. To request further hard copies please contact:

Publications Orderline
Admail 528
London SW1W 8YT
Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 015 0030

Help with queries

- 1.27 If you have comments or complaints about the way in which this consultation has been conducted, these should be sent to:

Consultation Co-ordinator
Department of Energy and Climate Change
Area 6A
3 Whitehall Place
London
SW1A 2AW
Email: Consultation.Coordinator@decc.gsi.gov.uk

- 1.28 A copy of the consultation code of practice criteria is set out at Annex C.

What happens next?

- 1.29 Responses to this consultation will be taken into account when developing the final regulations. It is the intention for the regulations to come into effect in the autumn of 2010 and that the Government will publish a response to the consultation at the same time as the regulations are laid.

¹⁵ http://www.decc.gov.uk/en/content/cms/consultations/nuc_dec_fin/nuc_dec_fin.aspx URN 10D/574

Section 2: Cost recovery

Introduction

- 2.1 This section explains how regulations will be used to recover the costs incurred by the Secretary of State.
- 2.2 The Act allows the Secretary of State to charge an operator a fee to:
 - a. recover the costs incurred when obtaining advice in relation to the consideration/approval of a FDP¹⁶;
 - b. recover the costs incurred when obtaining advice in relation to the consideration of a modification to a FDP or a modification of the conditions to which the FDP is subject¹⁷;
 - c. recover the costs incurred when obtaining advice in relation to a review of a programme¹⁸;
 - d. recover the costs incurred when obtaining advice in relation to documents produced in response to a notice served by the Secretary of State¹⁹; and
 - e. to charge a fee where information is provided in accordance with regulations²⁰.

Cost recovery

- 2.3 When considering a FDP, a proposed modification to a FDP or a subsequent annual or quinquennial report, the Secretary of State will in the first instance seek the advice of the NLFAB. It is the intention that the full costs of the NLFAB will be recovered from the operator.
- 2.4 As part of its consideration of the programme, modification or report, the NLFAB may advise the Secretary of State that there are particular issues that require further analysis. Where such advice is received from the NLFAB the Secretary of State may contract third parties²¹ to undertake that analysis. It is the intention that the costs incurred in seeking such advice will also be recovered from the operator.
- 2.5 The fee to be charged to the operator will be the total cost of the advice provided by the third party (NLFAB or other party providing technical advice) to the Secretary of State.

Initial fee

- 2.6 The operator will be required to submit a basic fee in accordance with Table 1. Any unused moneys will be reimbursed to the operator.

¹⁶ See Section 45(8) of the Act

¹⁷ See Section 49(3) of the Act.

¹⁸ See Section 53(6) of the Act.

¹⁹ See Section 53(6) of the Act.

²⁰ See Section 3 of this document.

²¹ Such as insolvency or financial investment specialists.

Table 1: Description of fees

Provision under which a fee is payable	Description	Basic fee	Maximum supplementary fee
Section 45(8) of the Act	Submission of a Funded Decommissioning Programme for approval in accordance with section 45(3) of the Act	£75,000	£425,000
Section 49(3) of the Act	Submission of a proposal to modify an approved Funded Decommissioning Programme or the conditions to which the programme is subject, in accordance with section 49(2) of the Act	£75,000	£425,000
Section 53(6) of the Act	Submission of information provided in response to a notice served by the Secretary of State in accordance with section 53(5) of the Act	£500	£1000
Regulation 4(1)	Submission of an annual report in accordance with regulation 7(1)	£18,750	£56,250
Regulation 4(1)	Submission of a quinquennial report in accordance with regulation 7(5)	£75,000	£425,000
Regulation 4(1)	Submission of information in accordance with regulation 6(4)	£75,000	£425,000

Supplementary fee

- 2.7 Given the expected complexity of the FDP the fee charging regulations allow the Secretary of State to charge a supplementary fee where costs are incurred that are above the basic fee. The supplementary fee will reflect the costs incurred over and above the initial basic fee.
- 2.8 For example where the costs incurred are greater than the initial fee, the regulations allow for the full amount of the additional cost incurred by the Secretary of State to be charged to the operator.
- 2.9 The level of the fees were arrived at after considering the costs associated with other regulated industries such as the off shore oil and gas industry.

Invoicing requirements

- 2.10 Where the Secretary of State incurs costs that will result in the operator being required to pay a supplementary fee, a statement will be issued to the operator (as costs are incurred) within thirty working days of the end of an operational quarter (with the quarters being 1 April – 30 June; 1 July – 30 September; 1 October – 31 December; and 1 January – 31 March). The supplementary fees payable by the operator must be paid within 30 days from the date of the statement provided by the Secretary of State.
- 2.11 Statements provided to the operator will include a statement setting out the initial fee paid and a summary of the work provided by the third party and the costs incurred. Fees are required to be paid by electronic transfer and receipt of the fees will be confirmed in writing.

Amending fees regulations

- 2.12 Any review of the cost recovery arrangements will consider amongst other things, the costs of the NLFAB, and the effectiveness of the arrangements in recovering costs and changes to government policy on fee-charging.
- 2.13 Significant changes to the fees structure will be preceded by a consultation.

Non-payment of fees

- 2.14 Where there has been a requirement to pay a fee and that fee has not been paid the Secretary of State will seek to recover those fees from the operator in the County Court.

Question 1:

Do the proposals create a transparent and effective means of recovering the costs incurred by the Secretary of State in relation to the matters described in Table 1?

Could the cost recovery proposals be improved to enhance their transparency and effectiveness?

Is the proposed maximum fee set at a suitable level?

In answering these questions please give your reasons.

Section 3: Independent third party verification

Introduction

- 3.1 The Act allows the Secretary of State to rely on a third party assessment of the FDP and to make regulations that set out the circumstances when the Secretary of State may rely on that assessment.
- 3.2 The purpose of doing so is to provide the Secretary of State with additional assurance as to the accuracy of the operator's estimates of the costs of the designated technical matters and to provide an independent assessment of the level of prudence made for the financing of the designated technical matters²².
- 3.3 The regulations made under the Act will set out the matters to be verified, when verification will be required, the circumstances in which verification can be relied upon and the scope and content of verification.
- 3.4 The assessment will be used by the Secretary of State and the NLFAB when considering the FDP. As a result, verification will form an important part of the FDP as recommendations and conclusions provided as part of the verification can be relied upon by the Secretary of State in making a decision in relation to a FDP. The assessments provided by the verification may also form the basis for additional requests for information on the FDP by the Secretary of State.

Matters to be verified

- 3.5 To provide this additional assurance the following aspects of the FDP are to be verified:
 - a. the costs associated with the designated technical matters; and
 - b. the level of prudence made for the financing of the designated technical matters.
- 3.6 The Secretary of State will expect a verification report to be submitted to the Secretary of State at the same time as:
 - a. a FDP is submitted for approval;
 - b. a modification to an approved FDP is proposed by the operator or by any other person with obligations under the FDP²³;
 - c. a quinquennial report is submitted to the Secretary of State for review;
 - d. an annual report is submitted to the Secretary of State for review.

²² Designated technical matters are the steps that need to be taken to decommission the installation and clean up the site (which includes the management and disposal of waste) once the station has ceased generation for the final time. The costs of these steps need to be estimated and the operator will have to meet the costs of designated technical matters from the independent Fund.

²³ To which Section 49 of the Act applies.

Scope/coverage of verification of the FDP submitted for approval

- 3.7 The verification should take the form of a report, be signed by the verifier(s) and be addressed to the Secretary of State. The matters to be verified are the cost estimates of the designated technical matters and the level of prudence for the financing of the designated technical matters.
- 3.8 The regulations require the operator to submit the report but the Secretary of State will expect the Fund to satisfy itself of the assessment of the technical matters, the cost estimates of the designated technical matters and the financing arrangements of the designated technical matters.
- 3.9 The level of detail of the verification will need to be such that the Secretary of State is able to rely on it when exercising the duty to ensure that prudent provision is made for the FDP²⁴. However, it should be commensurate with what is being verified. For example the Secretary of State would expect the verification of a FDP submitted for approval to be more detailed than the verification of an annual report.

Verification of a modification to an approved programme

- 3.10 Where a modification to which Section 49 of the Act applies, before approving the modification the Secretary of State will need to understand the effect of the modification on the cost estimates of the designated technical matters and its impact on the financing of the designated technical matters²⁵.
- 3.11 As a result, as part of the proposed modification the Secretary of State will expect the operator to have undertaken a review as to the adequacy of the FDP as a result of the proposed modification. The estimates of the costs of the designated technical matters should be updated as necessary.
- 3.12 The revised estimates of the costs of the designated technical matters and the level of prudence of the financing of the designated technical matters, as a consequence of the modification should be assessed by the verifier.

Verification of the quinquennial report

- 3.13 The operator is required to conduct quinquennial reviews of the FDP which should be submitted to the Secretary of State. The reviews should be carried out with the aim of ensuring that the technical matters and cost estimates of the designated technical matters remain accurate and up to date and that it reflects the current state of the nuclear power station to which it relates²⁶.

²⁴ See Section 46(4) and Section 49(7) of the Act for example.

²⁵ See draft regulation 5(3)(b).

²⁶ See Annex A of the draft guidance, *Energy Bill 2008, Consultation on Funded Decommissioning Programme Guidance for New Nuclear Power Stations*, February 2008, URN 08/637, <http://www.berr.gov.uk/files/file44486.pdf>, Department for Business, Enterprise and Regulatory Reform.

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- 3.14 The quinquennial report should contain a detailed summary of the changes (operational or technical) to the site which have had an effect on the cost estimates of the designated technical matters²⁷ as set out in the annual reports of the previous five years.
 - 3.15 The revised estimates of the costs of the designated technical matters and the level of prudence of the financing of the designated technical matters, as a consequence of the quinquennial review should be assessed by the verifier.
 - 3.16 The Secretary of State will expect the Fund to satisfy itself of the assessment of the technical matters, the cost estimates of the designated technical matters and the financing arrangements of the designated technical matters.

Verification of the annual report²⁸

- 3.17 An annual report on the FDP is required to ensure that the FDP remains prudent during the period between quinquennial reviews and as such it is to be verified. The verification of the annual report should be carried out with the aim of providing assurance on the content of the annual report. It should verify any changes to the technical matters, including the cost estimates of the designated technical matters, the Fund's performance over the preceding period and verify the details of any notifications of modifications that are below the materiality threshold described in draft regulation 6.

Statement of assurance

- 3.18 The verification report submitted by the operator should contain a 'statement of assurance'. Its purpose is to set out the details of any recommendations made by the verifier and to confirm whether or not the document which has been assessed gives a 'true and fair view' of the estimate of the costs of the designated technical matters and of the prudence of the financing of the designated technical matters. The full requirements of the 'statement of assurance' are set out in draft regulation 5(6).

Additional information required

- 3.19 Where there is more than one verifier, (perhaps where different organisations verify the technical matters and the financing of the designated technical matters), statements of assurance should be submitted for each element of the verification.
- 3.20 The verification report should include the date of the appointment of the verifier (or verifiers); details of the relevant qualifications, the experience of the verifier and the details of any recommendations made by the verifier (or any previous verifier).

²⁷ As defined by draft regulation 3

²⁸ The significant difference between the annual report and the quinquennial report is that the annual report is intended to be a 'snap-shot' of the FDP at the time the review is undertaken and not a review of the technical matters and the cost estimates of the designated technical matters. This is reflected in the difference in the fee charging provisions for example.

Change of verifier

- 3.21 Where there is a change in verifier the operator and the Fund should notify the Secretary of State in writing as soon as is reasonably practicable. This should include an explanation as to why the change in verifier has occurred. The notification should also include the details of the new verifier and set out the competences of the new verifier.
- 3.22 Where a verifier is replaced by another, the new verifier is required to include in the next statement of assurance how any of the recommendations/conclusions contained within the previous statement of assurance have been implemented and where they have not an explanation as to why not.

Competences

- 3.23 Although not set out in regulations, the purpose of the paragraphs below is to set out who the Secretary of State would expect to undertake the assessment and provide the verification.
- 3.24 A verifier can be a person or organisation that is independent of the operator and has the competence to undertake the verification. The verifier should operate under appropriate levels of professional indemnity cover and be removed from pressures of a financial or operational nature, which could affect sound judgement.
- 3.25 Verifiers should have professional experience of the nuclear industry and should have direct knowledge of the specific technical content contained within the FDP.
- 3.26 The verifier should have experience of the appropriate regulatory standards (be they financial or safety/environmental) and should be able to provide written evidence of the qualifications, experience (which can be checked) and relevant accreditations that make them qualified to complete the verification. The verifier should be able to demonstrate to the Secretary of State their awareness of existing best practice in matters related to the FDP and their independence from the operator.
- 3.27 The statement of assurance should contain a summary of the verifier's fitness to undertake the verification, a declaration of the independence of the verifier and set out how the verification has been completed against current best practice, for example, by providing evidence as to how the verification meets any relevant industry standards.

Question 2:

Do the proposals create an effective framework for verification to take place?

Are the responsibilities and requirements clear?

Is it clear how the Secretary of State would expect the verification to take place?

In answering these questions please give your reasons.

Section 4: Modifications to an approved programme

Introduction

- 4.1 Over time events may arise that could change the estimate of the costs of decommissioning and the management and disposal of waste. For example, as the station gets closer to decommissioning additional cost streams could be identified which may require the operator to modify the FDP.
- 4.2 Alternatively the need to modify the FDP could be triggered as a result of experience elsewhere, for example if evidence is produced that shows that the operator's estimating procedure is tending to overestimate costs (i.e. major under-spends on an existing decommissioning project). Another trigger for a modification to a FDP could be a change in the operator's fuel strategy.
- 4.3 This section therefore describes the Government's proposals on regulations to set a materiality threshold for modifications to an approved FDP.
- 4.4 Section 49 of the Act sets out the procedure for modifying an approved FDP whilst Section 50 provides that regulations can be made to disapply Section 49 and that such "regulations may, in particular describe a modification by reference to its financial consequences"²⁹.
- 4.5 The purpose of introducing regulations that disapply Section 49 of the Energy Act 2008 is to ensure that the Secretary of State need only approve "material" changes to the FDP before they are made. This will help ensure that responsibility and ownership of the FDP remains with the operator and ensure that the Secretary of State only becomes involved in approving modifications that have a material effect on the FDP.

Definition of a modification

- 4.6 It is envisaged that a modification to the FDP which is captured by the regulation may result from any of the following:
 - a. the modification or removal of, or change or amendment to, a safety case, process, practice or procedure;
 - b. the introduction, in whole or in part, of any new safety case, process, practice or procedure;
 - c. the modification, replacement, removal or decommissioning of, or change to any building or fixed or moveable part (or part thereof) which was installed or commissioned at the plant;
 - d. the construction, installation or commissioning of any building or fixed or moveable plant at the nuclear power station; or
 - e. the carrying out at the plant of any non-routine tasks.

²⁹ See Section 50 of the Act.

Materiality threshold

- 4.7 There must be transparency, separation and separate reporting of the two sets of liabilities (decommissioning and waste management on the one hand and waste disposal on the other). Hence it is proposed that a materiality threshold apply separately to changes in the decommissioning and waste management liability and the waste disposal liability. This is why draft regulation 3 requires that the estimates of the costs of the designated technical matters be stated in two parts i.e. the costs associated with disposal on the one hand and the costs of the decommissioning and waste management on the other.
- 4.8 It is proposed that the materiality threshold be set at a 5%± increase of the net present value (adjusted for inflation) of the then current estimate of the decommissioning and waste management liability and the waste disposal liability. In other words, the basis for identifying whether or not a change to the nuclear power station will result in a modification to the FDP for which prior approval is required, is to consider individually the affect of the change of the station on the decommissioning and waste management liability and the waste disposal liability. Where the change results in an increase equal to or greater than the materiality threshold, prior approval from the Secretary of State will be required.
- 4.9 The Government's updated estimates of the costs of decommissioning, waste management and waste disposal (for a generic 1.35GW PWR operating for 40 years) are:
- decommissioning and waste management costs in the range £800m – £1,800m (undiscounted); and
 - waste disposal costs in the range £600m – £1100m (undiscounted)³⁰.
- 4.10 Therefore a materiality threshold of 5% equates to a change of £40m – £90m in decommissioning and waste management liabilities, and a change of £30m – £55m in waste disposal liabilities. The Government considers that modifications to an FDP resulting in changes in estimated liabilities of this size are likely to be infrequent and the result of significant operational or technical changes. Such changes are considered to be of sufficient magnitude as to require prior approval by the Secretary of State.
- 4.11 Where the modification is less than the threshold prior approval is not required and the Secretary of State should be notified of the change in the next report³¹.

Cumulative financial consequences of modifications

- 4.12 The requirement for prior approval also applies to cumulative modifications to the two sets of liabilities. Cumulative modifications are defined as individual changes to the FDP that are below the 5%± threshold but when considered cumulatively result in the threshold being met. The recording of these changes should start from the first approval of the FDP and will be reset at the last modification (to which Section 49 applies) or the last quinquennial review, whichever is the later.

³⁰ Consultation on a methodology to determine a Fixed Unit Price for waste disposal and updated cost estimates for nuclear decommissioning, waste management and waste disposal, http://www.decc.gov.uk/en/content/cms/consultations/nuc_waste_cost/nuc_waste_cost.aspx, URN 10D/577

³¹ See Section 6 of this document.

- 4.13 Where there have been a number of technical changes which cumulatively give rise to a change in either of the operator's decommissioning/waste management or waste disposal liability of 5%± or more of the net present value (adjusted for inflation) of the most recently agreed cost estimates of the liabilities (e.g. the most recent quinquennial review or modification to a programme for which prior approval is needed), then the draft regulations require a modification to be submitted for approval.
- 4.14 The effect of the cumulative change modification will be to require the operator to monitor the financial consequences of all modifications to the FDP.

Notification

- 4.15 Where it is envisaged that there is likely to be an event that results in a change to one or both sets of liabilities that will require a modification to the FDP and that change is equal to or in excess of the materiality threshold, the Secretary of State will expect the operator and those persons responsible for managing the Fund to notify him in writing of that event, provide details of the effect on the operator's liabilities and the financial consequences of such a change to the FAP, and, propose for approval by the Secretary of State a modification to the Funded Decommissioning Programme³².
- 4.16 The Secretary of State will decide whether or not the modification is to be made having consulted the Health and Safety Executive³³ and the Environment Agency³⁴. The purpose of consulting with the Health and Safety Executive and the Environment Agency is to ensure that any decision made by the Secretary of State does not have a negative impact on any of the matters regulated by those bodies.
- 4.17 Where the proposed modification has an effect on the financing arrangements the Secretary of State will seek advice from the NLFAB on the revised financing arrangements that result from the proposed modification.

Verification of modification to a FDP that requires prior approval

- 4.18 The Secretary of State will expect any proposed modification that is submitted for approval to have been verified in accordance with Section 3 of this document.

Exemptions from the requirement for prior approval

- 4.19 As a result of the proposed regulations and in a business-as-usual scenario, where there is a requirement to make a modification to the FDP for which prior approval is required, the operator will have to provide details of the proposed modification to the Secretary of State.
- 4.20 However in extremis, a situation may arise where a technical or operational change to the station which may have an effect on the FDP needs to be implemented before prior approval from the Secretary of State can be sought.

³² As set out in Section 49 of the Act.

³³ Or successor body.

³⁴ As the Secretary of State is required to do under Section 49(8) of the Act.

- 4.21 The regulations therefore allow an operator to make a modification to the FDP without the prior approval of the Secretary of State where seeking prior approval to implement the modification to the Funded Decommissioning Programme would result in the operator breaching a condition of the nuclear site licence; an authorisation under the Radioactive Substances Act 1993 or an environmental permit or any enactment.
- 4.22 Where a situation described in paragraph 4.21 arises the operator is required to notify the Secretary of State as soon as reasonably practicable of:
- a. the full details of the modification;
 - b. the effect of the modification on the Funded Decommissioning Programme;
 - c. the reasons why paragraph 4.21 applies; and provide
 - d. supporting material for the reasons relied on.

Modifications of a FDP that are below the materiality threshold

- 4.23 Where a modification does not increase or decrease either liability by an amount that is equal to or greater than the materiality threshold, either on a cumulative basis or otherwise, Section 49 of the Act does not apply³⁵. The Secretary of State should be notified of such a modification(s) in the operator's annual report (or quinquennial report where relevant). The notification should describe the nature of the modifications and the impact on the cost estimates and the financing arrangements. The Act allows the Secretary of State to request information about such changes which will help ensure that the Objective of the FDP continues to be met i.e. that the operator is able to meet in full as and when necessary the full costs of decommissioning the installation and their full share of the costs of safely and securely managing and disposing of their waste.
- 4.24 The Government believes that these proposals are prudent given the requirements that are in place to ensure that the Objective of the FDP can be met. For example the NLFAB will scrutinise the FDP, before advising the Secretary of State on its suitability while the operator will be required to produce an annual report detailing changes which will impact on the eventual costs. The operator must also carry out in-depth reviews every five years and update their FDP and associated cost estimates as necessary. The Fund will also be expected to produce reports setting out the performance of the financing arrangements over a given period. Additionally the Secretary of State has to be notified of any modification to the FDP that is below the threshold. Together these requirements will help ensure that changes to the FDP are monitored.
- 4.25 Other layers of protection lie in the Secretary of State's powers to request additional information on the FDP where there is reason to believe that the FDP is not being complied with; or where there is reason to believe that it will not be possible for an obligation under the programme to be met or because there is reason to believe that the programme does not make prudent provision for the financing of the designated technical matters.

³⁵ Section 49 of the Act sets out the procedure for modifying an approved FDP.

- 4.26 As a result of this information and where there has been a breach of the FDP the Secretary of State could use the power of direction to require someone with obligations under the FDP to bring the FDP back under compliance.
- 4.27 In extremis, by using the power to modify a FDP the Secretary of State could place associated bodies under an obligation to provide some form of additional security in the event that the Fund value falls short and the operator is unable to make good any shortfall. That said, the Secretary of State does not expect that the use of this power will be necessary because when approving the FDP he would have had to be satisfied that there was adequate security already in place to meet the financing obligations of the FDP.
- 4.28 Given these layers of protection in place, the Government believes that the materiality threshold proposed in these regulations is a prudent one.

Question 3:

It is Government's intention that only changes that meet the definition of the materiality threshold should require the Secretary of State's prior approval.

Given the checks and balances in place,(annual and quinquennial reviews, independent verification, and in extremis, the Secretary of State's power to modify), is the proposed materiality threshold set at a level that will capture strategic changes to the FDP but still protect the taxpayer?

Is the proposed approach for the notification of modifications to a FDP that are below the materiality threshold a reasonable one?

Does the definition of the content of a funded decommissioning programme in draft regulation 3 accurately define the liabilities to be captured by the modification?

In answering these questions please give your reasons.

Section 5: Designated technical matters

Introduction

- 5.1 The Act defines designated technical matters as the steps that need to be taken to decommission the installation and clean up the site (which includes the management and disposal of waste) once the nuclear power station has ceased generation for the final time. The operator will have to provide security for the costs of designated technical matters.
- 5.2 The Act also contains an Order making power that enables the Secretary of State to designate certain waste management and disposal steps which are undertaken during the generating life time of the station as “designated technical matters”. The Act also allows the Secretary of State to designate activities such as steps preparatory to decommissioning as “designated technical matters”.
- 5.3 Designation means that the operator will be required to provide cost estimates in relation to these activities, and details of the security to be put in place to meet those costs estimates.

Designated technical matters

- 5.4 The Government proposes that the matters to be designated during the generating lifetime of the station are:
 - a. the construction and maintenance³⁶ of interim stores for intermediate level waste (ILW) not initially constructed as part of the station;
 - b. the construction and maintenance of interim stores for spent fuel that are not initially constructed as part of the station; and
 - c. the preparatory steps undertaken for decommissioning before the station ceases generating electricity for the final time.
- 5.5 Before approving a FDP the Government will want to ensure that the operator has considered the costs³⁷ associated with future ILW and spent fuel stores both during operation and at the end of generation. The Government will want to ensure that when the time arises to construct the stores, that there are the necessary moneys available for their construction. The way that the Government proposes to do this is to classify those waste and spent fuel stores that are not built as part of the initial construction of the station as designated technical matters. As a result the operator will be required to take into account the construction and maintenance costs of those future stores at the outset. Because the stores are classified as designated technical matters the operator will also have to provide security for the construction of those stores. This will ensure that money is available to construct the stores at the relevant time.

³⁶ Maintenance costs are taken to mean those costs that are required to be incurred so that the integrity of the store remains such that it is able to safely and securely store the waste and spent fuel for the required period of time. It is not considered to include ongoing operational expenditure relating to the stores such as, for example, security and utilities.

³⁷ These costs would include construction and decommissioning costs.

- 5.6 Where the interim ILW or spent fuel store is constructed as part of the initial construction of the nuclear power station the costs for those stores can be met from the capital expenditure costs of the station; the ongoing maintenance and operational costs will be met from the operating expenditure of the station. It is appropriate to meet these costs from operational expenditure because they are relatively small³⁸. Likewise the ongoing operational costs of the ILW and spent fuel stores that are designated technical matters can be met from operational expenditure. However, at the end of generation the costs for the operation and maintenance of the ILW and spent fuel stores have to be met from the Fund³⁹.
- 5.7 Given the Objective of ensuring that moneys are available to meet the liabilities as and when they fall due, the Government considers the construction and maintenance of interim stores for ILW and spent fuel and the costs of planning for decommissioning sufficiently significant to make them designated technical matters even though these costs will arise while the nuclear power station is operational.
- 5.8 This approach will ensure that money is available to carry out the relevant work during operations, which could otherwise be competing with revenue-generating activities and may not get prioritised.

Question 4:

Do the proposed designations strike the right balance between protecting the taxpayer on the one hand whilst avoiding undue administrative burdens on the operator? Please give your reasons.

³⁸ The Government estimates that the storage costs are estimated to be no more than 5- 10% of the total annual operating cost of the station.

³⁹ Department for Business, Enterprise and Regulatory Reform, *Energy Bill 2008, Consultation on Funded Decommissioning Programme Guidance for New Nuclear Power Stations*, February 2008, URN 08/637, <http://www.berr.gov.uk/files/file44486.pdf>

Section 6: Reporting requirements

Introduction

- 6.1 This section sets out the requirements for an operator's annual and quinquennial report. It also proposes to replace the quinquennial report with a more frequent in-depth report.
- 6.2 The purpose of the reports is to ensure that the operator's waste and decommissioning liability can be regularly monitored and assessed against the size and performance of the Fund.
- 6.3 Regulations on the reporting requirements will also allow the Secretary of State to recover the costs associated with the review of the reports.

Content of annual report

- 6.4 The report should contain the notifications of any modification to the FDP that are below the materiality threshold described in Section 4. It should also include details of other modifications above the materiality threshold which have occurred over the previous year; the details of the performance of the Fund and the details of any changes to the cost estimates of the designated technical matters.
- 6.5 The annual report is to be prepared by the operator. However the Secretary of State would expect the persons responsible for managing the Fund to review the operator's annual report to satisfy themselves, with reference to the information in the operator's annual report, that no material modifications to the FDP have occurred in the previous annual period. The persons responsible for managing the Fund would then be expected to prepare and provide the information in relation to the performance of the Fund.
- 6.6 The Secretary of State would expect the annual report to be verified and submitted to him within two calendar months following the end of the period to which it relates.
- 6.7 During the decommissioning phase, the operator and the persons responsible for managing the Fund will be expected to provide annual reports as outlined in paragraph 5.8.5 of the draft guidance⁴⁰.

Content of quinquennial report

- 6.8 The report replaces the annual report of that year and should contain those matters described in paragraphs 6.4 – 6.5 above.
- 6.9 The report should review the technical matters, the cost estimates of the designated technical matters and the adequacy and performance of the financing arrangements for the designated technical matters. The operator should submit its report of the in-depth review of the technical matters to the persons responsible for managing the Fund promptly after it has been prepared.

⁴⁰ Department for Business, Enterprise and Regulatory Reform, *Energy Bill 2008, Consultation on Funded Decommissioning Programme Guidance for New Nuclear Power Stations*, Paragraph 5.2.2, February 2008, URN 08/637, <http://www.berr.gov.uk/files/file44486.pdf>.

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- 6.10 The persons responsible for managing the Fund should be satisfied with the adequacy and the accuracy of the information in the operator's report and the proposed modifications to the DWMP and approve, or, as necessary, suggest modifications to the operator for proposed amendments to the DWMP.
- 6.11 The persons responsible for managing the Fund should provide a detailed summary of the size and performance of the Fund based on the annual reports for each of the previous five years and taking into account, for example, a change in investment policy or share price fluctuations affecting the value of the investments. The persons responsible for managing the Fund should also carry out a review of the expected performance of the Fund and the likelihood that the Fund would generate sufficient moneys to discharge the operator's liabilities in full as and when those moneys were needed.
- 6.12 The Secretary of State would also expect those persons responsible for managing the Fund to review the FAP in the light of the changes referred to and to also consider, in particular, what, if any, modifications to the FAP were necessary to ensure the Fund meets the operator's liabilities. The Secretary of State would also expect those persons to review and take into account actual and expected investment returns and expected station life.
- 6.14 The Secretary of State would expect the quinquennial report to be addressed to him and to be drawn up and submitted to him within three months following the end of the period to which it relates.
- 6.15 The quinquennial review will replace the annual review for the year for which it is prepared.

Question 5:

Is an annual and quinquennial reporting period appropriate? Are the timescales for submitting the reports adequate?

Is there any additional information that should be included in either report?

Given the nature of the liabilities and the content of the quinquennial report, should the in-depth quinquennial review be undertaken on a more frequent basis? If yes, what are your reasons for undertaking a more frequent review and when should they take place?

Annex A: Draft Regulations

STATUTORY INSTRUMENTS

**** No. ******

NUCLEAR ENERGY

The Financing of Nuclear Decommissioning and Waste Handling Regulations 2010

Made	***
Laid before Parliament	***
Coming into force	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 50(1), 54(1), 54(2) and 55(1) of the Energy Act 2008⁽¹⁾.

In accordance with sections 50(2) and 54(8) of that Act he has consulted the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland in so far as these Regulations relate to a function conferred on that body by or under an enactment.

Citation and commencement

1. These Regulations may be cited as the Financing of Nuclear Decommissioning and Waste Handling Regulations 2010 and come into force on [****].

Interpretation

2. In these Regulations—

“the Act” means the Energy Act 2008 and a reference to a numbered section is to that section of the Act;

“approved modification” means a modification approved in accordance with section 49.

Content of funded decommissioning programmes

3. (1) The estimates of costs of the designated technical matters must be stated in two parts in the funded decommissioning programme.
- (2) Part 1 is to contain the estimates of costs for the disposal of hazardous material (within the meaning of section 37 of the Energy Act 2004) for the purposes of section 45(5)(b).
- (3) Part 2 is to contain the estimates of costs for all other designated technical matters.

⁽¹⁾ 2008 c.32.

Fees payable in relation to funded decommissioning programmes

4. (1) A fee must be paid by a site operator to the Secretary of State in relation to funded decommissioning programmes under sections 45(8), 49(2), 53(6) and where—
 - (a) an annual report under regulation 7(1),
 - (b) a quinquennial report under regulation 7(5), or
 - (c) information under regulation 6(4),is delivered to the Secretary of State.
- (2) The fee payable by the site operator under sections 45(8), 49(3), 53(6) and under paragraph (1) is a basic fee and any supplementary fee.
- (3) The basic fee payable under paragraph (2) and set out in column 2 of the Schedule—
 - (a) is that specified in the corresponding entry in column 3 of the Schedule, and
 - (b) is to be paid when the documents or information set out in column 2 of the Schedule are delivered to the Secretary of State.
- (4) Where the costs of the Secretary of State in relation to obtaining advice for a matter described in column 2 of the Schedule are less than the amount of the basic fee paid for that matter, the Secretary of State must return to the operator an amount which is the difference between the two sums.
- (5) A supplementary fee must be paid for each matter described in column 2 of the Schedule, where the costs of the Secretary of State in relation to obtaining advice for that matter exceed the amount of the basic fee as specified in the corresponding entry in column 3 of the Schedule.
- (6) The supplementary fee is to be determined on the cost to the Secretary of State of obtaining advice for each matter described in column 2 of the Schedule, less the basic fee paid for that matter, but must not exceed the maximum specified in the corresponding entry in column 4.
- (7) The Secretary of State must send a statement detailing the supplementary fee or part thereof payable for a quarter, within 30 working days of the end of the quarter and the fee must be paid within 30 days of the date of the statement.
- (8) All unpaid sums due by way of, or on account of, any fees payable under these Regulations are recoverable as debts due to the Crown.
- (9) References in this regulation to a site operator include references to a person who has applied for a nuclear site licence for a site.

(10) In this regulation—

“quarter” means a period of three months ending with 31st March, 30th June, 30th September or 31st December;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽¹⁾ in the part of England, Wales and Northern Ireland in which a site is located.

Verification of financial matters

5. (1) The Secretary of State may rely on assessments conducted by an independent third party (“the verifier”) for the purposes of the Secretary of State’s functions under Part 3 of Chapter 1 of the Act.

(2) The site operator must send to the Secretary of State independent third party assessments verifying—

- (a) the estimates of the costs likely to be incurred in connection with the designated technical matters, and
- (b) that prudent provision has been made for the financing of the designated technical matters.

As contained in the documents referred to in paragraph(4).

(3) The assessments must be delivered at the same time as the documents referred to in paragraph (4) are delivered to the Secretary of State.

(4) The documents are—

- (a) a funded decommissioning programme sent for approval;
- (b) a proposal by the site operator or any other person with obligations under the programme to modify an approved programme or the conditions to which the programme is subject pursuant to section 49;
- (c) an annual report;
- (d) a quinquennial report.

(5) The verifier may in the assessment detail any necessary recommendations in relation to the matters set out in paragraph (2)(a) and (b).

(6) The assessments must be addressed to the Secretary of State and must contain—

- (a) the name and address of the verifier;
- (b) details of the verifier’s qualifications;
- (c) details of the verifier’s experience;

⁽¹⁾ 1971 c.80.

- (d) the date the verifier was appointed;
- (e) details in relation to sub-paragraphs (a) to (c) for any previous verifier;
- (f) details of any recommendations made by a previous verifier; and
- (g) a statement of assurance.

- (7) A statement of assurance is a statement made by the verifier—
- (a) confirming the verifier’s independence from the site operator and any person with obligations under the programme;
 - (b) summarising the assessment;
 - (c) explaining if any recommendations made in the most recent previous assessment have been implemented and if not the reasons for not doing so;
 - (d) identifying the standards used in accordance with which the assessment was conducted; and
 - (e) confirming whether the document which has been assessed gives a true and fair view, in accordance with the standards referred to in sub-paragraph (d)—
 - (i) of the estimates of costs likely to be incurred in connection with the designated technical matters, and
 - (ii) of the prudent provision made for the financing of the designated technical matters.
- (8) In this regulation “necessary recommendations” means recommendations made by the verifier, that in the verifier’s view would further improve the prudence of the matters set out in paragraph (7)(e).

Modifications to an approved programme

6. (1) For the purposes of section 50(1), the modifications proposed by a person other than the Secretary of State in relation to which section 49 does not apply are those to which paragraph (2) applies.
- (2) This paragraph applies to a modification of a funded decommissioning programme where—
- (a) subject to paragraph (3), the modification does not increase or decrease Part 1 or Part 2 of the cost estimates of the designated technical matters (referred to in regulation 3) by 5% or more from their current net present value, as adjusted from time to time for inflation; or
 - (b) compliance with section 49 would result—
 - (i) in the operator breaching, a condition of the nuclear site licence or, a condition or limitation contained in an authorisation made under the Radioactive Substances Act 1993⁽¹⁾, or an environmental permit under the Environmental Permitting (England and Wales) Regulations 2010 in relation to a radioactive

⁽¹⁾ 1993 c.12.

substances activity described in paragraph 5(2)(b), (2)(c) or (4) of Part 2 of Schedule 23 to those Regulations^[2]; or

(ii) in the operator breaching any enactment.

(3) Paragraph (2)(a) does not apply where—

(a) the modification—

(i) is to either or both parts of the cost estimates of the designated technical matters; and

(ii) if combined on a cumulative basis with previous modifications to the corresponding part of the cost estimates made under paragraph (2)(a) and made since the last approved modification or quinquennial report, whichever is the later, increases or decreases either estimate by 5% or more from their current net present value, as adjusted from time to time for inflation; or

(b) the modification is to the financing of the designated technical matters not caused by an increase or decrease in the cost estimates of the designated technical matters.

(4) A person who makes a modification falling within paragraph (2)(b) must send to the Secretary of State, as soon as reasonably practicable after the modification is made, written notice of the modification, with the following information—

(a) full details of the modification;

(b) the effect of the modification on the funded decommissioning programme;

(c) the reasons that paragraph (2)(b) applies; and

(d) sufficient material to demonstrate that paragraph (2)(b) applies.

Reporting requirements

7. (1) Subject to paragraph (3), the site operator must make an annual report concerning the funded decommissioning programme to the Secretary of State for each period of twelve months ending on the anniversary of the date the programme was approved.
- (2) The annual report must be delivered within two calendar months of the anniversary of the date the programme was approved.
- (3) Paragraph (1) does not apply where a quinquennial report is delivered to the Secretary of State covering a twelve month period ending on the anniversary of the date the programme was approved.
- (4) The annual report must contain—
 - (a) details of any changes to the technical matters;
 - (b) details of any changes to the estimates of costs of the designated technical matters;

^[2] S.I. 2010

-
- (c) details of the performance of the financing arrangements for the designated technical matters; and
 - (d) notification of modifications made under regulation 6(2)(a).
- (5) The site operator must make a quinquennial report concerning the programme to the Secretary of State for the period of five years ending on the fifth anniversary of the date the programme was approved and thereafter on each fifth anniversary of that date.
 - (6) The quinquennial report must be delivered within three calendar months of each fifth anniversary of the date the programme was approved.
 - (7) The quinquennial report must contain a detailed review of the—
 - (a) technical matters;
 - (b) estimates of costs of the designated technical matters; and
 - (c) adequacy and performance of the financing arrangements for the designated technical matters.
 - (8) Where paragraph (3) applies, the quinquennial report must also contain the matters set out in paragraph (4).
 - (9) If at any time it appears to the Secretary of State that a person has failed to comply with this regulation, the Secretary of State may make an application to the High Court under this regulation.
 - (10) If, on an application under this regulation, the High Court decides that the person has failed to comply with this regulation, it may order the person to take such steps as it directs for securing compliance.

Date

Name

SCHEDULE Regulation 4

FEES PAYABLE IN RELATION TO FUNDED DECOMMISSIONING PROGRAMMES

1 Provision under which a fee is payable	2 Description	3 Basic fee	4 Maximum Supplementary fee
Section 45(8)	A funded decommissioning programme submitted in accordance with section 45(3).	£75,000	£425,000
Section 49(3)	Submission of information provided in response to a notice served by the Secretary of State in accordance with section 53(5).	£75,000	£425,000
Section 53(6)	Submission of information provided in response to a notice served by the Secretary of State in accordance with Section 53(5).	£500	£1000
Regulation 4(1)	An annual report made in accordance with regulation 7(1).	£18,750	£56,250
Regulation 4(1)	A quinquennial report made in accordance with regulation 7(5).	£75,000	£425,000
Regulation 4(1)	Information provided in accordance with regulation 6(4).	£75,000	£425,000

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set the fees payable by operators in relation to funded decommissioning programmes (regulation 4), require verification of information contained in the programme (regulation 5), set out when the programme can be modified without going through the approval process set out in section 49 of the Energy Act 2008 (regulation 6) and require the operator to provide reports on an annual and five yearly basis (regulation 7).

A full regulatory impact assessment of the effect of these Regulations on the costs of business is available from Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW. [Copies have also been placed in the libraries of both Houses of Parliament.]

STATUTORY INSTRUMENTS

20** No. ****

NUCLEAR ENERGY

The Energy Act 2008 (Designated Technical Matters) Order 20**

Made	***
Laid before Parliament	***
Coming into force	***

The Secretary of State, in exercise of the powers conferred by section 45(6) of the Energy Act 2008⁽¹⁾ makes the following Order.

In accordance with section 105(3) of the Energy Act 2008, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. This Order may be cited as the Energy Act 2008 (Designated Technical Matters) Order 20** and comes into force on [****].

Interpretation

2. In this Order—

“interim stores” means stores used for the storage of intermediate level waste and spent fuel from a site, built after the nuclear installation has commenced generating electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

“intermediate level waste” means radioactive waste with radioactivity levels exceeding the upper boundaries for low-level waste, but which does not require heating to be taken into account in the design of storage or disposal facilities;

“low-level waste” means radioactive waste having a radioactive content not exceeding four gigabecquerels per tonne (GBq/te) of alpha activity or twelve GBq/te of beta or gamma activity;

“maintenance” means steps undertaken to maintain the structure and integrity of the interim stores;

“spent fuel” means nuclear fuel that has been irradiated in and permanently removed from a reactor core.

⁽¹⁾ 2008 c.32.

Designated technical matters

3. For the purposes of section 45 of the Energy Act 2008 the designated technical matters are—
- (a) the building and maintenance of interim stores; and
 - (b) the steps undertaken in preparation for the decommissioning of a nuclear installation and cleaning up of the site.

Date

Name

EXPLANATORY NOTE

(This note is not part of the Order)

This Order designates matters for which the operator will be required to set out, cost estimates and financing in relation to, as part of the funded decommissioning programme.

A full regulatory impact assessment of the effect of this Order on the costs of business is available from the Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW. Copies have also been placed in the libraries of both Houses of Parliament.

Annex B: Response form for the consultation document

You may respond to this consultation by email or by post.

Respondent Details	
Name:	
Organisation:	
Address:	
Town/ City:	
County/ Postcode:	
Telephone:	
E-mail:	
Fax:	

Please return by 18 June 2010 to:
Consultation on the Financing of Nuclear Decommissioning and Waste Handling Regulations Office for Nuclear Development Department of Energy and Climate Change 3 Whitehall Place London SW1A 2AW
You can also submit this form by email: decommguidance@decc.gsi.gov.uk

Tick this box if you are requesting non-disclosure of your response.

No.	Question
Section 2: Cost recovery	
Question 1	Do the proposals create a transparent and effective means of recovering the costs incurred by the Secretary of State in relation to the matters described in Table 1?
	<p>Could the cost recovery proposals be improved to enhance their transparency and effectiveness?</p> <p>Is the proposed maximum fee set at a suitable level?</p> <p>In answering these questions please give your reasons.</p>
Response	
No.	Question
Section 3: Independent third party verification	
Question 2	<p>Do the proposals create an effective framework for verification to take place?</p> <p>Are the responsibilities and requirements clear?</p> <p>Is it clear how the Secretary of State would expect the verification to take place?</p> <p>In answering these questions please give your reasons.</p>
Response	

No.	Question
Section 4: Modifications to an approved programme	
Question 3	<p>It is Government's intention that only changes that meet the definition of the materiality threshold should require the Secretary of State's prior approval.</p> <p>Given the checks and balances in place, (annual and quinquennial reviews, independent verification, and in extremis, the Secretary of State's power to modify), is the proposed materiality threshold set at a level that will capture strategic changes to the FDP but still protect the taxpayer?</p> <p>Is the proposed approach for the notification of modifications to a FDP that are below the materiality threshold a reasonable one?</p> <p>Does the definition of the content of a funded decommissioning programme in draft regulation 3 accurately define the liabilities to be captured by the modification?</p> <p>In answering these questions please give your reasons.</p>
Response	
No.	Question
Section 5: Designated technical matters	
Question 4	<p>Do the proposed designations strike the right balance between protecting the taxpayer on the one hand whilst avoiding undue administrative burdens on the operator? Please give your reasons.</p>
Response	

No.	Question
Section 6: Reporting requirements	
Question 5	<p>Is an annual and quinquennial reporting period appropriate? Are the timescales for submitting the reports adequate?</p> <p>Is there any additional information that should be included in either report?</p> <p>Given the nature of the liabilities and the content of the quinquennial report, should the in-depth quinquennial review be undertaken on a more frequent basis? If yes, what are your reasons for undertaking a more frequent review and when should they take place?</p>
Response	

Please select the category below which best describes who you are responding on behalf of.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe):

Thank you for taking the time to let us have your views. The Government does not intend to acknowledge receipt of individual responses unless you tick the box.

Annex C: The Consultation Code of Practice Criteria

The seven consultation criteria

Criterion 1 **When to consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 **Duration of consultation**

Consultation should normally last for at least 12 weeks with consideration given to longer timescales when feasible and sensible.

Criterion 3 **Clarity of scope and impact**

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 **Accessibility of consultation exercises**

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 **The burden of consultation**

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 **Responsiveness of consultation exercises**

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 **Capacity to consult**

Officials running consultations should seek guidance on how to run an effective consultation exercise and share what they have learned from the experience.

The code of practice can be accessed at www.berr.gov.uk/files/file47158.pdf







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