DEPARTMENT OF ENERGY & CLIMATE CHANGE

THE ENERGY ACT 2008

Consultation on the amendment of the Nuclear Waste and Decommissioning (Finance and Fees) Regulations 2011

27 April 2012

Contents

Introduction

1. This is a consultation on the changes that the Government proposes to make to the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 (the **Current Regulations**). The changes proposed relate to three specific areas of the Current Regulations: reporting requirements, verification and the modification of a Funded Decommissioning Programme (**FDP**).

2. The purpose of the consultation is to seek views on whether or not the proposals strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities.

3. This consultation document is divided into 3 parts. Parts 1 - 3 describe the changes and the purpose of the proposed amendments to the reporting requirements, verification and modification of a FDP. Annex 1 contains the documents annexed to this consultation, including the proposed new draft of the Regulations (the Revised Regulations). The Regulatory Impact Assessment is available on the DECC website: http://www.decc.gov.uk/en/content/cms/consultations/regs_waste_new/regs_waste_new.aspx

Background

The Energy Act 2008 and the Regulations

4. The Government legislated in the Energy Act 2008 (the **Energy Act**) to ensure that Operators of new nuclear power stations will have secure financing arrangements in place to meet the full costs of decommissioning their stations and their full share of waste management and disposal costs. Under the Energy Act, operators of new nuclear power plants are required to have a FDP approved by the Secretary of State for Energy and Climate Change (the **Secretary of State**) in place before nuclear-related construction of a new nuclear power station begins, and to comply with the FDP thereafter.

5. The Current Regulations, made under powers in section 54 of the Energy Act, relate to the preparation, content, implementation and modification of FDPs. The Regulations include provisions:

    a. to enable the Secretary of State to recover the costs of obtaining advice in relation to a FDP from an Operator;

b. on modifying an approved FDP (including an exemption from the requirement to seek Secretary of State approval under section 49 of the Energy Act);

c. on reporting requirements;

d. on the verification of a FDP or information relating to a FDP; and

e. on the content of a FDP.

6. This is the second consultation on the subject matter covered by the Current Regulations; the Government first consulted on The Financing of Nuclear Decommissioning and Waste Handling Regulations (the previous name of the Regulations before they came into force) in March 2010[1] (the **Draft Regulations**). The Government considered the responses to the first consultation and a formal Government response, the "Government response to the Consultation on The Financing of Nuclear Decommissioning and Waste Handling Regulations" (the **Government Response**), was published on 18 October 2010.

7. The responses received were from a mix of respondents, ranging from energy companies to Local Authorities and campaign groups, and were broadly supportive of the proposals set out in the Consultation. The Government Response addressed the key concerns raised during the consultation and made some amendments to the Draft Regulations as a result. The Current Regulations were then laid in Parliament and came into force in April 2011.

8. However since the first consultation there have been a number of further developments regarding the development of the FDP framework. In particular, the Government conducted a further consultation on draft FDP Guidance and published its updated Guidance in December 2011. As a result of views expressed in the consultation and the Government's further work on the Guidance, the Government has concluded that the Current Regulations should be amended and Revised Regulations are set out in Annex 1.

9. This consultation sets out the changes that the Government is proposing, which relate primarily to reporting requirements, verification and modification of a FDP.

[1] The consultation, together with the Government Response and associated documents are available at http://www.decc.gov.uk/en/content/cms/consultations/nuc_dec_fin/nuc_dec_fin.aspx

Funded Decommissioning Programme Guidance and Waste Transfer Pricing Methodology

Funded Decommissioning Programme Guidance

10. In December 2010, the Government published for public consultation draft guidance on what a FDP should contain, together with specific questions for consultation. The Government's position was set out in the Funded Decommissioning Programme Guidance for New Nuclear Power Stations (the **Guidance**) which was published in December 2011, together with a Government Response to the December 2010 consultation[2].

11. Paragraph 1.6 of the Guidance states that the Secretary of State's overriding objective, and therefore the objective of the FDP regime, is to ensure that operators make prudent provision for:

- the full costs of decommissioning their installations; and
- their full share of all the costs of safely and securely managing and disposing of their waste;

and in doing so the risk of recourse to public funds is remote.

12. The Guidance also sets out the Guiding Factors the Secretary of State will take into account when considering whether to approve, approve with conditions or to modify a FDP which has already been approved, namely that the FDP:

i. provides a clear structure;

ii. contains realistic, clearly defined and achievable plans for decommissioning, waste management and waste disposal;

iii. contains robust cost estimates which take due account of risk and uncertainty;

iv. is transparent;

v. contains clear terms and clear division of roles and responsibilities;

vi. is a durable arrangement; and

vii. sets out a fund structure that demonstrates:

a. independence of the fund;

b. measures to ensure sufficiency of the fund;

[2] The FDP Guidance, together with the consultation and the Government Response to the consultation, are available at: http://www.decc.gov.uk/en/content/cms/consultations/rev_fdp_guide/rev_fdp_guide.aspx

c. restrictions on the use of fund assets; and

d. insolvency remoteness.

Waste Transfer Pricing Methodology

13. The "Consultation on an updated Waste Transfer Pricing Methodology for the disposal of higher activity waste from new nuclear power stations" was published on 8 December 2010 following an earlier, related 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" which was published in March 2010. A revised Waste Transfer Pricing Methodology was subsequently published, together with a Government response to the December 2010 consultation, in December 2011[3].

Summary of the main changes

Reporting requirements

14. The purpose of the requirement in the Current Regulations on the operator to produce 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, as defined in the Guidance, to demonstrate that the operator is making prudent provision for that liability.

15. The Government proposes to allow the synchronisation of the reporting timeframes for FDP purposes with those used for corporate reporting as per the Companies Act 2006.

16. The Government is also proposing to extend the submission deadlines for annual and quinquennial reports. We are proposing to amend the period for submitting a quinquennial report from 6 months to 9 months and the period for submitting an annual report from 3 months to 6 months.

17. These measures should reduce compliance costs for operators, without any impact on the Secretary of State's ability to have confidence that the FDP continues to represent prudent provision for the operator's liabilities and would expect these changes to reduce compliance costs for the operator.

Verification of a FDP

18. The Government has reviewed the provisions in the Current Regulations relating to verification by an independent third-party verifier and has concluded that there

[3] The Methodology, together with the Consultation and previous documents, are available at: http://www.decc.gov.uk/en/content/cms/consultations/waste_trans/waste_trans.aspx

are some practical issues which need to be addressed. Having sought views from energy companies and potential verifiers, the Government considers that the Current Regulations as currently drafted might not be capable of being complied with at reasonable cost, nor result in verification on which the Secretary of State could reasonably rely.

19. Therefore the Government is proposing to revise the definition of a verification report in the Regulations, so that it contains an assessment by a verifier as to whether or not the operator's evaluation of prudence, either in relation to the Designated Technical Matters (**DTM**) costs or the financing of the DTM costs, is reasonable. The Government believes that this amendment should ensure that the requirement for a verification report can be complied with, while producing a report that will be helpful to the Secretary of State in providing assurance as to the continuing adequacy of the operator's cost estimates and financial provision.

20. Additionally, the Government proposes to separate the verification report into two individual verification reports, thus there will be a requirement for both a technical verification report and a financial verification report.

The Modifications Regime

21. The Government proposes to amend the provisions in the Regulations regarding those categories of modifications to a FDP that should not require Secretary of State approval.

22. The Government has concluded that in addition to the exemptions from approval in the Current Regulations, there should be three further classes of modification that will not require approval by the Secretary of State. Firstly, modifications that increase estimated costs by more than the 5% materiality threshold, provided that there is sufficient financial security to meet the revised liabilities. Secondly, modifications that reduce estimated costs by more than the 5% materiality threshold, where the modification corresponds to a change in the waste transfer price under the waste transfer contract, subject to certain conditions being satisfied. Thirdly, a proposal which relates to an item that was specified by the Secretary of State when the FDP was approved under section 46 of the Energy Act.

Complete list of consultation questions

23. This consultation focuses on the consultation questions listed below. When considering responses to this consultation, the Government will give greater weight to responses that are based on argument and evidence, rather than simple expressions of support or opposition. When answering these questions please explain and give reasons for your answers.

24. The consultation document poses the following questions:

1. Do the changes in relation to the reporting requirements strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities?

2. Do the changes in relation to the verification of a FDP strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities? To what extent is the standardisation approach desirable and /or achievable?

3. Do the changes in relation to the modifications regime strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities?

How to respond

25. This consultation is open to everyone and the Government is keen to hear from all interested parties. However, the Government recognises that the consultation is limited in scope and the changes which are being consulted on are technical and likely only to affect a relatively small group of persons. Consequently, the Government expects that this new consultation is likely to be primarily of interest to the nuclear industry, legal, financial, technical 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 in place to meet the full costs of decommissioning and their full share of waste management costs.

26. The closing date for responses is 8 June 2012. This consultation is conducted in accordance with the Government's Code of Practice on Consultation[4] (the **Code**). The Code sets out the the Government's general policy on formal, public, written consultation exercises. The Code acknowledges that deviations from it will, at times, be unavoidable when running a formal written public consultation and it is recommended that departments be open about such deviations. Under normal circumstances, the Code states that consultations should last for a minimum of 12 weeks. However, the Code states that where it is considered appropriate and

[4] The Code of Practice is available at http://www.bis.gov.uk/assets/biscore/corporate/migratedd/publications/f/file47158.pdf

there are good reasons for a consultation to last for a shorter period, the consultation document should be clear as to the reasons for the shortened consultation period. DECC considers that a shortened consultation period of 6 weeks would be appropriate for this consultation due to the technical subject matter of this consultation, the relatively small number of respondents to the previous consultation and the need to bring into effect the changes that the Government has identified as necessary in a timely fashion.

27. The Government is planning to hold two consultation events in respect of the changes proposed to the Current Regulations to provide additional means through which interested parties can express their views. Both events will be held on 14 May in Central London. The first will be open to all and give interested parties a further opportunity to discuss their views on all of the proposed amendments in the consultation. The second consultation event will focus specifically on verification and the changes proposed in relation to the verification of a FDP. Given the specific nature and the expected level of detail, the event is intended to be for prospective technical and financial verifiers, and prospective commissioners of verification. Anyone who wishes to attend either event should register their interest using the email address given below by 8 May 2012.

28. When responding to this consultation please state whether you are responding as an individual, a company or representing the views of a 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.

29. A response form is included at Annex 2.

30. Responses should be submitted by post to:

Consultation on the amendment of the Nuclear Waste and Decommissioning (Finance and Fees) Regulations 2011
Office for Nuclear Development
Department of Energy and Climate Change
Area 3D
3 Whitehall Place
London
SW1A 2AW

or by email to: wasteanddecommissioningteam@decc.gsi.gov.uk

31. Questions about any issues raised in the consultation document should be directed to the above email or postal addresses.

Confidentiality and data protection

32. 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 your response. Any confidentiality disclaimer that may be generated by your organisation's IT system or is 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.

33. 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).

34. 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 which public authorities must comply and which deals with, amongst other things, obligations of confidence. The Government's Code of Practice on Consultation[5] also applies to this consultation document.

35. 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.

36. We 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

37. You may make copies of this document without seeking permission. An electronic version can be downloaded from DECC's website.[6]

38. Further hard copies of the consultation document may be obtained by emailing wasteanddecommissioningteam@decc.gsi.gov.uk.

[5] www.bis.gov.uk/files/file47158.pdf

[6] http://www.decc.gov.uk/en/content/cms/consultations/regs_waste_new/regs_waste_new.aspx

Help with queries

39. 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

What happens next?

40. Responses to this consultation will be taken into account when developing the Revised Regulations. The Government will aim to publish a response to the consultation in summer 2012.

Part 1: Reporting

Introduction

1.1 The Reporting requirements outlined in the Current Regulations are an important aspect of FDP governance. The purpose of the annual and quinquennial reports is to ensure that an operator's waste and decommissioning liability can be regularly monitored and assessed against the security provided to meet those liabilities to ensure that the operator continues to make prudent provision for its waste and decommissioning costs.

1.2 It is not the Government's intention to impose unnecessary or disproportionate costs on operators. The Government recognises that reporting requirements relating to the FDP should be proportionate and that operators will have other mandatory reporting requirements which will need to be met, such as those under the Companies Act. Therefore, where appropriate, it would appear desirable to require operators to synchronise and harmonise those requirements.

The Current Regulations

1.3 The Current Regulations require that annual and quinquennial reports be compiled as at the annual and five-yearly anniversary of approval by the Secretary of State of the FDP.

1.4 Currently an operator must submit:

- an annual report to the Secretary of State within 3 months of the end of the period to which it relates; and
- a quinquennial report within 6 months of the end of the period to which it relates.

1.5 The operator is also required to file information as necessary to comply with other statutory obligations by which it is affected.

1.6 There is no provision, under the Current Regulations, for operators to synchronise the reporting year end for FDP purposes with the reporting year end for corporate financial purposes. The FDP reporting periods need not, and it is likely that in practice they will not, coincide with the financial year end. This has cost implications as well as procedural difficulties: the operator may need to calculate the value of relevant liabilities and the security provided at two different dates and then undertake a reconciliation exercise between the two sets of data.

Proposed changes to the Regulations

Synchronisation of reporting periods

1.7 The Government is keen to minimise the cost of reporting wherever possible, consistent with ensuring that the Secretary of State remains adequately informed.

1.8 The Government proposes to require the operator to synchronise the FDP reporting year with its own financial year. This would simplify the reporting process as an operator would no longer need to reconcile two sets of data. It is expected that reporting costs will be reduced by this change without any impact on the overall prudence of the FDP.

Submission deadlines

1.9 The Current Regulations require the operator to provide the Secretary of State with reports within a set period after the year end for FDP reporting purposes.

1.10 Having considered representations from prospective nuclear operators, the Government is of the view that the submission periods for the annual report and quinquennial report are unnecessarily short and will be difficult for operators to comply with.

1.11 The quinquennial report is intended to be a detailed and comprehensive analysis through which the operator demonstrates that the FDP is up to date and continues to represent prudent provision. The purpose of the annual report is to set out and summarise any changes over the reporting period to the cost estimates and financial provision set out in the FDP.

1.12 The Government would expect both reports to be robust, accurate and properly compiled, as well as accompanied by relevant verification reports. The Government recognises that the timeframes set out in the Current Regulations are challenging for operators and considers that there is merit in extending the period for submission of both the annual and quinquennial reports.

1.13 The Government proposes to extend the period for submitting the quinquennial report from 6 months to 9 months and the submission deadline in respect of annual reports from 3 months to 6 months. In view of the long timeframes covered by a FDP, the Government does not consider that these changes will have any impact on the Secretary of State's ability to have confidence that the FDP continues to represent prudent provision for the operator's liabilities and would expect these changes to reduce compliance costs for the operator.

Definition of quinquennial review

1.14 As set out above, the quinquennial report is intended to be a detailed and comprehensive review of the FDP. This will include a review of the requirements set out in section 45(7) of the Energy Act, namely: details of the steps to be taken in relation to technical matters; the estimates of costs likely to be incurred in connection with the designated technical matters; and details of any security to be provided in connection with those costs. Therefore, a robust quinquennial review process is one of the key means by which the Secretary of State can be assured that the FDP continues to represent prudent provision. It is clearly important that the report provided by the operator at the end of the quinquennial review provides details of this review, hence the definition of quinquennial report under Revised Regulation 8 has been amended to make this clear (as set out in Annex 1).

Consultation Question

1.15 Do the changes in relation to the reporting requirements strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities?

Part 2: Verification of a FDP

Introduction

2.1 Section 55 of the Energy Act allows the Current Regulations to permit the Secretary of State to rely on verification of financial matters by an independent third party. The Energy Act also states that Regulations may provide that the Secretary of State may:

- rely on estimates of costs verified by an independent third party; and/or
- rely on an independent third party's assessment of the prudence or otherwise of any provision made for the financing of the DTMs[7].

2.2 Verification is intended to provide the Secretary of State with independent expert assurance in relation to a FDP. The provision of independent verification upon which the Secretary of State can rely, means that the Secretary of State can have confidence in the cost estimates provided by the operator and in the assumptions underpinning the financial provision for these costs. It reduces the need for the Secretary of State to procure his own detailed advice (for which he would be able to charge the operator for under the Regulations), particularly in relation to consideration of annual and quinquennial reports and consideration of modifications to a FDP, enabling a more streamlined approval and scrutiny process. It is also expected that the Nuclear Liabilities Financing Assurance Board (**NLFAB**) will, as part of its independent scrutiny and advice on the technical suitability of a FDP, consider any third party verification submitted with the FDP. Therefore, verification will form an important part of the FDP framework.

The Current Regulations

2.3 The Current Regulations set out the matters to be verified, when verification reports will be required, the scope and contents of verification reports and the circumstances in which verification may be relied upon by the Secretary of State.

2.4 The Draft Regulations proposed that the statement of assurance given by a verifier should confirm "whether the document which has been assessed gives a true and fair view" of the costs likely to be incurred in connection with the DTMs, and of the prudent provision made for the financing of the DTMs. The Government accepted in its response to the consultation that the "true and fair view" test was problematic and confusing, given that it is a recognised term in financial reporting

[7] The DTMs are referred to in section 45 of the Energy Act as including the treatment, storage, transportation and disposal of hazardous material (as defined within the Energy Act 2004), as well as the matters relating to dealing with nuclear waste during the operation of the station, decommissioning and clean up of the site. The DTMs are those costs that must be estimated in the FDP.

rather than within the nuclear industry as a whole. Hence following the consultation these provisions were amended, and the Current Regulations require that a verification report be provided by an independent third party expert which contains an assessment by the verifier of whether or not;

i. the estimates of the relevant liabilities (referred to in the Regulations as the DTM costs) are prudent; and

ii. any provision for the financing of the DTM costs is prudent.

Proposed changes to the Regulations

2.5 The Current Regulations envisage a single verification report being provided covering both verification of cost estimates and verification of financial provision. The Revised Regulations (as set out in Annex 1) separate the verification report referred to in the Current Regulations into two separate verification reports covering technical verification (**DTM verification**) and financial verification.

2.6 The Government expects the proposed amendment to reflect what is likely to happen in practice. This is because different skills and organisations are likely to be employed in respect of the technical and financial verification thus the proposed amendment is likely to reflect reality more closely.

2.7 The Government wishes to develop a formulation in respect of the content of the verification reports which gives the Secretary of State an adequate level of assurance while being deliverable, at reasonable cost, by the operator and potential verifiers.

2.8 The Government recognises that the current requirement on verifiers to form a view on “prudence” is potentially problematic. Prudence is not defined in the Energy Act and advice commissioned by DECC and further work with the operators on the operation of the Regulations has suggested that potential verifiers would be unlikely to want to commit themselves to judgements about prudence. This means that the requirements set out in the Regulations regarding the content of a verification report are potentially unworkable in practice. The Government proposes to address these concerns by amending the required content of the verification report so that the verifier will need to assess whether or not the operator’s evaluation of the prudence of the DTM costs, or the prudence of the financing of the DTM costs, as the case may be, is reasonable.

2.9 The Government’s view is that reasonableness is a more workable test for the verifier to apply. The effect of this change would be that the onus would be on the operator to present to the verifier sufficient information on the cost estimates or the financing of the DTM costs, as the case may be, such that the verifier is able to conclude that the operator’s conclusion that the cost estimates (or the financing

of the DTM costs) are prudent is a reasonable one. It is anticipated that this will be with reference to provisions in the FDP regarding how the operator will form their view of prudence and how the verifier will conduct their review.

2.10 The Secretary of State would expect a FDP to contain detailed provisions regarding the conduct of verification. The FDP, at the time of its approval, will have been agreed by the Secretary of State on the basis that it is prudent and hence it is expected that verified compliance with a FDP will result in prudent provision. However, where the verifier concludes that the operator's conclusions regarding prudence are not reasonable (for example, the verifier concludes that costs are significantly underestimated, or that the rate of return assumptions for the Fund are significantly over-optimistic) the Secretary of State would expect the verifier to report accordingly and to make recommendations as to how to rectify the position.

2.11 The Government wishes to ensure that the verification framework is both robust and practicable. Through this consultation the Government is keen to establish the extent to which standardisation is appropriate or necessary to enable verification to operate effectively. Such standardisation might mean that the form of the verification report to be provided by the verifier in relation to a FDP is set out when the FDP is first approved and only capable of amendment subsequently through a modification to the FDP. Alternatively, a standard "verification certificate" could be developed that would apply to all FDPs, and which might be periodically updated. The Government is keen to hear views on these and any other potential approaches in this consultation.

2.12 It is important to ensure that the verification tests and the acknowledgement required can be delivered by prospective verifiers. Therefore, the Government intends to hold a consultation event specifically for potential commissioners and providers of verification reports to establish whether or not a market exists, or could exist, to provide the assurances set out in the proposed amendments to the Revised Regulations as well as the practical workability of the proposed amendments. The event may also be used to ascertain whether more information is needed to support the verification process outlined in the Current Regulations and whether standardisation of verification is possible and/or desirable.

2.13 The Government recognises that assurance given by a verifier will involve the professional judgment of the verifier. As such the Secretary of State will expect to see evidence that the verifier is taking account of current knowledge and experience, and making due allowance for risk and certainty, in making their assessment. The Government would most likely expect such verification assurance to examine whether the operator has followed appropriate procedures; ideally these procedures would have been agreed upon with the verifier in advance. For example, the verifier could check that the operator has in place an

appropriate cost methodology that deals with risk and contingency and that that methodology has been properly followed.

2.14 The verifier will wish to operate under an appropriate level of professional indemnity cover and it is expected that this would be dealt with in the verifier's terms of engagement.

2.15 The Government also recognises that the framework needs to flexible enough to enable verification to play a role in the consideration of a FDP when first submitted for approval. At the point of first submission there will not be an approved FDP and therefore no agreed reference point for the verifiers in making their assessment. In this case it would be for the verifier to make an assessment as to whether or not the operator's evaluation of the prudence of the DTM costs, or as appropriate, any changes to those costs, is reasonable.

2.16 The Government would expect the verifier to set out the basis on which he has undertaken his assessment. The Secretary of State would take account of this verification, however it is expected that the Secretary of State would commission his own expert advice in reaching his view on whether or not the FDP as submitted could be approved as prudent.

Consultation Questions

2.17 Do the changes in relation to verification of a FDP strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities? To what extent is the standardisation approach desirable and /or achievable?

Part 3: Modifications to an approved FDP

Introduction

3.2 Under section 49 of the Energy Act, all modifications, i.e. all changes, to an approved FDP require Secretary of State approval, however small. By having the power to approve modifications the Secretary of State can ensure that the impact of changes to a FDP are properly assessed and that prudent provision is maintained throughout the duration of the FDP. However, section 50 of the Energy Act recognises the potentially onerous nature of this requirement, and also that there may be certain circumstances where Secretary of State approval will not be necessary. It therefore allows for regulations disapplying section 49 from certain modifications.

3.3 The Government considers it essential that an operator maintains an up-to-date and accurate FDP but also recognises that modifications to a FDP are likely, and will be necessary, given the length of time that a FDP will be in effect, in order to maintain prudent provision. The purpose of the Secretary of State having the power to approve modifications is to ensure that the impact of operational, technical or other changes is properly assessed and reflected and that the FDP continues to represent prudent provision over time. By having regulations which disapply section 49 in various circumstances, the Secretary of State need only approve certain changes to the FDP.

3.4 The current Regulations make provision for certain modifications to be exempt from the requirement for Secretary of State approval. The Government remains of the view that the current exemptions are appropriate, but having, in particular, considered views expressed on this subject in the recent consultation on draft FDP Guidance, has concluded that there are three further categories of modifications which should not require Secretary of State approval.

The Current Regulations

3.5 The current Regulations provide for an exemption to the requirement to seek Secretary of State approval for a modification.

3.6 The exemption is by way of a materiality threshold, which is set at a level of +/- 5% of the DTM costs. Modifications to the FDP that do not affect the financing of the DTM costs, and which are below the materiality threshold are exempt from the need to obtain Secretary of State approval. Therefore where an operator makes a proposal in respect of a modification to a FDP, the operator does not need to seek prior Secretary of State approval where it results in a change to the DTM cost estimates of less than 5%. This figure is a cumulative one: modifications falling within this exemption since the last approved modification, or

the last quinquennial report as the case may be, are aggregated for the purpose of establishing whether it is met. As set out in the Government response to the 2010 consultation, the Government's view is that the 5% is calculated after having adjusted the DTM costs for an appropriate measure of inflation: that measure of inflation would be set out in the operator's approved FDP. In order to further clarify this point, it is proposed that the definition of DTM costs in Revised Regulation 4 is amended to explicitly recognise that the FDP will be able to provide for the escalation of the DTM costs for inflation without this being regarded as a modification to the FDP.

3.7 As set out in the March 2010 consultation on draft regulations, the purpose of the 5% materiality threshold is to ensure that the Secretary of State need only approve "material" changes to the FDP before they are made. This is intended to 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. The Government considered that modifications to a FDP resulting in changes in estimated liabilities of more than 5% size were of sufficient magnitude as to require prior approval by the Secretary of State.

3.8 The purpose of specifying that the 5% threshold only applies to a proposal that does not relate to the financing of the DTM costs, is that it is anticipated that regular modifications are likely to be required to the Decommissioning and Waste Management Plan (**DWMP**) element of the FDP (to reflect for example technical or operational changes to the power station or the periodic reviews of estimated costs), hence the requirement that only material changes should require Secretary of State approval. In contrast changes to the provisions in the Funding Arrangements Plan (**FAP**) section of the FDP are expected to be less frequent and, given their likely bearing on the overall prudence of the FDP, it is considered appropriate that such modifications should require the approval of the Secretary of State.

Proposed changes to the Regulations

3.9 The Government has concluded that the current modification regime could be made more flexible while still ensuring that prudent provision is made to discharge the cost liabilities when they fall due. In order to achieve this, the Government is proposing to amend the modification regime to introduce three new classes of modification which would be exempt from the need to seek Secretary of State approval.

Regulation 11(2) Modifications to a FDP which increase the cost estimates by more than the materiality threshold

3.10 When considering whether to approve a modification, the Secretary of State needs to be satisfied that prudent provision is maintained. Where a modification materially increases the DTM costs, the Secretary of State will be concerned to see that the costs have been properly calculated and that the increase in liabilities do not imply an increased level of risk to the taxpayer. Therefore for modifications which increase the cost estimates, so long as the change in estimated costs has been independently verified in the correct way and a specified level of financial provision relative to the change in estimated cost is met or maintained, the modified FDP would continue to represent prudent provision and hence Secretary of State approval for such a modification should not be required.

3.11 The Government recognises that the requirement to revert periodically to the Secretary of State for approval of modifications to their FDP relating to increases in estimated costs could be a cause for concern for an operator. Hence the Government is proposing to amend the regulations to allow modifications that increase the DTM costs by more than 5% to proceed without the requirement for Secretary of State approval if specified conditions are met. These conditions are that the independent Fund, together with any other security provided in accordance with the FDP is of a value greater than or equal to the value of the revised liabilities, calculated in accordance with the approved FDP, and the operator has certified to the Secretary of State that this is the case.

3.12 The Government acknowledges that certainty is important for operators. The requirement to revert to the Secretary of State for approval of modifications that are potentially foreseeable might introduce a level of regulatory uncertainty. The Regulations currently require the operator to seek approval for all modifications over the materiality threshold. This additional exemption would provide operators with an alternative route, albeit one which might require the operator to provide significant additional security, for example through paying additional monies into their independent Fund, within a short, defined time period.

3.13 Accordingly, an operator that has identified a need for its FDP to be modified to reflect an increase in estimated costs over the materiality threshold will have two options. It can seek Secretary of State approval for the modification, or rely on the sufficiency of its security to cover the increase. If that security is insufficient, the operator would need to provide additional security, for example through paying additional monies into their independent Fund, but if it did so it would be spared the need to seek Secretary of State approval. From the Secretary of State's perspective either route would be satisfactory for maintaining prudent

provision provided he is notified of the proposed change, and assured that there is sufficient security available.

3.14 It is clearly important that the certification given by operators is accurate in order to ensure that the FDP continues to represent prudent provision. In the event that this certification was incorrectly provided the modification to the FDP could not be made as this would constitute a modification to a FDP which is made without obtaining Secretary of State approval and as such would be in breach of the Energy Act.

3.15 The inclusion of Revised Regulation 11(3) requires that the security provided for the financing of the DTM costs is greater than or equal to the existing value of the revised liabilities. The Government expects that this would be the net present value of the liabilities, calculated with reference to appropriate discount rates, for example determined with reference to the expected rate of return on monies held in the operator's independent fund. The Government would expect the mechanism for determining the net present value to be set out in the approved FDP and it will therefore have been approved at the outset by the Secretary of State.

Regulation 11(4): Modifications to a FDP which reduce the cost estimate by more than the materiality threshold

3.16 The proposed amendment would exempt modifications that reduce the DTM costs by more than 5% from the requirement for Secretary of State approval, where the modification corresponds to a reduction in the fee for the disposal of spent fuel and intermediate level waste (ILW), as set out in an agreement made pursuant to section 66 of the Energy Act between the site operator and the Secretary of State.

3.17 In general, the Government's view remains that modifications to a FDP which reduce the cost estimate by more than the materiality threshold should require Secretary of State approval. This is because the Government sees a clear incentive on operators to seek to manage down over time the quoted value of their liabilities (particularly if the FDP provides for a return of surplus funds prior to final disbursement of any assets in the Fund). The Government regards the requirement to gain Secretary of State approval as a necessary check to ensure that such modifications are justified and represent genuine reductions in the expected cost. The Government is of the view that not requiring Secretary of State approval in almost all such instances would represent an unacceptable risk to the taxpayer. The Government notes that where such a modification represents a genuine reduction in expected costs, the Secretary of State's approval could not be unreasonably withheld.

3.18 However the Government is persuaded that there is one specific category of costs where a reduction in liabilities can be exempted from the requirement to gain approval, even if that change exceeds the materiality threshold.

3.19 Alongside the approval of a FDP the Government will expect to enter into a contract with the operator regarding the terms on which the Government will take title to and liability for the operator's spent fuel and ILW (the **Waste Contract**). In particular this agreement will need to set out how the price that will be charged for this waste transfer will be determined (the **Waste Transfer Price**). The Waste Contract is provided for under section 66 of the Energy Act.

3.20 The operator's FDP will contain an estimate of their waste disposal liability. This is expected to be a simple calculation based on the Waste Transfer Price and the operator's estimate of the volumes of waste that will be produced. In light of the particular way in which this liability is expected to be calculated, and the Government's role in setting the level of this liability, The Regulations[8] require the FDP to distinguish waste disposal liabilities from all other DTM costs.

3.21 Where a change in the estimated waste disposal liability (i.e. those costs covered by Regulation 5(1)(a)) is caused by a change in estimated waste volumes then this would be a modification to the FDP that would need to be handled in the same way as other modifications. However, the Government's view is that modifications to the FDP that correspond to a reduction in the Waste Transfer Price under the Waste Contract should not require approval by the Secretary of State. This is because a change in the Waste Transfer Price will be a direct result of the operation of the Waste Contract and will therefore already have been agreed by the Secretary of State, and the consequent modifications to the FDP should be clear and straightforward to determine.

3.22 The Government has published its Waste Transfer Pricing Methodology, setting out how the Waste Transfer Price will be determined. The Waste Transfer Pricing Methodology states that title to and liability for the operator's ILW and spent fuel will transfer to Government on a specified date (**Transfer Date**), which is expected to be at or near the point that the decommissioning of the operator's power station has been otherwise completed, in order to enable the operator to be in a position to be released from its site licence obligations. It is currently considered likely that the Transfer Date will precede the date on which the Government expects the disposal of the operator's waste to begin (the **Assumed Disposal Date**). This is termed "Early Transfer".

3.23 In the event of Early Transfer, the operator's plans to manage the waste prior to its eventual disposal will transfer to Government on the Transfer Date, together

[8] Regulation 3 in the current regulations, regulation 5(1) in the revised regulations set out at Annex1.

with sufficient monies to carry out the plan in the form of a lump sum payment (**Lump Sum Payment**). Therefore it is possible that the payment made by the operator to Government on transfer of title might also contain an element related to waste management costs, which would fall under Regulation 5(1)(b). The proposed new Regulation 11(4) does not extend the exemption from approval outlined above to changes to the expected level of the Lump Sum Payment (although the materiality threshold would continue to apply). The Government's view is that this is because changes to the expected level of the Lump Sum Payment will stem from modifications to the operator's plans for the management of the waste between the Transfer Date and the Assumed Disposal Date, which will need to be set out in the FDP, and considers that these should be governed by the same approval regime as other FDP modifications. However views on whether this exemption should be widened to include the costs covered by the Lump Sum Payment are sought in this consultation.

Regulation 10(1A): Modifications to a FDP relating to items specified by the Secretary of State as not affecting the prudence of the FDP

3.24 The Government is also proposing to amend the Current Regulations so that Secretary of State approval is not required for modifications to an approved FDP where the proposal relates to an item specified by the Secretary of State when the FDP was approved under section 46 of the Energy Act.

3.25 As set out above, in general the Government does not expect the FAP to require regular modification and considers that modifications to the FAP should require Secretary of State approval, hence changes that relate to the financing of the DTM costs are not covered by the 5% materiality threshold. However the Government considers that there might be some exceptions to this. In particular the FAP is expected to include a number of key variables which will inevitably change over time, such as the value of assets held by the independent Fund (which will be regularly recalculated) and the schedule of contributions to be paid to the Fund by the operator (which will be regularly reviewed in relation to the level of estimated liabilities and the investment returns achieved on the assets held by the Fund).

3.26 These are variables that will be reviewed and updated in accordance with the terms of the FDP. The revision of these variables is the result of the FDP working as intended and as approved by the Secretary of State. Hence although updating the value of the Fund is a modification to the FDP, in the Government's view this should not require the approval of the Secretary of State.

3.27 This proposed provision will allow the Secretary of State to specify which elements of the FDP can be modified without requiring Secretary of State approval at the outset.

Consultation Question

3.28 Do the changes in relation to modification of a FDP strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities?

Annex 1: The Revised Nuclear Waste and Decommissioning (Finance and Fees) Regulations 2011

NB: The proposed amendments to the Regulations are underlined in the draft.

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

2012 No.

NUCLEAR ENERGY

The Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2012

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), 55(1) and 104 of the Energy Act 2008([9]).

The Secretary of State has consulted the Health and Safety Executive, the Environment Agency, and the Department of the Environment for Northern Ireland, in so far as the regulations relate to a function conferred on any of those bodies by or under an enactment.

Citation and commencement

1. These Regulations may be cited as the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2012 and come into force on XX 2012.

Revocation of the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011

2. Subject to regulation 3, the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011([10]) are revoked.

([9]) 2008 c. 32
([10]) 2011/134

Transitional provision

3. [Transitional arrangements to be confirmed]

Interpretation

4. In these Regulations—

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

"annual report" has the meaning given in regulation 8(4);

"associated person" means a person other than the site operator who has obligations under a funded decommissioning programme;

"DTM costs" means the estimates of the costs likely to be incurred in connection with the designated technical matters as adjusted from time to time in accordance with the approved funded decommissioning programme;

"DTM verification report" means a written report which contains an assessment by a verifier of whether or not the site operator's evaluation of the prudence of the DTM costs, or as appropriate, any changes to those costs, is reasonable;

"financial verification report" means a written report which contains an assessment by a verifier of whether or not the site operator's evaluation of the prudence of the financing of the DTM costs, or as appropriate, any changes to those costs, is reasonable;

"quinquennial report" has the meaning given in regulation 8(5);

"section 48 proposal" means a proposal made by a person within section 48(2)(b) or (c) in respect of a funded decommissioning programme for a modification to the programme or to the conditions to which the approval of the programme is subject;

~~"verification report" means a written report which contains an assessment by a verifier whether or not—~~

~~(a) the DTM costs are prudent estimates; and~~

~~(b) any provision made for the financing of the DTM costs is prudent;~~

"verifier" means a person appointed by the site operator or an associated person to carry out an assessment in either a DTM verification report or a financial verification report and who is independent of the operator and any other person with obligations under the relevant funded decommissioning programme.

Content of funded decommissioning programmes

5.— (1) A person who submits a funded decommissioning programme must show separately in that programme—

(a) the estimates of the costs likely to be incurred in connection with the disposal of intermediate level waste and spent fuel; and

(b) the estimates of the costs likely to be incurred in connection with all other designated technical matters.

(2) In this regulation—

"intermediate level waste" means radioactive waste—

(a) which has a level of radioactivity above four gigabecquerels per tonne (GBq/te) of alpha activity or twelve GBq/te of beta or gamma activity; and

(b) where the heat generated by the waste does not need to be taken into account in the design of storage or disposal facilities;

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

Fees payable in relation to funded decommissioning programmes

6.— (1) A person who submits a funded decommissioning programme must pay a fee to the Secretary of State for the amount of the costs described in paragraph (2).

(2) The costs referred to in paragraph (1) are those reasonably incurred by the Secretary of State for relevant advice in relation to the consideration of—

(a) the programme; and

(b) information in respect of the programme which the Secretary of State has required to be provided under section 52(4).

(3) Where a person mentioned in section 48(2) proposes a modification of—

(a) a funded decommissioning programme; or

(b) the conditions to which the approval of the programme is subject,

the site operator must pay a fee to the Secretary of State for the amount of the costs described in paragraph (4).

(4) The costs referred to in paragraph (3) are those reasonably incurred by the Secretary of State for relevant advice in relation to the consideration of—

(a) the proposal; and

(b) information in respect of the proposal which the Secretary of State has required to be provided under section 52(4).

(5) Where the Secretary of State gives a notice under section 53(2) or (5) the site operator responsible for the funded decommissioning programme to which the notice relates must pay a fee to the Secretary of State for the amount of the costs described in paragraph (6).

(6) The costs referred to in paragraph (5) are those reasonably incurred by the Secretary of State for relevant advice in relation to the consideration of information provided in response to the notice.

(7) A site operator who submits—

(a) a notice as provided by regulation 10(2);

(b) an annual report; or

(c) a quinquennial report,

must pay a fee to the Secretary of State for the amount of the costs reasonably incurred by the Secretary of State for relevant advice in relation to the consideration of the notice or relevant report.

(8) A person liable to a fee under this regulation must pay it within 30 days of the date that the Secretary of State makes a written demand to that person for payment.

(9) Where a fee is not paid as required under paragraph (8), the Secretary of State may recover it as a civil debt due to the Crown.

(10) In this regulation "relevant advice" means advice obtained by the Secretary of State from the Nuclear Liabilities Financing Assurance Board or any person who is independent of the site operator and any other person with obligations under the relevant funded decommissioning programme, but who is not the verifier in respect of the matters on which advice is sought.

Information requirements

7.—(1) Where a person submits a funded decommissioning programme to the Secretary of State for approval, the programme must be accompanied by a DTM verification report and a financial verification report.

(2) Where a section 48 proposal is made in respect of the modification of an approved programme or the conditions to which the programme is subject, ~~which is a proposal to which section 48 applies,~~ the person making the proposal must ensure it—

(a) contains details of—

(i) any changes to the DTM costs; and

(ii) any changes to the provision made for the financing of the designated technical matters;

and

(b) is accompanied by:

(i) a DTM verification report in respect of any changes proposed to the DTM costs; and

(ii) a financial verification report in respect of any changes proposed to the financing of the designed technical matters.

Reporting requirements

8.— (1) The site operator must make an annual report to the Secretary of State—

(a) in respect of period 1, within 6 months of the end of that period; and

(b) subject to paragraph (3), for each subsequent period after period 1, within 6 months of the end of that period.

(2) The site operator must make a quinquennial report to the Secretary of State—

(a) in respect of quinquennial period 1, within 9 months of the end of that period; and

(b) for each subsequent quinquennial period after quinquennial period 1, within 9 months of the end of that period.

(3) An annual report is not required under paragraph (1)(b) for a year where that year is the fifth year of quinquennial period 1 or, as appropriate, a subsequent quinquennial period.

(4) An annual report must be a written report which—

(a) contains details of any changes during period 1 or, as appropriate, during each period after period 1—

(i) to the DTM costs; or

(ii) any provision made for the financing of the designated technical matters; and

(b) where any such changes are detailed to the DTM costs, must contain a DTM verification report in respect of those changes; and

(c) where any such changes are detailed to the financing of the DTM costs, must contain a financial verification report in respect of those changes.

(d) The annual report may also contain any notice required under regulation 10(2) where the modification to which the notice relates is to take effect on or after the date the annual report is made to the Secretary of State.

"period 1" means—

(a) in the case of a site operator required to file accounts with the registrar pursuant to section 441 of the Companies Act 2006, the period beginning on the date of approval, and ending on the last day of the financial year in which approval is given;

(b) in the case of a site operator that is not required to file accounts with the registrar pursuant to section 441 of the Companies Act 2006, the year commencing on the date of the approval of the funded decommissioning programme.

"subsequent period" means—

(a) in the case of a site operator that is required to file accounts with the registrar pursuant to section 441 of the Companies Act 2006, each financial year after period 1;

(b) in the case of a site operator that is not required to file accounts with the registrar pursuant to section 441 of the Companies Act 2006, each year after period 1.

~~"period 1" means the five year period commencing on the date of the approval of the funded decommissioning programme;~~

(5) A quinquennial report must be a written report which contains—

(a) details of a review completed by the site operator at the end of quinquennial period 1 or, as appropriate, at the end of a subsequent quinquennial period of—

(i) the steps to be taken under the programme in relation to the technical matters;

(ii) the DTM costs;

(iii) any provision made for the financing of the designated technical matters;

(b) a financial verification report; and

(c) a DTM verification report.

(d) The quinquennial report may also contain any notice required under regulation 10(2) where the modification to which the notice relates is to take effect on or after the date the quinquennial report is made to the Secretary of State.

"quinquennial period 1" means —

(a) in the case of a site operator required to file accounts with the registrar pursuant to section 441 of the Companies Act 2006, the period beginning on the date of approval of the site operator's funded decommissioning programme, and ending on the last day of the site operator's fourth financial year after the financial year in which approval of the funded decommissioning programme is given;

(b) in the case of a site operator not required to file accounts with the registrar pursuant to section 441 of the Companies Act 2006, the five year period commencing on the date of the approval of the site operator's funded decommissioning programme;

"subsequent quinquennial period" means—

(a) in the case of a site operator that is required to file accounts with the registrar pursuant to section 441 of the Companies Act 2006, each period of five financial years after quinquennial period 1;

(b) in the case of a site operator that is not required to file accounts with the registrar pursuant to section 441 of the Companies Act 2006, each period of five years after quinquennial period 1.

~~"year 1" means the year commencing on the date of the approval of the funded decommissioning programme.~~

(6) In this regulation-

"financial year" means the site operator's financial year and has the meaning given in section 390 of the Companies Act 2006;

"the registrar" has the meaning given by section 1060 of the Companies Act 2006.

Verification of the designated technical matters

9.— (1) Subject to paragraph (2), the Secretary of State may for the purposes of carrying out functions under Chapter 1 of Part 3 of the 2008 Act rely on either a DTM verification report or a financial verification report.

(2) The Secretary of State must not rely on a DTM verification report or a financial verification report unless the Secretary of State is satisfied that the verifier—

(a) has the qualifications and experience to carry out the assessment set out in the report;

(b) is independent of the site operator and any person with obligations under the programme; and

(c) has made a relevant assurance in respect of the assessment in the report.

(3) In paragraph (2) a "relevant assurance" means a written statement which—

(a) contains a summary of the DTM verification report or the financial verification report;

(b) sets out the standards in accordance with which the assessment is conducted; and

(c) where the assessment is that the site operator's assessment of the estimate of the prudence of the DTM costs or the provision made for the financing of the DTM costs is not reasonable, sets out—

(i) the reasons for that assessment; and

(ii) the recommendations which, if complied with, would in the verifier's opinion make the estimate or the provision reasonable.

Modifications to an approved programme

10.— (1) Section 49 does not apply where a person makes the following section 48 proposals:

(a) a proposal which relates to an item that was specified by the Secretary of State when the funded decommissioning programme was approved under section 46; or

(b) a proposal which does not relate to the financing of the DTM costs; and the relevant change in A is less than 5%; or

(c) a proposal made in accordance with regulation 11;

provided that notice is served on the Secretary of State in accordance with paragraph (2).

(2) In order for section 49 to be disapplied, the relevant person within section 48(2)(b) or (c) must serve a written notice on the Secretary of State which includes-

(a) a summary of the modification;

(b) the date the modification is to take effect;

(c) details of the relevant provision in regulation 10 or 11, as the case may be, which allows section 49 to be disapplied in respect of the section 48 proposal;

(d) is accompanied by:

(i) a DTM verification report in respect of any changes proposed to the DTM costs; and

(ii) a financial verification report in respect of any changes proposed to the financing of the designated technical matters.

(e) Where the modification is made pursuant to regulation 11(2), confirmation that the requirement in regulation 11(2)(b) will be satisfied when the proposed modification takes effect.

(3) In paragraph (1)(b) " relevant change in A" means the percentage difference between—

(a) the sum of A set out in—

(i) the section 48 proposal; and

(ii) any previous proposal under section 48 made since the relevant estimate and in respect of which section 49 was disapplied;

and

(b) A, as set out in the relevant estimate.

(4) In this regulation—

"A" means the estimate of costs set out in regulation 5(1)(a) or, as appropriate, (b);

"approved modification" means a modification to the funded decommissioning programme made further to a decision of the Secretary of State under section 49(6)(a);

"relevant estimate" means the DTM costs set out in the later of—

(a) the funded decommissioning programme approved by the Secretary of State under section 46;

(b) the funded decommissioning programme as modified by the last approved modification made before the section 48 proposal; or

(c) the last quinquennial report made before the section 48 proposal.

Modifications caused by proposed changes to the DTM costs

11.— (1) Paragraph (2) applies where a funded decommissioning programme requires the holding and accumulation of a fund as a means of financing the designated technical matters.

(2) Section 49 does not apply where a person makes a section 48 proposal, if:

(a) the proposal is to increase the DTM costs; and
(b) when the proposed modification takes effect, the site operator will be able to meet the conditions at paragraph 3.

(3) The conditions are that:

(a) the fund, together with any other security provided when the funded decommissioning programme was approved, is of a value greater than or equal to the value of the revised liabilities, calculated in accordance with the approved funded decommissioning programme; and

(b) the site operator has certified by notice to the Secretary of State that the condition in paragraph 3(a) is satisfied.

(4) Section 49 does not apply to a section 48 proposal for a modification that will reduce the estimate of costs for disposal of intermediate waste and spent fuel where:

(a) the reduction corresponds to a reduction in the fee for the disposal of relevant hazardous material provided for in an agreement made pursuant to section 66 between the site operator and the Secretary of State and the estimates of the costs likely to be incurred in connection with the disposal of intermediate level waste and spent fuel; and

(b) the agreement relates to the site which is the subject of the proposal.

Signatory text

Name
Minister of State
Date Department of Energy and Climate Change

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations revoke and replace, subject to a transitional provision, the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 ("the 2011 Regulations".) Chapter 1 of Part 3 of the Energy Act 2008 ("the 2008 Act") sets out the legislative framework for funded decommissioning programmes ("FDPs"). These Regulations are made using the powers in that Chapter, in relation to the preparation, content, implementation and modification of such programmes.

Regulation 5 requires that the estimates of costs of the designated technical matters in the funded decommissioning programme be shown in two parts. Regulation 6 sets out the costs which will form the basis for calculating the fees payable to the Secretary of State and matters, additional to the 2008 Act, where fees are payable by operators. Regulation 7 sets out the information which must accompany a funded decommissioning programme or a proposal to modify a programme. Regulation 8 requires that an operator must provide to the Secretary of State reports on an annual and five yearly basis and the contents of those reports. Regulation 9 provides the circumstances in which the Secretary of State may rely on verification reports.

Regulation 10 sets out the ways in which a site operator can amend their FDP without requiring the consent of the Secretary of State. Where the Secretary of State has specified at the time of the approval of the FDP that consent is not required to amend a particular item, the site operator may make the change without approval.

Regulation 11 provides that, where a site operator holds and accumulates a fund as a means of financing its decommissioning costs, it does not need Secretary of State approval to increase its DTM costs, provided that security for those costs is provided when the modification takes effect. Similarly, where the cost of decommissioning reduces, the site operator may reduce provision for those costs in its FDP, without requiring the approval of the Secretary of State.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies have also been placed in both Houses of Parliament.

Annex 2: Consultation Response Form

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

Please note that if you are accessing this document electronically you will only be able to enter text in the response fields.

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

Please return by 8 June 2012 to:
Consultation on the amendment of the Nuclear Waste and Decommissioning (Finance and Fees) Regulations 2011 consultation Office for Nuclear Development Department of Energy and Climate Change Area 3D 3 Whitehall Place London SW1A 2AW You can also submit this form by email: wasteanddecommissioningteam@decc.gsi.gov.uk

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

No.	Question
Part 1: Reporting requirements	
1	Do the changes in relation to the reporting requirements strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities?
Response	
Part 2: Verification of an FDP	
2	Do the changes in relation to the verification of an FDP strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities? To what extent is the standardisation approach desirable and/or achievable?
Response	
Part 3: Modifications to an approved Funded Decommissioning Programme	
3	Do the changes in relation to the modifications regime strike the right balance in setting a framework which is achievable at reasonable cost to the operator while enabling the Secretary of State to have confidence that the FDP continues to represent prudent provision for the operator's liabilities?
Response	

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

- ☐ Business representative organisation/trade body
- ☐ Central Government
- ☐ Charity or social enterprise
- ☐ Individual
- ☐ Large business (over 250 staff)
- ☐ Legal representative
- ☐ Local Government
- ☐ Medium business (50 to 250 staff)

☐ Small business (10 to 49 staff)

☐ Micro business (up to 9 staff)

☐ Trade union or staff association

☐ 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. ☐

Department of Energy and Climate Change
URN 12D/065

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