

Title: : Amendments to Nuclear Decommissioning (Finance and Fees) Regulations 2011 IA No: DECC0069 Lead department or agency: DECC Other departments or agencies:	Impact Assessment (IA)				
	Date: 2 February 2012				
	Stage: Consultation				
	Source of intervention: Domestic				
	Type of measure: Secondary legislation				
Contact for enquiries: Anthony Moulds Telephone: 0300 068 6978					

Summary: Intervention and Options **RPC: Green**

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB in 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£1.6m	£1.6m	£0.05m (benefit)	Yes	Out

What is the problem under consideration? Why is government intervention necessary?

The problem under consideration is how to ensure that the Nuclear Decommissioning (Finance and Fees) Regulations 2011 (hereafter the Regulations) enable the Secretary of State to protect the taxpayer through ongoing oversight of an operator's Funded Decommissioning Programme (FDP) without placing unnecessary compliance costs or regulatory uncertainty on Operators.

Government intervention is required to ensure that the Regulations, which came into force in 2011, provide as much flexibility to nuclear Operators as possible in order to minimise the burdens on businesses while ensuring that the taxpayer is protected from financial risks relating to new nuclear decommissioning and waste management and disposal costs. Further intervention is therefore necessary to reduce the existing regulatory burdens.

What are the policy objectives and the intended effects?

To introduce flexibility into the Regulations without diminishing taxpayer protection; this will be achieved by amending the Regulations to introduce options on how compliance can be achieved at potentially lower cost to nuclear Operators. The intended effect is to make the current regime more flexible which will enable Operators to make commercially and economically driven choices to achieve compliance at lowest cost.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Three options were considered:

Option 1: Do nothing - leave the Regulations unchanged, and;

Option 2: Amend the Regulations Synchronise reporting timeframes, altering content of Verification Report, and exempting all Modifications (upward and downward) of greater than 5%.

Option 3: Amend the Regulations as in Option 2 but exempting only upward Modifications greater than 5%. Option 3 is the **preferred option** because it introduces flexibility and certainty to the regulatory framework which should reduce costs, whilst not imposing any additional/new costs or risk of recourse to taxpayers.

Alternatives to regulation have been considered previously and discounted prior to consultation. The rationale is set out on paragraph 10 of the evidence base.

Will the policy be reviewed? It will be reviewed in 2018 (this is to allow the FDP annual and five-yearly review process to have completed one cycle before reviews)

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

FULL ECONOMIC ASSESSMENT : Do Nothing – Do not Amend the Regulations

Price Base Year 2009	PV Base Year 2012	Time Period Years 67	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Zero

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Zero	Zero	Zero
High	Zero	Zero	Zero
Best Estimate	Zero	Zero	Zero

Description and scale of key monetised costs by ‘main affected groups’

Zero. By definition, there are no costs associated with the ‘do nothing’ option which is to retain the existing regulations.

Other key non-monetised costs by ‘main affected groups’

Zero. By definition, there are no costs associated with the ‘do nothing’ option which is to retain the existing regulations.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Zero	Zero	Zero

Description and scale of key monetised benefits by ‘main affected groups’

Zero. By definition, there are no benefits associated with the ‘do nothing’ option which is to retain the existing regulations.

Other key non-monetised benefits by ‘main affected groups’

Zero. By definition, there are no benefits associated with the ‘do nothing’ option which is to retain the existing regulations.

Key assumptions/sensitivities/risks
N/A.

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: zero	Benefits: zero	Net: zero	Yes	zero net cost

Summary: Analysis & Evidence

Policy Option 2

FULL ECONOMIC ASSESSMENT : Amend by synchronising reporting timeframes, altering content of Verification Report, and exempting all Modifications (upward and downward) of greater than 5%.

Price Base Year 2009	PV Base Year 2012	Time Period Years 67	Net Benefit (Present Value (PV)) (£m)		
			Low: <u>Zero*</u>	High: £2.5m	Best Estimate: £1.9m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	Zero	Zero
High	NA	Zero	Zero
Best Estimate	NA	Zero	Zero

Description and scale of key monetised costs by 'main affected groups'

Zero monetised costs. Amending in this manner would make the Regulations more flexible not less and therefore the current Regulations place a ceiling on the costs to be borne by Operators.

*However, by exempting downward modifications greater than 5% there is a real risk that this approach could result in a significant cost to taxpayers in the long-run and therefore potentially this Option may have a net cost over the period of a FDP. It is not possible to accurately quantify this risk (see non-monetised costs box below and evidence base section for further information).

Other key non-monetised costs by 'main affected groups'

Amending in this manner would make the Regulations more flexible by exempting all modifications (upward and downward) greater than 5%. If the estimated liabilities are lower than the 'true value', the result will be that the security provided will be insufficient to meet those liabilities when they fall due. There is a risk therefore in this approach as it has the potential to increase costs to taxpayers in the long-run. Government would be amending the regime in a manner that would be inconsistent with the Objective and Guiding Factors of a Funded Decommissioning Programme (FDP) as set out in the Energy Act 2008. It is not possible to accurately quantify this risk.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Zero	NA	Zero
High	Zero	NA	£2.5m
Best Estimate	Zero	NA	£1.9m

Description and scale of key monetised benefits by 'main affected groups'

- *Synchronisation of FDP and corporate reporting periods:* reducing duplication in annual reporting of liabilities estimates. Estimated (central) that reconciliation of annual accounts and FDP estimates would cost an operator £35k p.a. from the agreement of the first FDP until the nuclear site is fully decommissioned.
- *Verification Reporting:* Altering the nature of Verification assurance is estimated (central) to provide a benefit of £54k per Verification, with Verifications required every 5-years and 2 ad-hoc Verifications over the FDP period.
- *Modification regime:* Exempting all Modifications (upward and downward) *is estimated (central) to provide a benefit to operators of £470k per Modification with 4 Modification (upward and downward) exempted over the FDP period* Exempting downward modifications is not however considered desirable (see evidence base).

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<ul style="list-style-type: none"> • The analysis is based on one operator submitting a FDP in 2012 and beginning the annual reporting cycle the following year (2013), six years in advance of the plant becoming operational. Assumed that the plant has a 40-year operational life and a 20-year decommissioning period, hence a 67-year appraisal period in total. • HMT long-term discount rate has been used: 3.5% Years 0-30, 3.0% Years 31-67. • Sensitivity analysis is provided showing the estimated impact for a fleet of new nuclear power stations of 10 - 15GW (3-5 stations) in total by 2030. 		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: zero	Benefits: £0.06m	Net: £0.06m	Yes	Out

FULL ECONOMIC ASSESSMENT : Amend by synchronising reporting timeframes, altering content of Verification Report, and exempting upward Modifications of greater than 5%.

Price Base Year 2009	PV Base Year 2012	Time Period Years 67	Net Benefit (Present Value (PV)) (£m)		
			Low: Zero	High: £2.2m	Best Estimate: £1.6m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	Zero	Zero
High	NA	Zero	Zero
Best Estimate	NA	Zero	Zero

Description and scale of key monetised costs by ‘main affected groups’

Zero. Amending in this manner would make the Regulations more flexible not less and therefore the current Regulations place a ceiling on the costs to be borne by Operators.

Other key non-monetised costs by ‘main affected groups’

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Zero	NA	Zero
High	Zero	NA	£2.2m
Best Estimate	Zero	NA	£1.6m

Description and scale of key monetised benefits by ‘main affected groups’

- *Synchronisation of FDP and corporate reporting periods:* reducing duplication in annual reporting of liabilities estimates. Estimated (central) that reconciliation of annual accounts and FDP estimates would cost an Operator £35k p.a. from the agreement of the first FDP until the nuclear site is fully decommissioned.
- *Verification Reporting:* Altering the nature of Verification assurance is estimated (central) to provide a benefit to Operators of £54k per Verification with Verifications required every 5-years and 2 ad-hoc modifications over the FDP period.
- *Modification regime:* Exempting upward Modifications is *estimated (central)* to provide a benefit to Operators of £470k per Modification with 2 Modifications exempted over the FDP period.

Other key non-monetised benefits by ‘main affected groups’

None.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
<ul style="list-style-type: none"> • The analysis is based on one operator submitting a FDP in 2012 and beginning the annual reporting cycle the following year (2013), six years in advance of the plant becoming operational. Assumed that the plant has a 40-year operational life and a 20-year decommissioning period, hence a 67-year appraisal period in total. • HMT long-term discount rate has been used: 3.5% Years 0-30, 3.0% Years 31-67. • Sensitivity analysis is provided showing the estimated impact for a fleet of new nuclear power stations of 10 - 15GW (3-5 stations) in total by 2030. 		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: zero	Benefits: £0.05m	Net: £0.05m	Yes	Out

Evidence Base

One-In-One Out

1. Two aspects of the proposed amendments to the legislation are within the scope of the One In One Out (OIOO) rule. It is estimated that under the central case the changes would result in an 'Out' of £0.05m based on the benefits to one Operator / FDP. This figure excludes the estimated benefits to business from the proposed amendments to the Verification process as these are categorised as cost recovery and are therefore outside the scope of OIOO reporting. The direct nature of benefits to business from the proposed amendments to the Reporting procedures and the Modification regime are within scope of the OIOO rule and are discussed further in the evidence base section below.

Problem Under Consideration

Summary and Objectives of the Existing Legislation

2. The Government legislated in the Energy Act 2008 (the Act) to ensure that Operators of new nuclear power stations have financing arrangements in place to meet (i) the full costs of decommissioning their installations, and (ii) their full share of the costs of safely and securely managing and depositing of their waste; and that in doing so the risk of recourse to public funds is remote (the Objective).
3. Under Section 45 of the Act, Operators of new nuclear power stations are required to submit a Funded Decommissioning Programme (FDP) to the Secretary of State for approval before nuclear-related construction of a new nuclear power station begins, and to comply with this FDP thereafter. Section 47 of the Act prohibits the use of a site in the absence of an approved FDP and Section 57 makes failure by the Operator to comply with obligations under the FDP a criminal offence. Annex A contains additional background information on FDP requirements under the Energy Act 2008.
4. In December 2010 the Government laid the Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order¹ (the Order), and the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011² (the Regulations) and also published an Impact Assessment for those measures.
5. The purpose of the Order (2010), which was passed under an affirmative procedure, was to allow the Secretary of State to specify which activities associated with the Decommissioning and Waste Management Plan (DWMP) are Designated Technical Matters (DTMs) i.e. those matters which are so significant that the operator must provide security to ensure that funds are available to discharge those matters.

¹ <http://www.legislation.gov.uk/ukSI/2010/2850/contents/made>

² <http://www.legislation.gov.uk/ukSI/2011/134/contents/made>

6. The Regulations (2011):
 - i. Require that the estimates of costs of the Designated Technical Matters in the FDP be shown in two parts;
 - ii. Set out the costs which will form the basis for calculating fees payable to the Secretary of State and matters, additional to the Act, where fees are payable by Operators;
 - iii. Set out the information which must accompany a FDP or a proposal to modify a FDP.
 - iv. Require that an Operator must provide to the Secretary of State reports on an annual and five-yearly (quinquennial) basis and the contents of those reports;
 - v. To enable the Secretary of State to rely on a third-party verification report provided that report is in an appropriate form;
 - vi. To set a materiality threshold for the disapplication of Section 49 of the 2008 Act to enable certain modifications to be made without the approval of the Secretary of State.
7. When the original Impact Assessment was undertaken for the current Regulations, developers' waste and decommissioning finance plans were in an early development stage and the precise operation of the Regulations in practice was not fully formed and articulated. Even at this stage, given that no FDP has yet to be approved, there is uncertainty around exact operation of the Regulations.
8. Therefore, in preparation of this Impact Assessment on Amendments to the Regulations (2011) we have reviewed the original assessment from 2010 in consultation with prospective Operators and legal advisers to ensure we have a current and accurate understanding of the baseline position to which we are proposing amendments. This review process broadly confirms the position in the original Impact Assessment of a small net benefit (per Operator / FDP) and at society level from the implementation of the Regulations (2011) due to a reduction in compliance costs and the administrative burden compared to the prior obligations Operators would have faced under the Act (2008).

Rationale for Intervention

9. The Regulations introduced in 2011 can be made more proportionate. Following informal engagement with industry, this Impact Assessment accompanies a Consultation document on how regulatory compliance burdens can be lowered without altering the effectiveness of the regulatory regime set out in the original Regulations which seek to protect the taxpayer from the financial risks of new nuclear power stations. These gains can, however, only be realised through government intervention to amend the Regulations.
10. As noted above in paragraph 2, the Act places onerous obligations on nuclear operators which, by way of Regulations, the Secretary of State may remove or reduce. The relief from the onerous obligations can, as a matter of law, only be delivered through regulations under the Act. This means that if the Regulations were repealed, for example, operators would have to comply with the Act which is actually more onerous. It also means that forms of regulation such as codes of conduct or reporting codes cannot be used to deliver benefits because the Act does not give the *vires* to the Secretary of State to relieve operators of their burdens by any route other than Regulations. For these reasons we have removed the options of repealing the regulations or forms of self regulation from further consideration within this Impact Assessment.
11. The Consultation document sets out proposals to amend three aspects of the existing regulations – aspects iv, v and vi in paragraph 6 above – in order to reduce administrative burdens. No

amendments are proposed on i, ii and iii of the Regulations as set out in paragraph 6. The proposed amendments are summarised in table 1 and explained in further detail below

Table 1: Summary of Existing Regulations and Proposed Amendments.

Aspect of the Regulatory Regime	Requirements under Existing Regulations (2011)	Proposed Amendments to the Regulations (Preferred Options)
iv. Reporting Timeframes	<ul style="list-style-type: none"> a. An Operator must submit an Annual Report (except where a five-year report is required) on their FDP within a fixed period of each anniversary of the FDP being approved. b. The fixed period is three months for the Annual Report and six months for the five-year (Quinquennial) report. 	<ul style="list-style-type: none"> a. Proposed amendment by way of cross-reference to the Companies Act, will allow the Operator to synchronise FDP reporting with Corporate Reporting year end dates. b. Proposed amendment would allow the period for submitting Quinquennial Reports to be extended to nine-months. No changes proposed for Annual reports.
v. Verification	<ul style="list-style-type: none"> a. An Operator must submit a Verification Report (from an independent third party expert) containing an assessment of whether or not estimates of liabilities are “prudent”. 	<ul style="list-style-type: none"> a. Proposed amendment modifies nature of third party assurance required so that Verification Report contains assessment of whether the Operator’s evaluation of the prudence principle is reasonable.
vi. Modification	<ul style="list-style-type: none"> a. Regulation specify a materiality threshold of 5% of the estimated costs of modifications with a cost impact of +/- 5% would require approval by the Secretary of State. 	<ul style="list-style-type: none"> a. Proposed amendment to allow upward modification (i.e. +5%) to proceed without approval from the Secretary of State provided that appropriate and sufficient financial security is provided by the effective date of the modification. The existing +/-5% would remain.

12. In the Government’s view, the proposed amendments to the reporting timeframes, the Verification Report and the Modification regime, should provide nuclear operators with greater flexibility under the Regulations without compromising taxpayer protection.

Problems with the Existing Regulation on Reporting Timeframes

13. There are two issues with the reporting timeframes as set out in the Regulations. First, it is difficult, although not impossible under the Regulations for the Operator to synchronise the reporting year end for FDP purposes with the reporting year end for corporate reporting purposes. This means, in effect, that the Operator may need to calculate the value of relevant liabilities and the security provided twice rather than once per year. The proposed amendment, by way of cross-reference to the Companies Act reporting requirements, will allow the Operator to synchronise FDP reporting with corporate reporting more easily and therefore remove the current regulatory failure.

14. Second, the Regulations require the Operator provide the Secretary of State with reports within a set period of year-end for FDP reporting purposes. It has been successfully argued that the current time periods are too short, especially where there is additional work required to resolve any differences between the Operator and the Fund (the trust or other vehicle constituted for the purposes of accumulating, managing and investing monies to discharge the relevant liabilities). In order to address this concern the Government is proposing to extend the reporting period for Quinquennial Reports to 9 months (from 6 months); no changes are proposed to the reporting timeframes for Annual Reports.

Problems with the Existing Regulation on the Content of the Verification Report

15. The current Regulations require that a verification report be provided (from independent third-party expert) which contains an assessment by the verifier of whether or not the estimates of the relevant liabilities (referred to in the Regulations as the Designated Technical Matters or 'DTM costs') are "prudent".

16. Prudence is not defined in the Act, nor is there established custom and practice or industry norms about how such an assessment would be made in the context of nuclear liabilities. Following representations from prospective Operators and further advice commissioned by the Department, it is clear that without very specific guidance on the meaning of prudence it is unlikely to be possible to obtain an assurance from independent third-party verifiers that the DTM costs are prudent estimates.

17. The proposed amendment for consultation therefore modifies the nature of the assurance required from an independent third-party verifier to require the verification report to contain :

"an assessment by a verifier whether or not the site operator's evaluation of the prudence of the DTM costs is reasonable;"

18. The effect of this modification is to place the onus on the operator to present to the verifier sufficient information on the cost estimates such that the verifier is able to conclude that *the operator's conclusion (that the cost estimates are prudent)* is a reasonable one.

Problems with the Existing Modification Regime

19. Over the duration of the FDP (which will be many decades) the estimated value of the relevant liabilities will fluctuate, potentially frequently and quite possibly substantially as understanding of the facility and its waste streams develop, and the cost changes arising from new techniques and technologies for decommissioning and waste management are incorporated into operator's decommissioning plans. Many of these fluctuations can be viewed as being in the 'normal course of business' for a nuclear operator.

20. The existing Regulations specify that a materiality threshold of 5% of estimated costs and Modifications with a cost impact of +/- 5% would require approval by the Secretary of State. It was originally considered that such changes would be of sufficient magnitude as to require prior approval by the Secretary of State and most respondents to the Consultation (2010) broadly agreed with the +/- 5% materiality threshold.

21. It has however, been argued in the context of the consultation on Funded Decommissioning Programme Guidance that the current modification regime could be made more flexible while preserving the Secretary of State's *strategic interest* of ensuring that prudent provision is made to discharge the relevant liabilities as and when they fall due. In order to address this concern without weakening taxpayer protection, the Government is proposing to amend the modification regime to

introduce a new class of modification which is exempt from the need to seek Secretary of State approval. The amendment would allow upward modifications to the cost estimates of more than 5% to proceed without approval from the Secretary of State provided that appropriate and sufficient financial security is in place by (or immediately after) the effective date of the modification.

22. However, downward modifications to the cost estimates of more than 5%, except those subject to the exemption set out below in paragraph 23, would still require Secretary of State approval in order to mitigate the long-run risk that estimates of the liabilities diverge downwards from their underlying 'true value'. Under the FDP Guidance, funding contributions may be revised downward or funding surpluses withdrawn. If therefore, the estimated liabilities are lower than the true value, the result will be that the security provided will be insufficient to meet those liabilities when they fall due.
23. The one exception where downward modification does not require Secretary of State approval is where the modifications result directly from a change in the Waste Transfer Price set for the operator by Government, as provided for in a contract between Government and the operator for Government to take title to the operator's higher-activity wastes (spent fuel and Intermediate Level Waste (ILW)) in return for a fee. The methodology for setting this fee and for calculating provision on an interim basis is set out in the Government's methodology on the Waste Transfer Price published in December 2011.

Policy Objectives

24. The policy objectives are:
 - a. To ensure that the Regulations enable the Secretary of State to protect the taxpayer through ongoing oversight of the FDP without placing unnecessary compliance costs or regulatory uncertainty on operators, and;
 - b. To ensure that the timeframes set out in the Regulations are practicable and do not place unnecessary compliance costs on business.

Description of Options Considered

25. Figure 1 below summarises the mix of options (A, B or C) on each aspect of the regulations that comprise each of the three policy options considered and explained in further detail below.

Amendment Option		Policy Option 1	Policy Option 2	Policy Option 3
Reporting Timeframes	A	✓		
	B		✓	✓
Verification Reporting	A	✓		
	B		✓	✓
Modification Regime	A	✓		
	B		✓	
	C			✓

Reporting Timeframes

Option A – Do nothing

26. By not amending the Regulations in respect of the timeframes for submitting Quinquennial Reports, in the event that additional work is required to resolve any differences between the Operator and the Fund, there is a significant risk that Operators would be unable to meet the requirements and hence be in breach of the Regulations. This is judged to be an inflexible aspect of the current regulations and disproportionately punitive as it is recognised that the reconciliation process for the Operator and the Fund could be a time consuming exercise. In addition, by not amending the regulations to enable synchronisation of Annual and corporate reports, Operators are likely to face an ongoing annual costs in relation to administrative burden of reconciling two sets of accounts.

Option B - Amend the Regulations, synchronise and extend reporting timeframes (the preferred option)

27. This option would make it easier for operators to synchronise FDP reporting and corporate reporting year-ends (by cross-referencing to the Companies Act) and to avoid the costs of reconciling liabilities estimates at two different dates and allow additional time for the operator to submit the Quinquennial Report, by extending the allowed period from 6-months to 9-months.

The Content of the Verification Report

Option A - Do nothing

28. With respect to the Verification Report, it is clear that the requirements of the current Regulations are unlikely to be met in a manner which gives appropriate reassurance to the Secretary of State given the immature nature of the market for technical verification of nuclear liabilities.
29. By not amending the Regulations in respect of the content of the Verification Report, the Secretary of State would therefore not be able to rely on the Verification Report provided by the Operator and would need to commission his own verification and recover the cost from the operator. This is because the Verification Report provided by the Operator would not be compliant as it would not include the relevant assurances, as detailed in paragraph 16 above.

Option B - Amend the Regulations, modify the required statement of assurance from independent third-party verifiers (the preferred option)

30. This option would amend the Regulations to require that the verification report contain an assessment from the verifier as to whether or not it is "reasonable" for the operator to conclude that the DTM costs are prudent estimates. Amending the Regulations in this manner would remove the apparent regulatory failure that exists under the wording of the existing regulations - namely that there is a lack of clarity or appropriate definition of "prudence" - and the resulting market failure - namely that it is unlikely to be possible to obtain an assurance from independent third-party verifiers that the DTM costs are "prudent".

The Modification Regime

Option A - Do nothing

31. By not amending the modifications provision of the Regulations, Operators would be at risk of bearing unnecessary compliance costs and subject to regulatory risk in respect of modifying their FDP. As explained in paragraph 21, it may not always be necessary for the Secretary of State to approve for all modifications to their FDP that breach a materiality threshold of +/- 5% provided that the operator assures the Secretary of that appropriate and sufficient financial security is or will be in place.

Option B – Amending the Regulations to exempt all Modifications (+/- 5%) from Approval

32. This option would introduce a new class of Modification which is exempt from the need to seek Secretary of State approval whereby all Modifications greater than +/- 5% to the cost estimates may be made without approval provided that the operator assures the Secretary of that appropriate and sufficient financial security is or will be in place.

Option C - Amending the Regulations to exempt Upward Modifications +5% from Approval and Downward Modifications of greater than 5% as a result of changes to the fee charged under S66 of the Act for waste disposal (the preferred Option)

33. This option would introduce a new class of modification which is exempt from the need to seek Secretary of State approval whereby upward modifications greater than 5% to the cost estimates may be made without approval provided that the operator assures the Secretary of State that appropriate and sufficient financial security is or will be in place.
34. This approach allows operators to proceed with an upward modification without approval and thereby avoid the associated compliance costs of seeking approval. If, however, the operator cannot provide the necessary assurances to the Secretary of State then the value of security would need to be increased to cover the revised value of the liability (including the modification).
35. It is not, however, proposed that downward modifications be exempt from the need for Secretary of State approval (except under the exemption set out in the paragraph 23). To do so, would introduce a long-term risk that estimates of liabilities diverge downwards from their underlying 'true value'. Under the FDP Guidance, funding contributions may be revised downward or funding surpluses withdrawn. If therefore, the estimated liabilities are lower than the true value, the result will be that the security provided will be insufficient to meet those liabilities when they fall due.
36. The exemption from downward modifications in excess of 5% requiring Secretary of State approval relates to changes in the fee charged by Government under Section 66 of the Act for waste disposal services. This fee is out with the control of an operator and is set by Government and therefore removing the requirement for such a modification to be approved eliminates a source of regulatory risk.

Monetised and non-monetised costs and benefits of each option

37. This section sets out estimates of the impacts on new nuclear Operators from the options on amending the Regulations. Information on the costs of complying with the Regulations has improved considerably since they were introduced in 2011, which has enabled quantification of the benefits that are likely to accrue to Operators as a result of amending the Regulations. The estimates are however still subject to uncertainty, given that no FDP has yet been approved there is uncertainty around exact operation and costs associated with compliance. We are seeking further information on administrative costs and benefits of the proposed amendments as part of the consultation.

Amending the Reporting Timeframes

38. Table 2 below provides an overview of the estimated costs and benefits on the two options related to amending the reporting timeframes. By definition, there are no costs or benefits associated with the 'do nothing' option (option A), which is effectively to retain the existing regulations. The preferred option grants operators more flexibility over their annual reporting timescales and as such is judged likely to provide an annual benefit, but not result in any offsetting costs.

Table 2 : Amending the Reporting Timeframes

	Do Nothing (Option A)	Amend the Regulations (Option B) Preferred Option
Costs	By definition, no additional costs over baseline (counterfactual).	No additional monetised or non-monetised costs over baseline (counterfactual).
Benefits	By definition, no additional benefits over baseline (counterfactual).	<p>Monetised benefits in respect of synchronisation of reporting timescales. Estimated that it will reduce annual costs to operators as the administrative burden associated with the reconciliation of annual accounts and FDP liability estimates will be removed.</p> <p>The central estimate is for a benefit of <u>£35,000</u> p.a. per nuclear site / FDP, in a low-high range of £0-£47,000 p.a.</p>

39. Based on informal consultation with industry it is estimated that it would cost operators £35,000 on average per annum to reconcile their Annual Reports and Accounts with the estimates of liabilities in their Funded Decommissioning Plans. Given the current inflexibility in the existing Regulations it is considered highly unlikely by industry that they could synchronise FDP and corporate reporting year-ends and therefore would be faced with the additional costs of reconciling the estimates in both sets of accounts. Amending the regulations to provide flexibility and enable operators to synchronise reporting dates would therefore, in our central case, provide an equivalent annual benefit of £35,000 per annum. A scenario in which no reconciliation was required between FDP and corporate accounts and therefore zero benefits are realised from modifying the Regulations reflects our 'Low' case, which is however considered unlikely in practice by industry. In addition, a 'High' case where the annual costs of reconciliation are estimated at £47,000 per annum has also been assessed.
40. The estimates in this Impact Assessment are undertaken based on the potential costs/benefits to an operator of one new nuclear power station. This is because (i) a FDP will be required for each site, rather than for each operator that could potentially have multiple sites, and (ii) there is uncertainty over the number of new nuclear power stations that will be built in the UK and the timescales over which they will be deployed.
41. The analysis therefore assumes that a nuclear operator will agree a FDP in 2012, and begin the annual reporting cycle the following year, six years in advance of commissioning of the plant. It is further assumed that the plant has an operational life of 40 years followed by a decommissioning period of 20 years. Based on these assumptions it is estimated that the benefits of synchronising reporting periods of £35,000 p.a. will provide a benefit of around £920,000 in Net Present Value terms over the 67-year appraisal period. The estimates were informed by an informal consultation exercise with industry and are based on expectations of the cost of staff time required to complete the synchronisation of accounts.

42. The range of estimated annual and NPV benefits from synchronising reporting timeframes are summarised in table 3 below.

Table 3. Estimated Benefits from Synchronised Reporting Timescales, 2009 Prices.

		Annual (£)	Net Present Value (£)
Benefits	Low	zero	zero
	Central	£35,000	£920k
	High	£47,000	£1.2m

Content of the Verification Report

43. Table 4 below provides summary of the estimated impacts associated with the options on Verification reporting. By definition, there are no costs or benefits associated with the ‘do nothing’ option (option A), which is to retain the existing regulations. The preferred option changes the nature of the assurance required and is consequently estimated to provide financial benefit to Operators, but not result in any offsetting costs from increased administrative burdens.

Table 4: Amending the Content of the Verification Report

	Do Nothing (Option A)	Amend the Regulations (Option B) Preferred Option
Costs	By definition, no additional costs over baseline (counterfactual).	No additional monetised or non-monetised costs over baseline (counterfactual).
Benefits	By definition, no additional benefits over baseline (counterfactual).	<p>Potential to reduce costs from removal of a second Verification Report commissioned by the Secretary of State for which costs would be recovered from Operators.</p> <p>Estimated benefit of £54,000 every five years in line with QQR reporting period from avoided costs of Secretary of State commissioning a second verification report and recovering costs from the Operator. This is in a range of £0-£71,000.</p> <p>In addition, estimated benefit of £54,000 twice over the FDP period. This is in a range of £0-£71,000.</p>

44. **Costs** - Option B, the preferred option, would make the Regulations on Verification reporting more flexible not less. It is therefore reasonable to assume and confirmed by discussions with industry that that the current Regulations provide a ceiling on the costs likely to be incurred as no additional administrative burdens for Operators are foreseen as a result of the proposed change in the nature of the assurance required from third-party verifiers.

45. *Benefits* – Option B, by changing the required content of the Verification report it is expected that there will be a financial benefit to Operators. As outlined above, the prescriptive nature of the assurance required under the current regulations is unlikely to be met by the market for independent third party verification a view that has been confirmed through discussions with industry. If this were the case, the Secretary of State would not be able to rely on the Verification Report provided by Operators and would have to commission his own, secondary Verification and recover the costs of doing so from industry.
46. For the purposes of monetising this avoided cost (benefit) for Operators it is assumed that the Secretary of State would have otherwise required the additional assurance of a second Verification in two circumstances:
- i. One instance over each five-year period between quinquennial reports where the cumulative value of operational/technical changes will result in a single Modification greater than 5% and so would require Secretary of State approval. It is assumed that this would occur in line with quinquennial reporting years at a cost of £54,000 per occurrence.
 - ii. Two instances over the operational life of the plant, in line with an estimated two upward ad-hoc Modifications greater than 5% or reflecting significant changes to the steps taken or details of the security provided. Each of these modification would require Secretary of State approval and therefore are expected to also require the greater assurance of a second Verification report commissioned by the Secretary of State. These Modifications are assumed to occur in years 10 and 30 of an assumed 40 year operational life of the power station, also at a cost of £54,000 per occurrence.
47. A scenario in which the Secretary of State did not require the additional assurance of a second Verification report (where a verification report is not provided in the correct form on which to base a Secretary of State decision) and therefore no benefits are realised from modifying the Regulations reflects our 'Low' case. This is considered unlikely in practice by industry, particularly over the long operational life of the power station. In addition, a 'High' case where the costs of a Verification reports are estimated at £71,000 per commissioned report has also been assessed.

48. The range of estimated benefits for each time a Verification report would be required are summarised in table 5 below along with NPV estimates over the FDP reporting period.

Table 5. Estimated Benefits from Avoided Costs of Secondary Verification Reporting, 2009 Prices.

		Costs Per Verification (£)	Net Present Value (£m)
Avoided costs of Verification report in QQR years (every 5 years)	Low	zero	zero
	Central	£54,000	£262,000
	High	£71,000	£343,000
Avoided costs of Verification report for 2 ad-hoc modifications over 40-year operational life	Low	zero	zero
	Central	£54,000	£47,000
	High	£71,000	£62,000
TOTAL	Low	NA	zero
	Central	NA	£308,000
	High	NA	£405,000

Amending the Modification Regime

49. Table 6 below provides an indication of the impacts associated with the options on amending the Modification regime. By definition, there are no costs or benefits associated with the 'do nothing' option (option A), which is effectively to retain the existing regulations.

50. Option B would be expected to provide the most significant benefits to Operators as a result of exempting all (both upward and downward Modifications of more than 5%) Modifications from the need for Secretary of State approval, but is not considered desirable on the basis that exempting downward modifications would create a long-term risk that estimates of liabilities diverge downwards from their underlying 'true value' which would risk recourse to the taxpayer to fund liabilities.

51. Option C, the preferred option, is also estimated to provide the same financial benefit to Operators, while preserving the Secretary of State's *strategic interest* of ensuring that prudent provision is made to discharge the relevant liabilities as and when they fall due.

Table 6: Amending the Modification Regime

	Do Nothing (option A)	Amend the Regulations: Exempt Upward and Downward Modifications +/- 5% (Option B)	Amend the Regulations: Exempt Upward Modifications +5% (Option C)
Costs	By definition, no additional costs over baseline (counterfactual).	No additional monetised costs over baseline (counterfactual). Exempting downward modifications has the potential to increase costs to the taxpayer in the long-run. If the estimated liabilities are lower than the true value, the result will be that the security provided will be insufficient to meet those liabilities when they fall due. It is not possible to accurately quantify this risk.	No additional monetised costs over baseline (counterfactual).
Benefits	By definition, no additional benefits over baseline (counterfactual).	Potential to reduce costs by providing flexibility to Operators in respect being exempted from all Modifications (upward and downward) greater than 5%. Estimated benefit of <u>£470,000</u> for each exempted modification of which 4 are assumed to be exempt over the operational life of the plant. This is in a range of zero to 5 modification over the life of the plant, with benefits per occurrence also assumed at £470,000.	Potential to reduce costs by providing flexibility to Operators being exempt from approval requirements. Estimated benefit of <u>£470,000</u> for each exempted modification of which 2 are assumed to be exempt over the operational life of the plant. This is in a range of zero to 3 modification over the life of the plant, with benefits per occurrence assumed at £470,000.

Option B

52. *Costs* – This option would make the Regulations on the Modification regime more flexible by exempting all modifications (upward and downward) greater than 5%. If the estimated liabilities are lower than the ‘true value’, the result will be that the security provided will be insufficient to meet those liabilities when they fall due. There is a real risk therefore in this approach as it has the potential to increase costs to the taxpayer in the long-run. As such, Government would be amending the regime in a manner that would be inconsistent with the Objective and Guiding Factors of a Funded Decommissioning Programme as set out in the Energy Act 2008. It is not possible to accurately quantify this risk.

53. *Benefits* – This option would provide a financial benefit to operators, although monetisation is problematic given the uncertainty around the number of times an Operator would have to seek Secretary of State approval for large Modifications of greater than 5% under the current

Regulations. It is assumed however that over the 40 year operational life of the facility, there would be four circumstances (2 upward and 2 downward Modifications) in which approval would be necessary (assumed to be in years 10, 20, 30 and 35) with an estimated administrative burden to Operators of around £470,000 per approval. The benefit of amending the regulations in this manner would consequently be the removal of these costs for Operators. We judge there to be four instances over the life of plant where increases (or decreases) in liabilities estimates might result which are large enough to require Secretary of State approval; they are:

- i. Changes in the fee charged by the Secretary of State under Section 66 of the Act for waste disposal services (the Waste Transfer Price);
- ii. Changes in the waste management strategy, for example a shift from on-site interim storage, conditioning and encapsulation pending final disposal to, off-site centralised interim storage, conditioning and encapsulation pending final disposal;
- iii. A fundamental review of the DWMP commissioned by the Secretary of State in the light of new information (we expect this to happen **twice** during the operational life of the facility).

Table 7. Estimated Benefits from Exempting Upward and Downward Modifications of more than 5%, 2009 Prices

	Scenario (number of modifications over 40 year operational life)	Cost Per Modification (£)	Net Present Value (£m)
Benefits	Low (zero modifications)	NA	NA
	Central (4 modifications)	£470,000	£725,000
	High (5 modifications)	£470,000	£888,000

Option C (Preferred Option)

54. *Costs* – This option would make the Regulations on the Modification regime more flexible, not less, by exempting upward modifications of greater than 5%. It is therefore reasonable to conclude as confirmed by discussions with industry that the current Regulations provide a ceiling on the costs to be incurred as no additional administrative burdens for Operators.

55. *Benefits* – This approach would provide a financial benefit to operators, although as with option B, monetisation is problematic given the uncertainty around the number of times an Operator would have to seek Secretary of State approval for Modifications of greater than 5% under the current Regulations. It is assumed however that over the 40 year operational life of the facility, there were to be 2 circumstances in which approval would be necessary (assumed to be in years 10 and 30) for upward Modifications greater than 5%, with an estimated administrative burden to Operators of around £470,000 per approval. We judge there to be two instances, as specified in paragraph 52 over the life of plant where increases (i.e. upward only) in liabilities estimates might result which are large enough to require Secretary of State approval.

Table 8. Estimated Benefits from Exempting Upward Modifications of more than 5%, 2009 Prices

	Scenario (number of modifications over 40 year operational life)	Per Modification (£)	Net Present Value (£m)
Benefits	Low (zero modifications)	NA	NA
	Central (2 modifications)	£470,000	£412,000
	High (3 modifications)	£470,000	£604,000

Summary of Central Estimates for each Option

56. Table 9 below summarises the central estimates of benefits associated with each policy option considered. The preferred set of amendments to the regulations (Option 3) is shown to have slightly lower net benefits to Operators over the 67 year appraisal period than Option 2. However, as outlined above this is due to the retention of the requirement to seek Secretary of State approval for downward Modifications under Option 2, given the significant risks of recourse to taxpayers if this was obligation on Operators was removed.

Table 9. Net Benefits of Each Policy Option, Central Estimates, NPV 2009 Prices.

	Net Benefits of Policy Option		
	Policy Option 1 <i>Do nothing</i>	Policy Option 2 <i>Synchronise Reporting Timeframes, Amend Verification Assurance, and Exempt all Modifications (+/- 5%)</i>	Policy Option 3 (Preferred Option) <i>Synchronise Reporting Timeframes, Amend Verification Assurance, and Upward Modifications (+ 5%)</i>
Synchronise Reporting Timeframes	zero	£920k	£920k
Verification Reporting	zero	£308k	£308k
Modification	zero	£725k	£412k
Total	zero	£1.9m	£1.6m

Scaling of monetised benefits per site to account for potential for multiple new nuclear power stations

57. While there is uncertainty over the level and timescales of new nuclear deployment, the Government is clear that nuclear should be free to contribute as much as possible to the need for new low carbon electricity generating capacity³. The Carbon Plan⁴, published by DECC in December 2011 set out modelling results that suggested new nuclear could contribute between 10-15GW by 2030, equivalent to between 3 to 5 new multiple reactor nuclear power stations. Table 10 below therefore provides estimates of the NPV of benefits for a fleet of between 3-5 new nuclear plants, based on the modelled deployment trajectories (operational start dates of new reactors) underpinning the Carbon Plan.

Table 10: NPV of Benefits from Options on Amending Regulations – Sensitivity on Levels of New Nuclear Deployment, (2009 prices).

Number of New Nuclear Sites and Cumulative Capacity by 2030	NPV of Policy Option		
	Policy Option 1 <i>Do nothing</i>	Policy Option 2 <i>Synchronise Reporting Timeframes, Amend Verification Assurance, and Exempt all Modifications (+/- 5%)</i>	Policy Option 3 (Preferred Option) <i>Synchronise Reporting Timeframes, Amend Verification Assurance, and Upward Modifications (+ 5%)</i>
1 site (c.3.2GW - 3.3GW)	zero	£1.9m	£1.6m
3 sites (c.10GW)	zero	£5.1m	£4.4m
5 sites (c.15GW)	zero	£7.8m	£6.7m

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);

58. The level of analysis used in this Impact Assessment has been determined by the level of information available from industry on the cost implications associated with adherence to the current Regulations. Operators have significantly refined their cost estimates since the Regulations were introduced in 2011, reflecting an improved understanding of how the Regulations will operate in practice. This has enabled relatively detailed analysis to be undertaken at this stage on the potential impacts of amending the Regulations. However, given that no FDP has yet been approved, there is uncertainty around exact operation and costs associated with compliance. We

³DECC, National Policy Statements for Energy Infrastructure, July 2011.
http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx

⁴ DECC, The Carbon Plan: Delivering Our Low Carbon Future, December 2011.
http://www.decc.gov.uk/en/content/cms/tackling/carbon_plan/carbon_plan.aspx

are seeking further information on administrative costs and benefits of the proposed amendments as part of the consultation.

59. This main benefit of the improved availability of information has been in relation to detailed estimates on the administrative burden (e.g. FTE days and costs for financial, legal, management work) associated with complying with each aspect of the Regulations i.e. annual reporting, submitting modifications for approval, and the costs of independent third party Verification. Information from industry on the costs of verification, combined with legal advice, has helped inform the estimates on the costs of Secretary of State having to commission Verification reports.
60. The analysis aims to provide monetised estimates of the benefits associated with each of the three proposed amendments to the Regulations and alternative options. While we have relatively detailed estimates on unit costs as informed by industry there remains significant uncertainty around the frequency and exact timing of these benefits (avoided costs) occurring. In particular, there is inherent uncertainty around the number of times a second Verification report would need to be commissioned by the Secretary of State and the years in which these costs would therefore be passed on to industry. A similar level of uncertainty is attached to the monetised estimates on the Modification regime. We have however based our assumptions on the frequency and timing of these impacts on our informal consultation with industry and believe them to be reasonably conservative and a realistic interpretation of the frequency and magnitude of impacts at this stage. The analysis also includes a range that reflects a scenario where zero benefit is realised from each proposed amendments to the Regulations. This is a possible outcome but is considered of low probability, as reflected in our rationale for intervening to amend the regulations in order to reduce the currently onerous administrative burdens.
61. The analysis serves to demonstrate that the monetised impacts (benefits) are likely to be of a relatively small magnitude over the duration of a Funded Decommissioning Programme and relative to the industry costs more generally. As this is a consultation stage Impact Assessment we are using the consultation to seek additional evidence on potential impacts and will revise the analysis in light of any suitable evidence obtained.

Risks and Assumptions

Assumptions

62. The analysis is based on the following assumptions:
- The counterfactual is that the Regulations (2011) remain un-amended as reflected in our 'do nothing' options.
 - The analysis is based on the potential impacts on an operator of one new nuclear power station. This is because (i) a FDP will be required for each site, rather than for each operator that could potentially have multiple sites, and (ii) there is uncertainty over the number of new nuclear power stations that will be built in the UK and the timescales over which they will be deployed.
 - An appraisal period of 67-years has been used based on the assumption that that a nuclear operator will agree a FDP in 2012, and begin the annual reporting cycle the following year, six years in advance of commissioning of the plant in 2019. It is further assumed that the plant has an operational life of 40 years followed by a decommissioning period of 20 years.
 - Due to the long appraisal period, HM Treasury's long term discount rate has been used to produce the NPV estimates: 3.5% Years 0-30, 3.0% Years 31-67.

Risks

63. If the regulations do not provide an adequate framework for the modification, verification and reporting on the FDP there is a risk that the framework will not deliver a satisfactory level of assurance to the Secretary of State that prudent provision is being made for the liabilities. This risk is being mitigated through continue review of the FDP framework which is a long-lived arrangement.

Direct costs and benefits to business calculations (following OIOO methodology);

64. Two aspects of the proposed amendments to the legislation are within the scope of the One In One Out (OIOO) rule. It is estimated that under the central case the changes would result in an 'Out' of £0.05m based on the benefits to one Operator / FDP. This figure excludes the estimated benefits to business from the proposed amendments to the Verification process as these are categorised as cost recovery and are therefore outside the scope of OIOO reporting. The direct nature of benefits to business from the proposed amendments to the Reporting processes and the Modification regime (as reported in table 3 and table 8 respectively) are within scope of the OIOO rule. The estimates were derived via an informal consultation exercise with industry and are based on expectations of the cost of internal staff and external adviser time required to undertake each process. It is expected that there will be no offsetting costs to business as a result of the amendments as the existing regulations impose a ceiling on the costs that Operators will incur in meeting their Obligations in respect of their Funded Decommissioning Programme (FDP).

Wider impacts

65. These proposed amendments relate to regulatory processes in relation to investment in new nuclear power stations. All the companies likely to build new nuclear power stations will face the same legislation and the same regulatory requirements and therefore the amendments are not judged to have impact on competition. There are no exemptions in the Regulations for business of certain sizes. Therefore, whilst as a matter of law both micro businesses and SMEs are caught under the Regulations the reality is that prospective nuclear operators are all very large businesses due to the very large capital requirements and the extensive regulatory function that is required to operate in the sector. Also because the nuclear industry is highly regulated due to safety, security and environmental considerations, nuclear operators will have highly developed and sophisticated regulatory functions within their organisational structures.

Summary and preferred option with description of implementation plan

66. The preferred option for amending each aspect of the Regulations is set as set out in paragraph 27 in respect of Reporting Timeframes; paragraph 30 in respect of the content of the Verification Report; and paragraph 32 in respect of approval for Modifications to their FDP. Overall, the preferred options for amending the Regulations are captured in Policy Option 3.

67. The number of businesses that will be affected by the Regulations and Order will be small – there are currently three consortia of nuclear developers considering new build in the UK, with scope for developers to construct more than one new nuclear power station. We have ongoing and systematic contact with these businesses and we are clear that any failings in the regime would be made clear to us. We can, however, see the merits of undertaking a review once the regime is fully up and running and will do so at an appropriate point after the agreement of the first FDP once sufficient experience of operating the regime has been gained by operators and Government.

Annex A

Background Information on the Funded Decommissioning Programme Requirements as set out in the Energy Act 2008

1. When considering whether to approve, to approve with condition or to modify an FDP which has already been approved, the Secretary of State will consider whether such an FDP or Modification satisfies the following factors (the Guiding Factors), 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 divisions of roles and responsibilities;
 - vi. Is a durable arrangement; and
 - vii. Sets out a Fund structure that demonstrates independence of the fund; measures to ensure efficiency of the Fund; restrictions on the use of Fund Assets; and insolvency remoteness.
2. The Secretary of State would expect an FDP to be divided into two parts. The first part, referred to as the Decommissioning and Waste Management Plan (DWMP) will fulfil an Operator's obligations under the Act in relation to "Technical Matters" and the estimates of costs likely to be incurred in connection with the "Designated Technical Matters⁵" (DTM). The DTMs are those matters which are so significant that the operator must provide security to ensure that funds are available to discharge those matters. The second part, referred to as the Funding Arrangements Plan (FAP) should set out details of any security to be provided, as required under the Energy Act in connection with meeting the estimated costs of carrying out the plans (as set out in the DWMP) for the DTM.
3. Section 46 of the Act (as amended by section 106 of the Energy Act 2011) enables the Secretary of State to agree to exercise or not to exercise his power to propose modifications to the FDP in a particular manner or within a particular period. In determining whether (and if so, on what terms) to propose a Modification to the FDP, the Secretary of State will have regard to the matters set out in the Guidance⁶; in particular whether the Modification is a necessary, appropriate or proportionate means to ensure that the Objective is met and the Guiding factors are complied with.
4. Where the Secretary of State enters into a Section 46 Agreement he will need to consider whether, as a whole, the FDP and the Section 46 Agreement include adequate provision for the Modification of the FDP in the event that the provision made for it for the Technical Matters (including the financing of the Designated Technical Matters) ceases to be prudent. The exact terms of the agreement will be specific to the Operator as it will take into account that particular Operators proposed FDP.
5. In determining whether (and if so on what terms) to approve a Modification put forward by an Operator under Section 48 (Modification of an approved programme) of the Act or other person with obligation under the FDP, the Secretary of State will have regard to the provision of the FDP and any mechanisms within the FDP relating to its updating in accordance with the procedure laid down in Section 49 (Procedure for modifying approved programme) of the Act. In particular the FDP may contain suggested mechanism relating to certain types of Modification which fall above any threshold

⁵ See section 45(6) of the Energy Act for a definition of designated technical Matter and section 3 of the Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010 at www.legislation.gov.uk

⁶ http://www.decc.gov.uk/en/content/cms/meeting_energy/nuclear/new/waste_costs/waste_costs.aspx

set out in the Regulations. For example, where it can be predicted in advance that a Modification may be required by the Operator as a matter of course and appropriate mechanisms are set out in the FDP, the Secretary of State would expect to approve any such Modifications compliant with the mechanism set out in the FDP, provided that the general principles are complied with.

6. Under Section 49 of the Act, all Modifications to an approved FDP require Secretary of State approval. Given that this requirement is onerous, Section 50 enables the Secretary of State to make regulations which disapply section 49 in relation to Modifications which are of a description specified in the Regulations. It is the Nuclear Decommissioning and Waste Handling (Finance and Fees) regulations 2011 (the Regulations) which describe the types of Modification which do not require Secretary of State approval.
7. There are a range of circumstances in which a modification may be required. For example, changes to the DWMP to account for technical or operational changes to the nuclear power station which have had an effect on the cost estimates for DTM. Modifications may also include changes to the FAP for example to reflect changes to the Investment Strategy to take account of changing expectation of investment returns. Other circumstances within which Modifications may be required are explained in the Guidance⁷.

⁷ http://www.decc.gov.uk/en/content/cms/meeting_energy/nuclear/new/waste_costs/waste_costs.aspx