



Department for  
Energy Security  
& Net Zero

# Energy Bill Policy Statement

Great British Nuclear

July 2023



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# Summary

The Energy Security Bill, now known as the Energy Bill, was introduced into Parliament on 6 July 2022. This Bill will deliver a cleaner, more affordable and more secure energy system for the long term. It builds on the commitments in the British Energy Security Strategy (BESS) to invest in homegrown energy and maintain the diversity and resilience of the UK's energy supply.<sup>1</sup>

The Bill includes legislation for Great British Nuclear (GBN), which will be responsible for helping to revitalise the civil nuclear power industry in Britain and driving forward new nuclear projects, to ensure the UK meets the ambition of up to 24 Gigawatt (GW) of nuclear-generated electricity by 2050, as established in the BESS.

GBN was launched in March 2023 and is currently operating through an existing government company, British Nuclear Fuels Limited (BNFL).<sup>2</sup> The purpose of GBN is to facilitate delivery of the government's programme of new civil nuclear projects. The Energy Bill will formalise in legislation GBN's long-term mandate to carry its objectives with confidence.

The nuclear industry is continuing to evolve in the face of emerging technologies, such as Small Modular Reactors (SMRs), and nuclear developers, operators and technology designers are being forced to adapt to keep up. This is paired with a renewed global interest in nuclear-generated power, with economic peers such as France announcing a nuclear "renaissance" in 2022.

Given this evolving and adapting nuclear market, GBN is being intentionally designed to be an agile, adaptable organisation that is as fit to deliver new nuclear in 2023 as it will be in 2050. The specific nature and scope of government's ambitions for nuclear (e.g. how many projects, which reactor technology etc.) may change over time. To better support this adaptability, there are important and technical delegated powers in the Bill to allow for an adaptable GBN, reflecting the evolving market and HMG's evolving policy ambitions.

To better empower GBN to deliver on the government's nuclear ambitions in the long term, the Secretary of State will be granted a power to give directions and guidance to GBN. This will help to ensure GBN's enduring role in facilitating delivery of the government's nuclear policy.

As part of designating a company as GBN, and as its activities evolve over time, property, rights and liabilities may need to be transferred between GBN and other relevant public bodies, companies and/or their subsidiaries, including between a former and proposed GBN company. The Bill, therefore, includes provisions for transfer schemes to facilitate this, with delegated powers allowing for the provision of compensation, tax variation and pensions in relation to these transfer schemes. This provides for the future flexibility required by GBN.

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<sup>1</sup> [The British Energy Security Strategy \(2022\)](#).

<sup>2</sup> [Powering up Britain: Energy Security Plan \(2023\)](#).

## Role of Great British Nuclear

GBN is tasked with facilitating delivery of government's nuclear programme. Its focus will be to de-risk new nuclear development by co-funding projects at the critical early development stage and acting as an expert adviser throughout the process.

Having launched within the auspices of the current legal framework in March 2023, the Energy Bill will set out GBN's long-term role in delivering government policy. GBN will be a government-owned company and, as such, will have broad general powers under the Companies Act 2006. The Bill, in setting out GBN's objects, stipulates that those general powers are to be exercised to facilitate the design, construction, commissioning and operation of nuclear energy generation projects in furtherance of government policy.

The first priority for GBN is to lead a competitive process to select the best SMR technologies for investment. Once the competitive process has ended, GBN will deploy government funding to support the development of these selected technologies. The objective of the technology selection process is to identify the vendors who are best positioned to be commercially deployed, in line with our ambition to take two projects – at least one SMR – to Final Investment Decision (FIDs) next Parliament.

GBN investment will aim to de-risk projects at the critical period between regulatory approval to investment decision and operation. By de-risking early-stage projects, GBN aims to boost private sector investment into nuclear and prepare a pipeline of new nuclear projects in line with government's ambitions for up to 24GW of nuclear generation by 2050.

While the initial focus for GBN will be on SMRs and their deployment in appropriate projects in Britain, it will also support government consideration of further large Gigawatt-scale projects to help us deliver on our ambition.

# Power of Secretary of State to issue directions and guidance to Great British Nuclear

GBN's role is to drive delivery of government's ambitions for new nuclear. As new nuclear has a very long lead time, GBN is designed to be a flexible delivery vehicle that may undertake different activities, assuming and relinquishing responsibilities over time. The policy objective when laying legislation is to ensure GBN has the flexibility to adapt to changing markets and trends, and the support to drive progress in decades-long nuclear projects.

Government's policy intention is that GBN will generally be operationally independent, with the usual governance and sponsorship arrangements in place for a non-departmental public body (NDPB), subject to classification. However, given GBN's broad and potentially shifting responsibilities over time it is considered necessary that the Secretary of State has a mechanism through which to direct and guide the strategic direction of GBN in line with government policy.

Restricting GBN with an inflexible series of functions, powers, duties and objectives through the Energy Bill risks GBN becoming a rigid organisation. Instead, a provision is included to grant a power for the Secretary of State to issue directions and guidance to GBN. The directions and guidance given by the Secretary of State – and the process attached to it – are intended to be in addition to, and separate from, any more general, business as usual policy or guidance which GBN is required to follow.

The directions may be specific or general in nature. GBN must comply with such directions and have regard to guidance given to it. The Secretary of State will be required to first consult with GBN and such persons as they consider appropriate before issuing directions. This will ensure that such directions or guidance are only used where necessary and appropriate, respecting GBN's relevant expertise. The Bill also requires that all directions are laid before parliament and that directions and guidance given to GBN in connection with this power are published, to ensure appropriate levels of transparency.

There are numerous examples of similar powers, including where the arm's length bodies in question are companies such as the UK Infrastructure Bank (UK Infrastructure Bank Act 2023) and Strategic Highways Companies (Infrastructure Act 2015).

Possible scenarios where this power may be used include:

- **Shift in government policy for new nuclear:** There could be a move to focussing attention on a particular nuclear technology or a change in the stated ambition for nuclear generating capacity which would require GBN to focus on new areas of work, possibly to the exclusion of others, or to scale its operations up or down.
- **Intervention in the public interest:** The Secretary of State may direct GBN to take a specific action that is in the public interest, for example a focus on a particular type of technology.

## Transfer Scheme (Compensation)

As part of designating a company as GBN, and as its activities evolve over time, property, rights and liabilities may need to be transferred between GBN and other relevant public bodies. In addition, given the complex and evolving nature of nuclear projects, there may be situations in future which would require GBN to divest itself from certain projects, necessitating the transfer of property, rights and liabilities to or from the organisation.

The Bill includes power for these transfers to be effected by transfer schemes made by the Secretary of State. Transfer schemes are a common mechanism for facilitating transfers of businesses where government is involved. They have been used under previous legislation such as the Postal Services Act 2011, Communications Act 2003, Transport Act 2000 and the Railways Act 1993. The Bill specifies that the transferor may be compensated by the Secretary of State or any relevant transferee.

There are also scenarios when the transfer scheme may override agreements with third parties that might otherwise prevent or restrict a transfer. It is therefore possible that third parties (other than a transferor) may also suffer loss or damage due to the Secretary of State's transfer scheme powers being exercised. Where this is the case, it is appropriate that affected parties should be compensated, and these powers include provision for proportionate compensation to be paid.

In situations where the Secretary of State and affected parties entitled to compensation disagree on the valuation of transferred assets, an independent valuer will be appointed by the Secretary of State to resolve the issue. Given the importance of impartiality when creating rules for dispute arbitration, the Secretary of State will engage with independent valuers to ensure the regulations defining the valuation procedure remains fair, relevant, and reflective of market norms at the time. To ensure transparency and accountability during what can be commercially sensitive negotiations, Parliament will retain oversight through secondary legislation.

## Transfer Scheme (Taxation)

As part of the designation of a company as GBN and as its activities evolve, various assets, rights and liabilities may need to be transferred between GBN and other relevant public bodies. There may also, in future, be circumstances in which GBN assumes or relinquishes involvement in particular civil nuclear generation projects, which means that property, rights and liabilities need to be transferred to or from it.

The Bill includes powers for these transfers to be effected by transfer schemes made by the Secretary of State. Such transfer schemes may result in tax liabilities for the Secretary of State (as a potential transferee under the scheme), for other parties to the transfer scheme, or for those who are otherwise affected by the transfer scheme.

Nuclear projects are often enormous in scale and the underlying financial structure can substantially vary between nuclear projects. To best reflect this evolving context, His Majesty's Treasury (HMT) has been empowered to vary tax relating to transfers through the creation of a Statutory Instrument (SI) using the negative procedure.

It may be appropriate to vary how such tax liabilities apply to avoid inefficient and often circular tax transfers between public organisations. To ensure value for money for the taxpayer, this Bill includes clauses which empower the Treasury to define the structure under which such transfers will take place. This will protect against inadvertently placing excessive tax liabilities on organisations ill-equipped to deal with such liabilities, and which may disrupt nuclear project delivery.

Regulations made under this power may contain provision for a tax not to apply, to apply with modifications, or for anything transferred to be treated in a specified way for the purposes of a tax provision. This could be in connection with any of the following:

- income tax
- corporation tax
- capital gains tax
- stamp duty
- stamp duty reserve tax
- stamp duty land tax
- value added tax.

It is not uncommon for variations to tax liabilities to be drafted by way of power for the Treasury, as here. Examples include paragraph 4 of Schedule 5 to the Investigatory Powers Act 2016 and section 25 Public Bodies Act 2011.



# Pension arrangements in connection with Great British Nuclear

Within the nuclear and electricity sector there are special pension protections for certain employees which give them the right to continued membership of a defined benefit (DB) pension scheme (DB scheme). Similar protections apply in other sectors and for employees of local or central government. Where those employees are subject to a compulsory transfer of employment, those protections require their new employer to continue to provide them with a DB Scheme.

As GBN is anticipated to play a long-term role in Britain's civil nuclear market, the organisation is likely to face transfers of employees who are currently active members of a DB scheme, some of whom will have special pension protections. It is therefore likely that changes to DB Schemes will be required over time. Similar considerations will also need to be made for employees who are active members of defined contribution/money purchase (DC) pension schemes.

Therefore, broad powers are required to allow the Secretary of State to make provision to facilitate the participation of GBN and any related entities in pension schemes which are currently in existence for transferring employees.

The pensions and employment arrangements for any future transfer schemes relating to GBN can only be properly determined as part of the overall structuring of each respective transfer scheme and cannot be determined in advance. Provision will need to be made by considering the detail of the relevant pension schemes themselves, and the decisions on how employees will transfer to the receiving entity as well as how, where appropriate, the historic DB pension liabilities will be apportioned between the transferring and receiving entities.

Detailed provision of these matters can only be made once the due diligence process associated with any transfer scheme has taken place in the future. Any immediate due diligence needed can only take place once powers within the Bill are secured, as government can only rely on voluntary disclosure by the relevant parties otherwise prior to this. Further, any speculative information gathering undertaken at this stage would become out of date and therefore of limited use. Consequently, this process must wait and be carried out once legislation has passed and as GBN's activities develop and evolve. Given GBN's anticipated long-term role, there are then likely to be a number of transfer schemes which are made over time of varying natures, and with different parties involved, each of which will require due diligence around the pensions position.

To ensure durable pensions arrangements the powers to allow the Secretary of State to make provision for the following are required:

- a. the division of the relevant pension schemes into different sections;
- b. the participation of existing and new employers in those different sections;
- c. the allocation of DB assets and rights between those sections (and for the valuation of assets and rights in that context); and

- d. the transfer of assets and rights from the newly created sections to another pension scheme.

These provisions will ensure that the pension arrangements will consider both GBN's obligations and the DB pension liabilities of the employees and former employees which may remain the responsibility of a transferor.

The legislation will provide that the Secretary of State must ensure that relevant employees are, in all material respects, no worse off in terms of their pensions provision immediately after the exercise of the power. Before the power is exercised, the relevant pension scheme trustees and principal employers must be consulted. The proposed power is modelled on the ISOP pension provisions in Schedule 8 to the Energy Bill, and the power in section 96 Transport Act 2000 is to some extent a precedent for taking this kind of delegated power.

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