

ANNEX 10
LEGISLATIVE BACKGROUND

This Annex sets out the legislative and statutory background to the FDP, which includes references to relevant provisions of the 2008 Act, the 2013 Regulations, the 2022 Act and in relation to that background, the Guidance.

1. SUBMISSION OF THE FDP

1.1 Section 45 of the 2008 Act provides that where an operator applies to the ONR for a nuclear site licence for a site on which it intends to construct a nuclear installation, it is required to:

- (A) give written notice of the application to the Secretary of State; and
- (B) prepare and submit a funded decommissioning programme to the Secretary of State.

1.2 An FDP is defined as a programme which makes provision for the 'technical matters' and specifies how the 'designated technical matters' are to be financed. It must contain, among other things: details of the steps to be taken under the programme in relation to the technical matters; estimates of the 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.

(A) **Technical Matters:** the Technical Matters in relation to a site are defined in Section 45(5) of the 2008 Act as:

- (i) Treatment, storage, transportation, and disposal of hazardous material during the operation of the nuclear installation; and
- (ii) Decommissioning of the nuclear installation and site clean-up after the end of its operation, including activities preparatory to such decommissioning and clean-up.

(B) **Designated Technical Matters (DTMs):**

- (i) The "Designated Technical Matters" in relation to a site are defined in Section 45(6) of the 2008 Act as the decommissioning and the clean-up of the site after the nuclear installation ceases operation.
- (ii) The 2010 Order expands this definition to also include (i) activities preparatory to decommissioning and clean-up; and (ii) construction and maintenance of an interim store built during the operation of the plant.

1.3 While the FDP must make prudent provision for all Technical Matters, it is only required to make prudent provision for the financing of costs associated with the Designated Technical Matters. The full list of Technical Matters and Designated Technical Matters is further illustrated in Table below.

Table: Technical Matters and Designated Technical Matters

	Matter	Statutory Reference	Technical Matter	Designated Technical Matter
1.	The treatment, storage, transportation and disposal of hazardous material during the operation of a nuclear installation on the site	45(5)(a)	Yes	No
2.	The decommissioning of any relevant nuclear installation and the cleaning up of the site	45(5)(b) / 45(6)(b)	Yes	Yes
3.	Activities preparatory to decommissioning and the cleaning up of the site	45(5)(c) / 45(6)(a) / 2010 Order	Yes	Yes
4.	Construction and maintenance of an interim store built during the operation of the plant	45(5)(a) / 45(6)(a) / 2010 Order	Yes	Yes

2. APPROVAL OF THE FDP

- 2.1 Once the FDP is submitted in respect of the Site, the Secretary of State may then approve or reject it. It is a criminal offence for the Operator to use the Site by virtue of the Nuclear Site Licence, or permit another person to do so, without an FDP having been submitted and approved.
- 2.2 The Secretary of State must exercise the power to approve the FDP with the aim of securing that prudent provision is made for the Technical Matters, including financing the Designated Technical Matters in accordance with Section 46(4) of the 2008 Act. If approved, the FDP may be endorsed with or without modifications, and unconditionally or subject to conditions.
- 2.3 Section 54(6) of the 2008 Act requires the Secretary of State to publish guidance in relation to the relevant factors it may be appropriate to consider when approving and/or modifying an FDP. Section 54(7) requires the Secretary of State to have regard to any such guidance when, *inter alia*, making a decision to approve the FDP.
- 2.4 The Guidance represents the latest guidance made by the Secretary of State pursuant to Section 54(6) of the 2008 Act. The Guidance includes the Objective supplemented by

seven (7) guiding factors relevant to the Secretary of State's decision on FDP approval (and/or modification).

2.5 The Objective is set out in Section 1.6 of the Guidance and provides that (emphasis added):

“the Secretary of State's overriding concern, 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 the costs of safely and securely managing and disposing of their waste; and*

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

2.6 The Guidance goes beyond the requirements in the 2008 Act by the inclusion of the following requirements:¹

- (A) that provision is made for the full share of the costs of safely and securely managing and disposing of waste. Costs for the Operational Period waste disposal management (as distinct from decommissioning) do not fall under the scope of Section 46(4) of the 2008 Act; and
- (B) that the risk of recourse to public funds must be remote. This requirement is not expressly included in the 2008 Act.

2.7 While neither the 2008 Act nor the Guidance define “prudent provision”, the Board, in considering the expert King's Counsel advice provided to DESNZ and in line with established principles of statutory interpretation, interprets the phrase in accordance with its ordinary meaning to convey the concept of “*carefully considering and catering for*” the relevant matters.

2.8 In addition, in relation to the Objective, the Board is of the view that:

- (A) the reference to public funds applies to monies advanced directly by a governmental or other public body rather than amounts collected from end consumers by the Revenue Collection Counterparty under the RAB funding model in accordance with the 2022 Act. This interpretation is consistent with:
 - (i) the definitions of “public funds” in other legislation, including the Pension Schemes Act 1993, the Banking Act 2009 and the Financial Services Act 2012; and
 - (ii) the intention of the RAB funding model; and

¹ **Note:** As noted in paragraph 2.3 above, the 2008 Act requires the Secretary of State to have regard to the requirements in the Guidance. Unlike the requirement in Section 46(4) of the 2008 Act to make “prudent provision” (as set out in paragraph 2.2 above), the 2008 Act does not specifically require the objectives and requirements in the Guidance to be met.

- (B) the term “remote” should be understood as introducing a separate test to “prudent provision” in the Guidance. In this context, the meaning of “remote” is somewhere between “unlikely” and “completely negligible.” The Board’s approach to analysing whether the risk of recourse to public funds is “remote” is further discussed in paragraph 3 below.

2.9 The seven (7) Guiding Factors in the Guidance provide that the FDP must:

- (A) provide a clear structure;
- (B) contain a realistic and achievable DWMP;
- (C) contain robust cost estimates which take due account of risk and uncertainty;
- (D) be transparent;
- (E) contain clear terms and division of responsibility;
- (F) establish a durable arrangement; and
- (G) set out a Fund structure that demonstrates:
 - (i) independence of the Fund;
 - (ii) measures to ensure sufficiency of the Fund;
 - (iii) restrictions on the use of Fund Assets; and
 - (iv) insolvency remoteness.

2.10 Before deciding whether to approve or reject the FDP, the Secretary of State must consult the ONR and the Environment Agency regarding the FDP and any proposed modifications or conditions. The Operator and any other person with obligations under the FDP must have the opportunity to submit written representations on the proposed modifications or conditions.

2.11 The Secretary of State must reach a decision without unreasonable delay and must provide reasons to the Operator if rejecting the FDP.

3. REMOTENESS

3.1 As for whether the risk of recourse to public funds is “remote”, ultimately this would be for the Secretary of State to determine based on the available evidence and advice, including that provided by the Board. As shown in Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*), there are several scenarios where there could be recourse to public funds. These can be broadly categorised as follows:

- (A) risks arising solely or substantially due to some kind of positive political or policy action(s);

- (B) market risks resulting from market disruption or volatility, tax treatment of investment returns, or broader macroeconomic events; and
- (C) miscalculations, mistakes, unforeseen technical issues, or other factors or events unrelated to any positive political or policy action(s) or market risks referred to in paragraph (B) above.

3.2 Examples of risks in the category described in paragraph 3.1(A) above include the following:

- (A) politically motivated early closure such that the Partial Revocation process under the SZC Economic Licence applies, but the Secretary of State may under the NASTA otherwise remove the FDP liabilities of the Operator in respect of the FDP Shortfall, including through the Nuclear Transfer Scheme, in which case the Secretary of State would need to pay the FDP Shortfall together with the FDP Implementation Company costs to the FDP Implementation Company (or the holder of the Nuclear Site Licence);
- (B) in various trigger scenarios specified in the NASTA, including an Operator Insolvency Event, expiry of the Regulatory Term and Discontinuation, the Secretary of State may effect an asset transfer in relation to the Fund Assets via the Nuclear Transfer Scheme in accordance with clause 25.2 (*Operator Insolvency Event and Nuclear Transfer Scheme*) of the FAP. See further discussion of this risk in paragraph 2.3 of Annex 12 (*Nuclear Administration and Nuclear Transfer Schemes*);
- (C) Permanent Early Closure, Single Reactor Early Shutdown, plant life extension, or changes to the economic regulatory framework or the SZC Economic Licence, which may, all to varying degrees, be mitigated and/or caused by modification of the SZC Economic Licence and/or the FAP (which require the Secretary of State's approval);
- (D) failure by the Secretary of State to exercise the veto right under Section 11A of the 1989 Act in response to a proposed SZC Economic Licence modification made by the GEMA adverse to the Operator and/or the FDP Implementation Company;
- (E) transfer of shares or assets of the Operator and/or the FDP Implementation Company to the NDA; and
- (F) adverse regulatory change and/or change in policy.

3.3 The Board is not able to assess the remoteness (or otherwise) of the risks in the category in paragraph 3.1(A), as they depend (to varying degrees) on the actions of future governments. However, the Secretary of State should consider these risks as part of the overall assessment.

3.4 Examples of risks in the category described in paragraph 3.1(B) above include the following:

- (A) risks arising post-closure of the Plant due to investment returns being insufficient to cover actual nuclear cost inflation. See row C.5 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*);

- (B) market risk resulting in the return on Fund Assets being lower than anticipated in the Long Term Discount Rate (a greater risk in relation to higher risk asset classes such as equities). See paragraph 8.2(A) of the Main Report;
- (C) counterparty credit risk. See row B.2 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*);
- (D) foreign exchange risks. See row C.5 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*); and
- (E) tax risk post-Plant closure. See row C.6 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*).

3.5 Examples of risks in the category described in paragraph 3.1(C) above include the following:

- (A) unforeseen technical issues arising post-closure of Sizewell C beyond the twenty-five per cent. (25%) contingency allowance designed to address such eventualities (see Annex 8 (*GAD report on Sizewell C funding plan scenario testing*) and Annex 15 (*Decommissioning and Waste Management Plan (DWMP) Analysis*)). The Board has been instructed to assume that the Secretary of State is satisfied with the terms of the DWMP (which includes this twenty-five per cent. (25%) contingency allowance) pursuant to paragraph 17 of the Terms of Reference. However, the possibility is flagged for completeness;
- (B) the costs included in the DWMP not being complete, such that they are not included in the Funding Path, thus causing an FDP Shortfall if not identified prior to closure. See rows A.2, B.6, C.3 and C.7 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*); and
- (C) early closure of the Plant and the consequent application of the Partial Revocation process under the SZC Economic Licence, where the Operator's determination of the "funding path in the FAP to ensure that there is no FDP Shortfall at the end of the Partial Revocation Period" (paragraph 23 of Special Condition 13 of the SZC Economic Licence) is not correct such that there is still a Funding Shortfall at the end of the period. See paragraph 4.5 of Annex 11 (*SZC Economic Licence*).

3.6 The Board has considered and opined on the remoteness (or otherwise) of the risks in the categories in paragraphs 3.1(B) and 3.1(C) above.

4. MODIFICATION OF THE FDP

4.1 Where the FDP has been approved, the Secretary of State, the Operator, or any other person with obligations under the programme may propose modifications to the FDP or to the conditions of its approval in accordance with Section 48 of the 2008 Act. Any such proposal must be made in writing.

4.2 Where the proposed modification is made by the Secretary of State, the Secretary of State must give the opportunity to the Operator and any other person who has obligations under the

FDP (or who would have obligations following the proposed modification) to make written representations in relation to the proposal.

- 4.3 The Secretary of State must then decide whether the proposed modification is to be made and give notice of the decision, including the reasons for it, to every person who has obligations under the approved FDP pursuant to Section 49 of the 2008 Act. Again, the Secretary of State must consult the ONR and Environment Agency insofar as the modification relates to functions conferred on either body. The Secretary of State must exercise the powers related to approving modifications with the aim of ensuring that prudent provision is made for the Technical Matters. The modification takes effect at the time specified in the notice given by the Secretary of State (or the Operator).
- 4.4 When approving the FDP, Section 46(3A) of the 2008 Act provides that the Secretary of State may agree to exercise, or not to exercise, the statutory power to propose a modification in a particular manner and within a particular period (being the Section 46 Agreement). In order to enter into a Section 46 Agreement, the Secretary of State must be satisfied, pursuant to Section 46(3C), that the agreement includes “adequate” provision for the modification of the FDP by the Secretary of State if the provision made by the FDP for the Technical Matters (including financing of the Designated Technical Matters) ceases to be prudent. The Section 46 Agreement covers various scenarios in which the Secretary of State may modify the FDP, including following a Permanent Early Closure (as further described in paragraph 4.6 below).
- 4.5 The Board has been instructed pursuant to paragraph 17 of the Terms of Reference, to assume that the Secretary of State is satisfied with the terms of the Section 46 Agreement in relation to Sizewell C. However, the Board has considered the Section 46 Agreement in light of (i) the identification by the Board in row B.11 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*) of a successful modification to the FDP by the Secretary of State as a mitigant in the event of a Single Reactor Early Shutdown and (ii) the potential interaction of FDP modification with Operator insolvency and transfer pursuant to the Nuclear Transfer Scheme as discussed further in paragraph 2.3 of Annex 12 (*Nuclear Administration and Nuclear Transfer Scheme*).
- 4.6 Clause 6.1 (*Conditions for Process Initiation Right*) of the Section 46 Agreement provides a list of “Process Trigger Events” which will entitle the Secretary of State to initiate a process to propose its own modification to the FDP. These include (but are not limited to) the following events of particular relevance to the FDP Implementation Company:
- (A) a failure by the Operator to correctly request Contribution amounts (clause 6.1.3);
 - (B) a failure by the Operator to transfer any amounts it receives from the Revenue Collection Counterparty into the FDP Account (clause 6.1.6);
 - (C) a failure by the Operator to propose a modification to the FDP following a Partial Revocation notice, as required under the FAP (clause 6.1.8);
 - (D) the FDP no longer makes prudent provision for the Technical Matters (including financing of the Designated Technical Matters) (clause 6.1.10);

- (E) a failure by the Operator to propose a modification to the FDP following a Permanent Early Closure, as required under the FAP (clause 6.1.11);
 - (F) a failure by the Operator to propose a modification to the FDP following a Single Reactor Early Shutdown as required under the FAP (clause 6.1.12); and
 - (G) following receipt of a Funding Outcomes report, the Secretary of State determines that such Funding Outcomes Report demonstrates that the FDP no longer provides prudent provision for the Technical Matters (including financing of the Designated Technical Matters) (clause 6.1.15).²
- 4.7 The Board notes that the draft FAP does not impose an obligation on the Operator to propose a modification to the FDP following a Single Reactor Early Shutdown (rather, this is only currently required following an Early Permanent Shutdown Decision in relation to both Reactors under clause 33 (*Early Permanent Shutdown Decision and Partial Revocation*) of the FAP). This does not appear consistent with clause 6.1.12 (*Conditions for Process Initiation Right*) of the Section 46 Agreement.
- 4.8 The 2008 Act does not provide any specific legislative timeframe for the Secretary of State's consultation or decision-making process when considering proposed amendments to the FDP. However, the Section 46 Agreement does regulate the process in detail.
- 4.9 Following the occurrence of a Process Trigger Event:
- (A) the Secretary of State must notify the Operator in writing that it intends to initiate an amendment to the FDP and provide the Operator with the opportunity to first submit an Operator modification proposal to remediate the Process Trigger Event. The deadline for the Operator to submit its proposal must be at least three (3) months from the date of the Secretary of State's written notice;
 - (B) the Operator must confirm whether it intends to submit its own modification proposal within ten (10) Business Days and provide the proposal itself within the deadline specified by the Secretary of State in its written notice;
 - (C) following receipt of an Operator proposal, the Secretary of State may either: (i) accept such proposal; or (ii) propose its own modifications (whether as a new proposal or as amendments to the Operator's proposal). If the Operator does not make a proposal, then the Secretary of State may also make its own proposal;
 - (D) if the Secretary of State proposes its own amendments following receipt of the Operator's proposal (or in the absence thereof), it shall notify the Operator and the FDP Implementation Company (including particulars of the modification) and allow at least ten (10) Business Days for the Operator and the FDP Implementation Company

² **Note:** Clause 6.1.15 refers to "ALFSR" (defined as the "Assessment of the Likelihood of Funding Success Report"), which the Board has assumed is a drafting error which will be fixed to refer to the Funding Outcomes Report before entrance into the Section 46 Agreement.

to issue an objection notice (to the extent that either believes the Secretary of State's proposed modifications are inconsistent with the Section 46 Agreement); and

- (E) if an objection notice is issued, the proposed modification will then be referred to the dispute resolution procedure under the Section 46 Agreement. If the parties are unable to resolve the dispute within a further twenty (20) Business Days, either party may then refer the dispute to LCIA arbitration.
- 4.10 The Operator is required to propose its own modifications to the FDP in various circumstances, including (i) as soon as reasonably practicable once it becomes aware that an Early Permanent Shutdown Decision is likely under clause 33.1.2 (*Early Permanent Shutdown Decision and Partial Revocation*) of the FAP and (ii) within twenty-five (25) Business Days following the determination of the Partial Revocation period under paragraph 23 (*FDP Shortfall*) of Special Condition 13 (*Funded Decommissioning Programme*) of the SZC Economic Licence. Where a modification to the FAP is proposed by the Operator, the modification process to be followed is materially the same as the steps identified in paragraphs 4.9(C) and 4.9(D).
- 4.11 Transfer pursuant to a Nuclear Transfer Scheme is an Early Termination Event under the Section 46 Agreement. In such circumstances, the Secretary of State's discretion to propose modifications to the FDP would be unconstrained by the Section 46 Agreement (see paragraph 2.3 of Annex 12 (*Nuclear Administration and Nuclear Transfer Scheme*) for further analysis of the circumstances where such modification may be relevant).
- 4.12 The Section 46 Agreement contains a list of "Foreseen Events" in clause 7.1.2 (*Foreseen Events*) which the Secretary of State agrees cannot cause the FAP to no longer make prudent provision for the Technical Matters or financing for the Designated Technical Matters. Therefore, these events shall not entitle the Secretary of State to propose a modification to the FAP under the Process Trigger Event referred to in paragraph 4.6(D) above). A change to the estimate of DTM Costs is included as a Foreseen Event which will not entitle the Secretary of State to propose modification of the FAP.
- 4.13 In addition, the Section 46 Agreement further restricts the Secretary of State's power to propose modifications to the FDP in relation to the "Fixed Parameters" and the "Limited Fixed Parameters". The Fixed Parameters, effective from the commencement of the Section 46 Agreement, lock in key aspects of the FDP funding methodology, including the calculation and verification of Key Assumptions, the use of a P80 cost estimate with a 25% contingency for decommissioning and spent fuel management, a minimum 50-year primary funding period, minimum spreading periods for funding corrections, and requirements for investment strategy and cost controls. After the date on which the Process Trigger Event referred to in paragraph 4.6(G) above is initiated, the more flexible Limited Fixed Parameters apply, which maintain the process for Key Assumptions and the P80 approach but allow the contingency to increase from 25% up to 40%. As discussed in paragraph 5.6 of Part B (*Life Cycle of the FAP*) of Annex 7 (*Funded Decommissioning Programme*), the Section 46 Agreement expressly prohibits the Secretary of State from proposing modifications the effect of which would be to conflict with, or which would not be consistent with, the intended aim or effect of such parameters.

4.14 The 2008 Act permits the Secretary of State to make regulations which disapply the requirement for the site operator to follow this formal modification procedure in order to amend the FDP in certain limited circumstances. Such circumstances are specified in Section 11 of the 2013 Regulations³ and are subject to conditions. They include:

- (A) where the proposed modifications are expressly contemplated in the FAP as being 'relevant modifications' and would result only in a change in the estimates of the Costs of ILW Disposal and Costs of Spent Fuel Disposal or other Designated Technical Matters (or relate only to the funding of the costs likely to be incurred in connection with the Designated Technical Matters); or
- (B) where the proposed modifications would result only in a change in the estimates of the Costs of ILW Disposal and Costs of Spent Fuel Disposal or other Designated Technical Matters (or relate to the details of the steps to be taken under the programme in relation to the technical matters), and the proposal would result in a change in the estimates of such costs either of five per cent. (5%) or less, or more than five per cent. (5%) where the value of the fund is greater than or equal to the subsequent required value under the FDP.

5. FDP FUNDING MECHANISM

- 5.1 The 2022 Act introduced the RAB funding model to new nuclear power generation projects. Part 2 of the 2022 Act sets out the detailed provisions providing for the costs of new nuclear projects to be funded through charges on end consumer energy bills collected by a Revenue Collection Counterparty.
- 5.2 The RAB regulatory funding of an operator is intended to commence during the construction phase of the nuclear project (from the Licence Modification Date) and continue throughout the project lifecycle to the extent that revenue from the sale of electricity generated on the market falls below the regulatorily determined Allowed Revenue.
- 5.3 In relation to Sizewell C, the Operator's Allowed Revenue includes an FDP Allowance Building Block, intended to be sized to cover payments that the Operator is required to make to the FDP Implementation Company commencing five (5) Business Days prior to First Criticality.
- 5.4 The entitlement to receive the regulatory Allowed Revenue (including the FDP Allowance Building Block) will be contained in the SZC Economic Licence following the introduction of Special Conditions by the Secretary of State pursuant to its powers under Section 6 of the 2022 Act.

³ **Note:** The 2013 Regulations (including minor amendments introduced by the Nuclear Decommissioning and Waste Handling (Finance and Fees) (Amendment) Regulations 2016) are the relevant regulations made under the Secretary of State's powers set out in section 54(1) of the 2008 Act. These broadly provide that the Operator may make certain exempt modifications to the FDP without the consent of the Secretary of State where the changes relate to designated technical matters and are either contemplated as subject to unilateral change in the FAP (see section 68 (*Relevant Modifications*) of the FAP) or are within a 5% tolerance.

- 5.5 Part 3 of the 2022 Act sets out the special administrative regime in respect of nuclear company insolvency, including the framework for court-imposed relevant licensee nuclear company administration orders ("**RLNC Administration Orders**").

6. FAILURE TO COMPLY WITH THE FDP AND POWER OF DIRECTION

- 6.1 The 2008 Act provides that failure to comply with an obligation imposed on a party by an approved FDP in respect of the Site is a criminal offence.
- 6.2 Where a party fails to comply with its obligations under an approved funded decommissioning programme (or has been found guilty by a UK court of unlawful conduct which the Secretary of State thinks may affect the funded decommissioning programme), the Secretary of State may direct that party to take steps which the Secretary of State considers necessary or appropriate to comply with the obligation or remedy the effects of its unlawful conduct. If the party fails to comply with the Secretary of State's direction, it is open to the Secretary of State to make an application to the High Court to seek a court order requiring compliance.

7. GRANT AND MODIFICATION OF ELECTRICITY GENERATION LICENCE

- 7.1 A nuclear plant operator's electricity generation licence is granted by the GEMA pursuant to the 1989 Act. In relation to Sizewell C, the nuclear company electricity generation licence will then be modified by Secretary of State in accordance with the powers under Section 6 of the 2022 Act by the introduction of the Special Conditions.
- 7.2 The terms of the nuclear company electricity generation licence may be modified:
- (A) by GEMA pursuant to Section 11A of the 1989 Act (subject to the Secretary of State's veto right under Section 11(A)(5)); and
 - (B) by the Secretary of State under the 2022 Act in the following circumstances:
 - (i) prior to the award of a revenue collection agreement at the time that a nuclear company has been designated (Section 6(3) of the 2022 Act); i.e., at the time the electricity generation licence is initially modified by the introduction of the special conditions for nuclear generator as contemplated in paragraph 7.1 above;
 - (ii) where the nuclear licensee company is in Nuclear Administration (Section 35(2) of the 2022 Act); or
 - (iii) where the expected construction costs exceed the higher regulatory threshold specified in the licence (Section 7(2) of the 2022 Act).

8. WASTE TRANSFER CONTRACT

The 2008 Act provides that the Secretary of State may enter into a waste transfer contract for, or in connection with, the disposal of relevant hazardous material by or on behalf of the Secretary of State in return for a fee (subject to consent of the Treasury in relation to the

amount of the fee). Accordingly, the Waste Transfer Contracts will be entered into between the Operator and the Secretary of State.⁴

⁴ **Note:** See row C.7 of Annex 5 (*Risk Matrix Identifying Key Potential Risks to Shortfall in Funding for the Cost of FDP Liabilities*).