

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: 26 November 2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Anthony Moulds			

Summary: Intervention and Options **RPC:** RPC Opinion Status

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
£1.9m	£1.9m	£0.06m (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)
 Following the consultation, two options are considered in this final stage IA:
Option 1: Do nothing - leave the Regulations unchanged, and;
Option 2: Amend the Regulations – amend reporting timeframes, altering content of Verification Report, exempting only upward Modifications greater than 5% and, postponing the date at which the first Annual Report and Quinquennial Report are required. Option 2 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 15 of the evidence base.

Will the policy be reviewed? The amended Regulations will be reviewed 10-years after implementation.

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: 19/12/2012

Summary: Analysis & Evidence

Policy Option 1

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, exempting upward Modifications of greater than 5% and postpone the date of delivery of Annual and Quinquennial Reports until the power station becomes operational.

Price Base Year 2009	PV Base Year 2012	Time Period Years 67	Net Benefit (Present Value (PV)) (£m)		
			Low: £0.4m	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. 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	£0.4m
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:* benefit from reducing duplication in annual reporting of liabilities estimates. Reconciliation of annual accounts and FDP estimates would otherwise result in a cost to an Operator in each year of the reporting cycle until the nuclear site is fully decommissioned.
- *Verification Reporting:* Altering the nature of Verification assurance is estimated to provide a benefit to Operators per Verification report submitted, required every 5-years and for 2 ad-hoc modifications over the FDP period.
- *Modification regime:* Exempting upward Modifications is estimated to provide a benefit to Operators per Modification with 2 Modifications exempted over the FDP period.
- *Submission of Annual and Verification Reports:* postponing the requirement to submit Annual and Quinquennial Reports until the power station is operational is estimated to result in benefits to Operators from the reduction in the number of reports required over the FDP period.

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

None.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

- The analysis is based on one operator submitting a FDP in 2012. The first Quinquennial Report will be due in the year that the power station becomes operation, which is assumed to be 2019. The first Annual Report will be due in 2020, the year after the power station becomes 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 -

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

Evidence Base

One-In-One Out

1. Two aspects of the proposed amendments to the Regulations 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 £0.06m 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.

Changes since the Consultation Document Impact Assessment on Amendments to the Regulations

7. In April 2012 the Government published a Consultation document and an accompanying Impact Assessment on proposed changes to the Regulations. The proposed changes related to three specific areas of the current Regulations: reporting requirements, verification and the modification of a Funded Decommissioning Programme (FDP).
8. When the original Impact Assessment was undertaken for the current Regulations, developers' waste and decommissioning finance plans were at 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 been approved, there is uncertainty around exact operation of the Regulations.
9. Therefore, in preparation of the Consultation stage Impact Assessment (April 2012) on amendments to the Regulations (2011) we reviewed the original assessment from 2010 in consultation with prospective Operators and legal advisers to ensure we had a current and accurate understanding of the baseline position to which we are proposing amendments. This review process confirmed the position in the original Impact Assessment of a small net benefit (per Operator / FDP) and at societal 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).
10. Since the publication of the Consultation document there have been further policy developments and the Government's final proposed amendments now include changes to the dates at which the submission of Annual and Quinquennial reports by Operators will commence. In summary, the commencement of the reporting cycles for both documents will, under the amended Regulations, be postponed until the power station becomes operational. Previously it was proposed that the first Annual Report would be due the year after the FDP was agreed, with the first Quinquennial Report due five years after the agreement of the FDP. Further information on these amendments and the estimated financial impact on operators is discussed in paragraphs 20 and 46 below.
11. With respect to the amendments to the three aspects of the Regulations proposed in the Consultation document and IA, no substantive changes have been made as set out in the Consultation IA. However the wording of the amended provisions has been amended as a result of views expressed in the consultation around the workability of the verification regulations

12. With regard to verification, the amendments to the regulations address views expressed in the consultation that there were significant concerns around the willingness of potential verifiers to provide reports in the form proposed. In particular, in order to address concerns that the scope of financial verification was unclear, in the amended regulations the Government has identified the two main assessments it expects the financial verifier to make and has specified those in the definition of the financial verification report in Regulation 4.
13. With regard to modifications, concerns were raised over the workability and clarity of the proposals in the consultation. For example, concern was expressed around the handling of inflation in assessing whether changes to cost estimates against the 5% materiality threshold. Regulation 11(3) has been revised to ensure that the policy intent is achieved.

Rationale for Intervention

14. The Regulations introduced in 2011 can be made more proportionate. Following the Consultation exercise of April 2012, this Impact Assessment reflects the Government's final proposals 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.
15. As noted above in paragraph 3, 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.
16. The Consultation document set 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 were proposed on i, ii and iii. As explained in paragraph 10 above, further amendments are now proposed to aspect iv (points (c) and (d) below) in order to remove unnecessary reporting burdens on industry. 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. c. An operator must submit their first Annual Report on the FDP within a fixed period of each anniversary of the FDP being approved. d. An operator must submit their first Quinquennial Report on the FDP within a fixed period of the fifth anniversary of the of the FDP being approved. 	<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. c. Proposed amendments would postpone the submission of the first Annual Report until the year after the power station becomes operational. d. Proposed amendments would postpone the submission of the first Quinquennial Report until the year that the power station becomes operational.
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 provides clearer and more specific tests that the independent verifiers should apply.
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.

17. 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. The proposed amendment to the dates at which Annual and Quinquennial reporting will commence reflects the limited value of reporting in the period prior to commencement of operations. The proposed revisions to the Verification regulations will ensure that it is possible for operators to comply with the requirement to provide independent Verification at reasonable cost.

Problems with the Existing Regulation on Reporting Timeframes

18. There are three 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.
19. Second, the Regulations require the Operator to 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.
20. Third, the Regulations currently require the Operator to submit (a) their first Annual Report within a fixed period of each anniversary of the FDP being approved and, (b) their first Quinquennial Report within a fixed period of the fifth anniversary of the of the FDP being approved. It is proposed that that these dates are postponed in order that the first Annual Report will be due for submission the year after the power plant becomes operational, with the first Quinquennial Report due in the year that the plant becomes operational. This change is being made because following consultation it is accepted that regular Annual and Quinquennial Reports in the period between Secretary of State approval of an FDP and first criticality of the reactor may be of limited value and present an avoidable expenditure for operators.

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

21. 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".
22. 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.
23. The proposed amendment 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 DTM estimates are reasonable."

24. The effect of this change 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 estimates are reasonable.

Problems with the Existing Modification Regime

25. 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.
26. 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.
27. 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.
28. However, downward modifications to the cost estimates of more than 5%, except those subject to the exemption set out below in paragraph 29, 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.
29. 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 (WTP) 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

30. 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

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

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

Reporting Timeframes

Option A – Do nothing

32. 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 and postpone the date for the submission of the first Annual and Quinquennial reports (the preferred option)

33. 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.

34. The additional amendments to postpone the date at which the first Annual and Quinquennial Reports are to be submitted will provide a more flexible and proportionate reporting framework, that is sufficient in the period between its approval and first criticality. This change is being made because following consultation it is accepted that regular Annual and Quinquennial Reports in the years period between Secretary of State approval of an FDP and first criticality of the reactor may be of limited value and present an avoidable expenditure for operators.

The Content of the Verification Report

Option A - Do nothing

35. 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.

36. 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 23 above.

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

37. 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

38. By not amending the modifications provision of the Regulations, Operators would be at risk of bearing unnecessary compliance costs and be subject to regulatory risk in respect of modifying their FDP. As explained in paragraph 27, 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 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)

39. 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.

40. 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).

41. 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 29). 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.

42. 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

43. 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.

Amending the Reporting Timeframes

44. 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. The central estimate is for a benefit of £35,000 p.a. per nuclear site / FDP, in a low-high range of £0-£47,000 p.a.</p> <p>In addition, there will be benefits from the postponement of the first Annual Report by 7 years. The central estimate is for a benefit of £69,00 p.a. per nuclear site / FDP, in a low-high range of £55,000-83,000 p.a.</p> <p>The postponement of the first Quinquennial Report (QQR) by 2 years results in there being one less QQR over the appraisal period which implies a benefit of £218,000. However, in NPV terms the estimated saving is less significant as it is heavily discounted at the end of the appraisal period.</p>

Synchronising Reporting Timeframes

45. 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, either in the FDP Annual or Quinquennial Reports. 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.
46. 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.
47. The analysis therefore assumes that a nuclear operator will agree a FDP in 2012, and begin the annual reporting cycle the year in which the plant becomes operational, which is assumed to be 2019. 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 £707,000 in Net Present Value terms over the 67-year appraisal period.
48. 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	£707k
	High	£47,000	£943k

Postponement of the First Annual and Quinquennial Reports

49. Following the consultation exercise, it is proposed that the final amendments include a postponement to the dates at which the submission of Annual and Quinquennial reports by Operators will commence. As above, it is assumed for the purposes of this Impact Assessment that the first FDP will be agreed in 2012. For the reasons outlined in paragraph 34, the start of the reporting cycles for both documents will, under the amended Regulations, be postponed until the power station becomes operational. Previously it was proposed that the first Annual Report would

be due the year after the FDP was agreed (2013), with the first Quinquennial Report due five years after the agreement of the FDP (2017).

50. Based on informal consultation with industry it is estimated that it would cost operators around £69,000 on average to produce an Annual Report on their FDP in a range of £55,000-£83,000. It should be noted that an Annual Report is replaced by the Quinquennial Report at five-yearly intervals. Delaying the submission of the first Annual Report from 2013 until 2020 therefore means six less reports over the period which provides a benefit to an Operator of £365,000 in Net Present Value (NPV) terms.
51. The industry consultation suggested that it would cost operators around £218,000 to produce the more substantial Quinquennial Report, in a range of £175,000-£262,000. Delaying the submission of the first QQR from 2017 until 2019 has two effects on the estimated costs compared to the counterfactual case. First, over the 67-year appraisal period the two-year postponement results in the requirement for one less QQR to be submitted at the estimated central cost of £218,000. Second, there is a benefit to operators in Net Present Value terms from delaying the submission of the first report and therefore all subsequent QQRs as the costs of each report are discounted more significantly. Overall, the benefit in NPV terms is estimated at £93,000.
52. The range of estimated benefits per occurrence and NPV benefits from postponing the start of the Annual and Quinquennial reporting cycles are summarised in table 4 below.

Table 4. Estimated Benefits from Delaying the Start of the Reporting Cycles, 2009 Prices.

		Per occurrence (£)	Net Present Value (£)
Benefits from postponement of first Annual Report	Low	£55,000	£292,000
	Central	£69,000	£365,000
	High	£83,000	£437,000
Benefits from postponement of first Quinquennial Report	Low	£175,000	£75,000
	Central	£218,000	£93,000
	High	£262,000	£112,000
TOTAL	Low	NA	£366,000
	Central	NA	£458,000
	High	NA	£549,000

Summary of Benefits to Amending the Reporting Timeframes

53. Table 5 draws together the analysis in this section and presents the overall NPV of estimated benefits to operators from the proposed amendments to the reporting timeframes.

Table 5. Summary of estimated benefits from amendments to reporting timeframes, 2009 Prices.

		Net Present Value (£)
Benefits from Synchronised Reporting Timescales	Low	zero
	Central	£707k
	High	£943k
Benefits from postponement of first Annual Report	Low	£292k
	Central	£365k
	High	£437k
Benefits from postponement of first Quinquennial Report	Low	£75k
	Central	£93k
	High	£112k
TOTAL	Low	£366k
	Central	£1,165k
	High	£1,493k

Content of the Verification Report

54. Table 6 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.

55. The Government continues to regard independent verification as an important element of the FDP framework. However it has concluded that the proposed amendments to the regulations set out in the consultation do not achieve the intended objective of ensuring that the verification regime is both robust and practical. Therefore the requirements in the Regulations regarding verification have been revised. These revisions do not materially affect the intended outcome of these regulations and consequently do not impact the costs estimated at the Consultation stage for attaining appropriate verification. Rather, they address views expressed in the consultation that there were significant concerns around the willingness of potential verifiers to provide reports in the form proposed.

56. In particular, in order to address concerns that the scope of financial verification was unclear, in the amended regulations the Government has identified the two main assessments it expects the financial verifier to make and has specified those in the definition of the financial verification report in Regulation 4.

Table 6: 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>

57. The amendments will 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.

58. 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.

59. 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.

60. 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.

61. The range of estimated benefits for each time a Verification report would be required are summarised in table 7 below along with NPV estimates over the FDP reporting period.

Table 7. 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	£238,000
	High	£71,000	£313,000
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	£285,000
	High	NA	£375,000

Amending the Modification Regime

62. Table 8 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.

63. Option B, the preferred option, is expected to provide significant benefits to Operators as a result of exempting upward Modifications of more than 5% from the need for Secretary of State approval. Downward Modifications of more than 5% are not to be exempted as it 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.

Table 8: Amending the Modification Regime

	Do Nothing (option A)	Amend the Regulations: Exempt Upward Modifications +5% (Option B)
Costs	By definition, no additional costs over baseline (counterfactual).	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 being exempt from approval requirements. Estimated benefit of £470,000 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 (Preferred Option)

64. *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.

65. *Benefits* – This approach 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 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.

Table 9. 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

66. Table 10 below summarises the central estimates of the benefits associated with each policy option considered. The preferred set of amendments to the Regulations (Option 2) is shown to have a net benefit to Operators over the 67 year appraisal of £1.9m.

Table 10. 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 <u>(Preferred Option)</u> <i>Synchronise Reporting Timeframes, Amend Verification Assurance, and Upward Modifications (+ 5%)</i>
Amend Reporting Timescales	zero	£1,165k
Verification Reporting	zero	£285k
Modification	zero	£412k
Total	zero	£1.9m

67. The estimated benefit (central) to Operators of £1.9m in net present value terms is slightly higher than that estimated in the consultation stage IA (£1.6m). The increase is a result of the additional post-consultation amendment to postpone the dates at which the submission of Annual and Quinquennial reports will commence, which consequently reduces the overall costs associated with the reporting cycle. However, the benefit to Operators from delaying the start of the reporting cycle is slightly offset by a reduction in the estimated benefits related to Verification reporting, compared to the estimates contained in the consultation stage IA. This is because Verification reporting is aligned with Quinquennial reporting and therefore the delay to the start of the reporting cycle means that there will also be one less Verification report required over the appraisal period and therefore the

benefits relating to the proposed amendments which are expected to result in the avoidance of a second Verification report are reduced accordingly.

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

68. 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 11 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 11: 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 <u>(Preferred Option)</u> <i>Synchronise Reporting Timeframes, Amend Verification Assurance, and Upward Modifications (+ 5%)</i>
1 site (c.3.2GW - 3.3GW)	zero	£1.9m
3 sites (c.10GW)	zero	£5.1m
5 sites (c.15GW)	zero	£7.7m

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

69. 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.

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

70. 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.
71. The analysis aims to provide monetised estimates of the benefits associated with each of the three areas of proposed amendments to the Regulations. 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.
72. 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.

Risks and Assumptions

Assumptions

73. 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. Sensitivity analysis is provided for new nuclear programmes of between 10-15GW by 2030.
 - 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 in the year the plant becomes operational (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

74. 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);

75. 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 £0.06m 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 are within scope of the OIOO rule. 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

76. 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

77. The preferred option for amending each aspect of the Regulations is set as set out in paragraph 33 in respect of Reporting Timeframes; paragraph 37 in respect of the content of the Verification Report; and paragraph 39 in respect of approval for Modifications to their FDP. Overall, the preferred options for amending the Regulations are captured in Policy Option 2.

78. 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 operational and the amended Regulations will have a 10-year review clause from the date of implementation.

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 to 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