Title: The Relevant Licensee Nuclear Company Administration (England and Wales) Rules 2023. **IA No: DESNZ014(F)-23-EMA** **RPC Reference No: N/A** **Lead department or agency:** Department for Energy Security & Net Zero	**Impact Assessment (IA)** **Date:** 22nd June 2023 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** alexander.jones@beis.gov.uk

Summary: Intervention and Options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2023 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
N/A	N/A	N/A	Not a regulatory provision

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

The Nuclear Energy Financing Act 2022 (NEFA) makes provision for the implementation of a Regulated Asset Base (RAB) model for nuclear projects. Secondary legislation is required to support effective deployment of the RAB model. Government intervention is needed to ensure the continued construction or operation of the plant in an insolvency scenario.

What are the policy objectives of the action or intervention and the intended effects?

The overall objective is to support the UK to achieve Net Zero by 2050. The policy objective is to implement insolvency regulations tailored to nuclear projects financed by the RAB model. Existing insolvency arrangements are considered insufficient to support security of supply and protect consumers. Consumers contribute to the funding of nuclear plants in construction and operation through the RAB model. The policy objective will ensure that consumers are not deprived of a reliable low carbon source of power in the exceptionally unlikely event that a nuclear plant became insolvent. Market stability, investor, and consumer confidence will be maintained, and nuclear site safety will be upheld

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

DESNZ considered the option of not introducing new legislation. This would mean standard existing insolvency arrangements remain in place. DESNZ believes that in the extreme case of insolvency, these arrangements will primarily serve the interests of creditors, harming the consumers who have contributed to RAB funding in the event of liquidation. Consumers would be less likely to benefit from a reliable source of low carbon electricity generation. DESNZ believes the introduction of a Special Administration Regime (SAR) will help deliver projects at a lower cost and protect consumers by ensuring the sole objective of the administrator is to rescue the nuclear company and complete the construction, or continue the operation, of the nuclear plant. DESNZ considered whether these benefits could be reached through contractual agreements but felt a SAR was the preferred means to protect consumer and taxpayer interests.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date: June 2028**

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 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 _____ Date: 06/06/23

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2023	**PV Base Year** 2023	**Time Period** N/A	**Net Benefit (Present Value (PV)) (£m)**		
			Low: Optional	**High:** Optional	**Best Estimate:** N/A

COSTS (£m)	**Total Transition** (Constant Price)		**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	N/A		N/A	**N/A**

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

N/A

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

In the exceptionally unlikely event of insolvency, the costs can be divided into two categories. Direct costs include the administrative costs such as initial court application and hearings, and ongoing operational costs. Indirect costs include moral hazard and impacts on creditors. If insolvency occurs during operation, the SoS has the power to modify the allowed revenue under the RAB licence. However, it is difficult to monetise costs for a generic nuclear SAR, as these will vary depending on the size of the plant and duration of insolvency.

BENEFITS (£m)	**Total Transition** (Constant Price)		**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	N/A		N/A	**N/A**

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

N/A

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

The main benefit will be the continued supply of low carbon electricity to consumers in the event of insolvency. Without the SAR, there is an increased risk that the UK is unable to meet its demand for electricity through the failure to complete construction or early decommissioning of a nuclear plant. This loss may be covered by the use of unabated gas increasing emissions, or through other low carbon projects at an additional cost. Consumers will also avoid a significant sunk cost risk. The credit rating of nuclear projects may improve as a result of the additional protection, helping to lower the cost of finance and attract future investment.

Key assumptions/sensitivities/risks	N/A

The risk of having to appoint a special administrator under the SAR is considered remote due to the adaptive nature of the RAB model making insolvency exceptionally unlikely. Risks such as moral hazard and the impact on financing are covered as indirect costs. The SAR acts as a wider safety net to ensure that consumers remain protected. We assume that if a nuclear plant were to undergo early decommissioning, the demand would be fulfilled with unabated gas or alternative low carbon technology at additional cost.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs: N/A	**Benefits:** N/A	**Net:** N/A	N/A

Evidence Base

1. Policy background and problem under consideration

1. Alongside the legally binding target of Net Zero by 2050, in 2021 the Government enshrined in law a new target to reduce greenhouse gas emissions by 78% by 2035 compared with 1990 levels, as part of the Sixth Carbon Budget. A key part of meeting the Sixth Carbon Budget will be to secure the transition to a clean electricity system that is reliable and affordable for consumers.

2. Large scale nuclear power plants are the only technology we have available today which have been proven at scale to provide continuous, reliable, and low carbon electricity. However, the existing nuclear fleet in the UK will be retired by 2028, with the exception of Sizewell B. New nuclear power plants are needed to fill the gap created by the retirement of the existing fleet and to meet rising electricity demand due to factors such as the electrification of heat and transport. The British Energy Security Strategy (BESS) set the ambition for up to 24GW of nuclear power by 2050, compared to the current capacity of 6GW.

3. To support this commitment, it is the Government's intention that the Regulated Asset Base (RAB) model can be used to support investment in the design, construction, commissioning, and operation of large-scale nuclear. The RAB model works by sharing project risk between investors and end users of power. It could lower the financing costs for this asset type.

4. The Nuclear Energy Financing Act 2022 (NEFA) sets out the framework for the RAB model to work in practice. It provides the power to the Secretary of State to designate an eligible nuclear project with a RAB provided it is both sufficiently advanced and is likely to represent value for money. The licence can then be modified to include RAB conditions. The primary legislation also sets out the framework for a Special Administration Regime (SAR) in the event of relevant licensee nuclear company's (RLNC) insolvency.

2. Rationale for intervention

5. The risk of insolvency is considered exceptionally low. However, the implications of an entity which owns a nuclear plant funded through a RAB model becoming insolvent could be significant. The development of a nuclear power station involves a complex construction process with significant upfront capital requirements over a long period of time.

6. Generation companies which own a nuclear power plant in the UK are subject to the existing insolvency regime. If a generation company is deemed to be unable to pay its debts and an ordinary administrator is appointed, the objectives of that administration are likely to be aligned with protecting creditors. This will typically either result in the rescue, part rescue, or liquidation of the company which may adversely affect consumers for RAB-funded projects. In the event of liquidation, the sum recovered from a sale of assets is likely to be less than the upfront capital outlay. The resulting decommissioning of the plant means consumers will not benefit from the electricity generation asset that they helped to fund.

7. These existing arrangements are a combination of standard insolvency law (including the appointment of a corporate administrator) and the Nuclear Transfer Scheme (NTS) which, contingent on the generation company becoming insolvent, allows for the Secretary of State to ensure the safe transfer of nuclear assets to the Nuclear Decommissioning Authority (NDA), or an alternative publicly owned body.

8. These arrangements are considered insufficient for RAB-funded projects. Given that the main feature of a RAB model is the right given to the generation company to charge a regulated price to users, consumers will have contributed significantly toward the costs of construction and operation of the plant. Further protection for consumers to prioritise continuation of construction or operation of the plant is appropriate.

3. Policy objective

9. The policy objective will ensure that in the exceptionally unlikely event that a RAB-funded nuclear plant became insolvent:
   - generation of electricity to the grid commences or continues;
   - consumers will not be deprived of the intended benefits having contributed to funding the construction and operation of a nuclear plant; and
   - market stability, investor confidence, and customer confidence are maintained.

10. The SAR achieves these objectives by providing a mechanism through which the Government has the option, but not the obligation, to fund a failing nuclear project until it is rescued. The intention is for the nuclear project to complete construction, or continue operating, and realise the intended benefits. The objectives of an ordinary administrator are replaced by the objective that the core activities of the entity (generating electricity) are performed without interruption until the entity is rescued. The legislation will enable the RAB model to be adequately safeguarded, thus supporting the delivery of a lower cost of finance for new nuclear power plants.

4. Description of policy options

11. The primary legislation, among other things, considered two options in relation to SAR; rely on existing insolvency arrangements or introduce legislation which gives the Secretary of State (SoS) the power to apply to the courts for a RLNC administration order. This impact assessment will expand on these options and offer a third option - contractually replicating the effects of the SAR.

Option 1 – Do nothing

12. If the SAR is not introduced, the standard existing insolvency arrangements remain in place, combining insolvency law and the NTS. These arrangements will protect the interests of creditors, potentially liquidating the company in order to recover the investment, if the nuclear company becomes insolvent. The sum recovered from a sale of assets is likely to be significantly less than the upfront capital outlay. The nuclear plant will not be built, or will cease operating, and consumers will lose the intended benefits they have paid for. Arrangements will have to be made to fill the demand left by the lost nuclear generation, further delaying electricity generation. This could further increase costs to consumers, and increase the emissions associated with electricity generation if the alternative is not low carbon.

13. Alternatively, the NTS gives the SoS the power to transfer the property, rights, and licence of the nuclear company to the Nuclear Decommissioning Authority or another public body. However, this will only be used as a last resort and may likewise result in decommissioning without producing the intended benefits to consumers.

Option 2 – Introduce SAR rules (preferred option)

14. This option introduces the full SAR legislation as supported by the rules. The SoS has the power to apply to the court for a special administration order if the nuclear company is unable, or unlikely, to pay its debts. The two most likely scenarios which could result in insolvency for the nuclear company are:
    - Insolvency as a result of financial mismanagement; or
    - Insolvency due to a technical fault resulting in a prolonged unplanned outage or delays in construction.

15. The SAR will supplement other mechanisms to ensure the project continues to supply power for the expected lifetime. Under the primary legislation the SoS has the power to modify the RAB licence if a nuclear company is heading towards insolvency. For example, the allowed revenue paid by electricity suppliers to the generating company can be altered to account for additional financing costs above the cap.

16. If the previous options are exhausted, the SoS can apply to the courts for the appointment of a nuclear administrator. The Government then provides funding in the form of loans or grants to the company and indemnifies the administrator against personal liabilities incurred while undertaking the administration. The administrator takes over the company's operations, running them in line with the SAR objective of ensuring that electricity generation commences, or continues, until it is no longer necessary for the order to remain in force. The ownership of the company does not change. The SAR ends when the company is rescued or sold. The administrator will need to ensure that the company continues to comply with all its regulatory and legal requirements. This should ensure compliance with the safety, security, and environmental provisions related to the power plant and the site on which it is located.

17. The SoS is not obliged to apply to the courts for an administration order in the unlikely event that a RLNC is faced with an insolvency scenario. The SoS retains the option to decide on the most appropriate course of action depending on the circumstances which the plant is facing. For example, the SoS may choose not to apply for an administration order if it is not considered Value for Money (VfM) for the plant to continue operation.

Option 3 – Replicate the functions of the SAR under contractual agreements

18. The intended outcome from the SAR is achieved through a contractual route which would be likely to require an Insolvency Support Agreement. This approach would realise only some of the intended benefits of the SAR while adding some key limitations. Consumers will be protected by the administrator, whose goal it will be to ensure continuation of supply through rescue of the nuclear company. This additional layer of security will also give confidence to potential investors.

19. However, it was felt that attempting to achieve these aims through contractual routes could have a comparatively worse impact on consumers and taxpayers. A legislative regime would

include clear, understood rules to be followed in the event of a special administrator being appointed.

5. Costs and benefits

Costs

20. The costs can be divided into two categories; direct costs including administration costs which may be borne by taxpayers, and indirect costs such as moral hazard and the potential for financial mismanagement.

21. For a full cost breakdown and modelling of RAB-funded nuclear projects, please see NEFA IA[1]. The costs for the nuclear SAR have not been modelled in this IA. It is challenging to quantify the low probability that a generic nuclear plant may enter an insolvency scenario. Moreover, the costs of administration are highly uncertain. A SAR would significantly increase the probability of rescue over the existing arrangements, but it is challenging to place an exact value.

22. SARs have only been used once in the energy sphere, during the Bulb administration. The exact costs for an electricity supplier cannot be directly compared to generic nuclear plants. However, they serve as a good indicator for the potential breadth and magnitude of the cost of a nuclear SAR. The Bulb SAR began in November 2021 and will continue until taxpayer funding for the transfer of Bulb to Octopus is paid in full by Octopus from 2024 or 2025 onwards[2]. Relevant costs to BEIS associated with the Bulb SAR, which may be useful as a benchmark for a nuclear SAR, include £2.8m for advisors appointed by BEIS to provide legal and financial advice. Administrator expenses accrued during the SAR totalled £49.9m for the administration itself. A detailed breakdown, including the figures referenced above, is available in the NAO investigation report referenced above, though this will be of most use in showing the potential variance in costs across projects.

23. The overall cost is likely to vary significantly depending on a number of factors, including: the size of the generator, the price of electricity at the time of the insolvency, the market reaction and any potential risk premium, and the length of time the company is in administration. The Government will also face an administrative cost to initiate the SAR, coming from the initial court application and associated hearings but these are expected to be outweighed by the benefit of rescuing the nuclear plant from insolvency.

24. The ongoing costs of the SAR will depend upon the operational profile of the plant. If the plant is in operation, it will be generating revenue from selling electricity to suppliers, in effect funding part or all the cost of the administration regime. This can also be altered by modifying the RAB licence to increase the allowed revenue. The Government will need to provide funding to the administrator if the plant is still in the construction phase or experiencing an unplanned outage. Per the Nuclear Energy Financing Act 2022, the Secretary of State may only modify the RAB licence for the purpose of furthering the objective of the administration, hence the revenue can only be adjusted to aid this objective.

[1] https://publications.parliament.uk/pa/bills/cbill/58-02/0174/ImpactAssessment.pdf

[2] https://www.nao.org.uk/reports/investigation-into-bulb-energy/#downloads

25. In addition to the construction and operational costs, further costs will derive from the associated legal advice alongside standard insolvency practices such as six-monthly progress reports to be filed with Companies House.

26. There is an argument for including further indirect costs related to this legislation, such as moral hazard in the form of excessive risk taking as a result of the additional "safety net" provided by the SAR. This could be due to management perception of increased protection for risky decisions, or lower investment in risk mitigation procedures for the same reasons. However, we do not think the introduction of the SAR will lead to excessive risk taking given the primary objective of completion of construction or continued generation of electricity. The focus on maintaining operational safety inherently requires adherence to stringent safety standards and requirements, alongside strong existing oversight measures serving as a deterrent. The increased probability of financial mismanagement is deemed to be negligible.

27. The SAR also places the right of consumers to continue to be supplied with electricity from a generator they have contributed to the funding of above the rights of creditors. This constrains the ability of the administrator to achieve the best value for creditors to the failing company. However, we believe the creditors will be cognisant of this feature and value the additional layer of protection by de-risking their investment, which may decrease the cost of capital. Engagement with large energy suppliers for the Energy Supply Company (ESC) SAR suggests that companies were not concerned about potential changes to the cost of capital as a result of the SAR.[3]

Benefits

28. The potentially irrecoverable costs of the SAR are likely to be exceeded by the through-life benefits of a nuclear plant. For reference, the SoS recently designated Sizewell C with a nuclear RAB. Initial VfM analysis, published as part of this designation, indicated that Sizewell C could provide benefits to consumers of up to £17bn (Net Present Value in 2012 prices, 2022 base year) in the Net Zero High Demand scenario. This is due to a reduction in electricity system costs compared to other Net Zero compliant counterfactuals. This analysis also highlights other significant non-monetised benefits that are not captured by the economic modelling, such as improved security of supply[4].

29. The primary benefit of the SAR relates to avoided cost and carbon emissions from the unplanned replacement of a nuclear plant. This is compared to the counterfactual scenario, expected to be increased generation from unabated gas or other low carbon technologies, to meet demand.

30. The value of the continued supply of low carbon electricity to consumers in the event of insolvency will be significant, given the significant contributions made by consumers during construction. Without the SAR, there is an increased risk that the UK is unable to meet its demand for electricity through the loss of a nuclear plant. The sudden requirement to replace the stable electricity generation from nuclear plants presents a significant risk to security of supply and a may lead to greater dependency on imports in the short-term.

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/66568/5574-energy-supply-company-administration-rules-impact-.pdf

[4] https://www.gov.uk/government/publications/designation-of-nnb-generation-company-szc-limited

6. Risks and assumptions

31. While the risk of having to introduce the SAR is considered remote due to the existing arrangements which continue to apply (such as modifying the allowed revenue) to prevent insolvency, the SAR acts as a wider safety net to ensure that consumers remain protected. Risks such as moral hazard and the impact on creditors are covered as indirect costs.

32. There are several assumptions in this IA. Firstly, that insolvency is considered "exceptionally unlikely", in line with IPCC uncertainty guidance[5] to ensure consistent treatment of uncertainties. This signifies an outcome with a likelihood of 0-1%.

33. Secondly, it is assumed that existing gas plants have enough capacity to replace nuclear-generated electricity in the short-term if a nuclear company were to be liquidated. Rapid alternatives would be needed if a nuclear plant were to enter an insolvency scenario and go offline during operation. Demand may be able to be matched by unabated gas in the short term. In the long term this may lead to the construction of new capacity to ensure security and stability of electricity supply.

34. In addition, the IA assesses the impacts on the assumption that a SAR is introduced. In reality, as mentioned above, the SoS is not obliged to apply to the courts for an administration order in the unlikely event that a RLNC is faced with an insolvency scenario. The SoS retains the option to decide on the most appropriate course of action depending on the circumstances which the plant is facing. For example, the SoS may choose not to apply for an administration order if it is not considered Value for Money (VfM) for the plant to continue operation.

7. Impact on small and micro businesses

35. The secondary legislation on its own will not have any impact on small and micro businesses. When the nuclear RAB model is implemented on a nuclear power plant, it will impact small and micro businesses by creating jobs in the supply chain, and indirectly impact small and micro business as a result of any costs or cost savings which are passed through to electricity suppliers and then consumers. The impacts as a result of the SAR legislation will be ensuring a continuation of this in an insolvency scenario, due to the increased likelihood of rescue.

8. Wider impacts

36. The court will be affected by the introduction of the SAR when the SoS applies for the special administration. However, we expect this to be minimal, as the SAR is a contingency measure, which would be used as an alternative to ordinary administration.

37. In the PSED produced for the primary legislation[6], we identified age, disability and race, and pregnant/maternity leave groups as those most vulnerable to disproportionate energy bill impacts, which is the likely route for cost recovery in the event of a Special Administration Regime coming into force during the plant's operation. We believe the same three groups will be vulnerable for similar reasons since the impacts specifically relate to the pass-through and recovery of costs of the RAB regime, as set out in the IA.

[5] https://www.ipcc.ch/site/assets/uploads/2018/05/uncertainty-guidance-note.pdf

[6] https://publications.parliament.uk/pa/bills/cbill/58-02/0174/ImpactAssessment.pdf

- Age – Those who are older may be less likely to benefit from future energy bill reductions from the low-carbon electricity produced from a nuclear plant. Therefore, increases to bills through potential costs imposed by suppliers to account for uncertainty or volatility in the RAB payment amount, particularly during the construction period, might not be rewarded with lower future bills. In the case of the SAR legislation, additional charges to electricity consumers would only be incurred in the event of a SAR coming into effect. The possibility of this is considered remote. The decision to introduce the SAR in the event of insolvency is subject to VfM considerations. It is expected to be in the best interest of consumers, given their contributions during construction. The SAR may also lower the cost of finance due to de-risking, reducing this impact.

- Disability and Race – Disability Groups and Ethnic Minorities are disproportionately represented in lower income households. Lower-income households are disproportionately affected by changes to electricity bills because any increase represents a larger share of their household income than those in middle- or higher-income households. Therefore, any increases imposed by suppliers to account for uncertainty or volatility in the RAB payment amount would disproportionately increase the bills of these groups. As mentioned above, the possibility of additional charges as a result of the SAR is considered remote. Any decisions relating to the SAR will be subject to VfM considerations.

- Pregnant/Maternity Leave Groups – Any increases in consumer electricity bills due to increases imposed by suppliers to account for uncertainty or volatility could particularly impact those on unpaid maternity leave, or unable to work due to pregnancy. The possibility of further additional charges as a result of the SAR is considered remote and would be subject to VfM considerations. The SAR legislation may decrease the cost of finance, potentially reducing this impact.

38. We do not expect any disproportionate impacts from this legislation on the following protected characteristic groups: Marriage/Civil Partnership, Religion or Belief, Sex, Gender Reassignment or Sexual Orientation.

39. The bill impacts associated with the costs in this Impact Assessment (related to the administrative burden of introducing the SAR) are expected to be negligible. Therefore, we do not expect there to be a large impact on vulnerable consumers as a result of this legislation. However, this policy does allow for costs to be passed on to vulnerable consumers.

40. The successful rescue of a nuclear company through a SAR will have a positive impact on costs and energy bills for these protected characteristic groups. This is compared to the counterfactual where the plant goes into ordinary administration and is liquidated, with the demand being met at additional cost to consumers as outlined previously.

41. On balance, we consider that the marginally disproportionate negative impact to the identified groups would be outweighed by the benefits delivered by a nuclear RAB plant. The introduction of a SAR will ensure low carbon power can continue to be supplied by the respective nuclear plant that has entered SAR leading to lower overall cost nuclear projects, energy security and meeting climate change targets).

9. Potential trade implications

42. The impacts from these measures are not expected to have direct implications for international trade and investment. There may be implications for the amount of available electricity that could be traded internationally if a nuclear company is rescued as a result of a SAR, compared to the counterfactual. Without the SAR, the plant may be decommissioned, ceasing electricity generation.

10. Monitoring and Evaluation

43. The SAR is one of three parts stipulated in legislation for the RAB, including the Act and Revenue Channel Regulations. It is difficult to extricate the SAR entirely from the other parts to allow a thorough examination. It is also challenging to assess available evidence of the success of a SAR unless an insolvency event occurs. Therefore, any future monitoring and evaluation plan should be light touch, with a more detailed evaluation plan in place to assess the RAB mechanism as a whole. This should, however, include consideration of the relevance of the SAR in any future context. In addition to typical monitoring, it is suggested that any monitoring and evaluation be carried out in conjunction with other planned process evaluations for the RAB mechanism.