

# **ENERGY ACT 2008**

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## **EXPLANATORY NOTES**

### **Part 3: Decommissioning of Energy Installations**

#### **Chapter 1: Nuclear Sites: Decommissioning and Clean-Up**

##### **Summary and Background**

224. In *Meeting the Energy Challenge: A White Paper on Nuclear Power*, published in January 2008, the Government confirmed its view that it would be in the public interest to give energy companies the option of investing in new nuclear power stations. As well as ensuring operators are responsible for the costs of decommissioning of any new nuclear power station, and waste management and disposal during the lifetime of the station, this Chapter of the Act sets out the framework for accumulating monies to pay for the costs of decommissioning and waste management.
225. In the White Paper, the Government re-confirmed its commitment to put in place a legislative framework to ensure that energy companies which operate new nuclear power stations accumulate funds to cover their full decommissioning costs and their full share of waste management costs. It will be a prerequisite for energy companies seeking to construct any new nuclear power stations in the future to fulfil this requirement.
226. This legislation forms part of a package of measures announced in the Nuclear White Paper to facilitate the building of new nuclear power stations. The measures announced in the Nuclear White Paper include:
- running a Justification process, which is an EU requirement, to demonstrate that the benefits of new nuclear processes outweigh any health detriment;
  - running a Strategic Siting Assessment to develop criteria for developing the suitability of sites for new power stations;
  - conducting a formal Strategic Environmental Assessment in accordance with the SEA Directive<sup>1</sup>; and
  - conducting a Generic Design Assessment of nuclear power station designs.
227. This Chapter of the Act contains the legislative framework for requiring that funded decommissioning programmes be submitted for approval. It also sets out how the programmes will be approved and monitored, and establishes offences for non-compliance with the legislation. It provides for regulations and guidance in relation to the preparation, content, implementation and modification of programmes. Any potential operator will have to submit a funded decommissioning programme which will have to consist of two elements.

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<sup>1</sup> Directive 2001/42/EC, of June 2001 on the assessment of the effects of certain plans and programmes on the environment (O.J. L197, 21.7.2001, p30)

228. Firstly, the operator must set out the technical steps it will take to manage and dispose of radioactive waste and spent fuel, and to decommission the power station and clean-up the site. Second, the operator must also provide (i) prudent estimates of the costs of decommissioning and clean-up and – to the extent prescribed by order – of the cost of management of waste during the operation of the installation; and (ii) for how it will accrue monies to cover the costs of decommissioning and clean-up that it has identified and, again where prescribed by order, the costs of management of waste. The Act also provides that where the Secretary of State enters into an agreement for the disposal of relevant hazardous material that is or is required to be the subject of a funded decommissioning programme, the agreement may include provision for a fee to be paid to the Secretary of State.
229. In line with other regulatory activities in the nuclear energy sector, such as those relating to safety (under the Nuclear Installations Act 1965), the Government will publish guidance relating to funded nuclear decommissioning programmes. Section 54 requires the Secretary of State to publish guidance in relation to factors which it may be appropriate to consider when deciding whether to approve a programme or approve a modification to a programme. The Secretary of State may also issue guidance about the preparation, content, modification and implementation of funded decommissioning programmes. In contrast to guidance issued by the Health and Safety Executive in relation to certain of its functions under the 1965 Act, this guidance must be laid before Parliament.
230. If the nuclear site operator does not follow the guidance in formulating a funded decommissioning programme, this will not necessarily mean that the Secretary of State will reject the programme. Where a submitted programme does not conform to the factors set out in the guidance, the operator will have to demonstrate that the proposals meet the overall objectives of ensuring that the operator makes prudent provision to cover its costs of decommissioning and long term waste management and disposal, whenever these liabilities arise. As long as an operator can demonstrate this, a funded decommissioning programme could still be approved. The guidance will not prescribe the arrangements that operators must put in place, but rather it will set out factors which it may be appropriate for the Secretary of State to consider in the circumstances referred to, to assist operators in understanding how these objectives could be met to his satisfaction

## **Commentary on Sections**

### Funded decommissioning programmes

#### ***Section 45: Duty to submit a funded decommissioning programme***

231. This section requires a person applying for a nuclear site licence, for a site where they intend to construct or operate a new nuclear power station (that is a nuclear power station constructed after commencement of this section), to notify the Secretary of State and submit a funded decommissioning programme for approval. It also requires a person to submit a funded decommissioning programme for approval if they intend to operate a new nuclear power station to which this section previously applied. The effect of this provision is to ensure that when a site operator changes after the site has been constructed and the power station is operating, the new site operator will be required to submit a funded decommissioning programme. *Subsection (4)* explains that a “funded decommissioning programme” is a programme which makes provision for certain technical matters (for example, the activities involved in decommissioning a relevant nuclear power station) and provision for how certain of those technical matters (“the designated technical matters”) are to be financed.
232. *Subsection (5)* specifies what the technical matters are, namely:
- how hazardous material (which includes radioactive waste) will be treated, stored, transported and disposed of during the operation of the power station,

*These notes refer to the Energy Act 2008 (c.32)  
which received Royal Assent on 26 November 2008*

- how the power station will be decommissioned at the end of its life,
  - how the site is to be cleaned up, and
  - any activities by way of preparation for decommissioning and clean-up.
233. *Subsection (6)* gives the Secretary of State the power to prescribe by order (subject to the affirmative resolution procedure – see section 105) which of the matters referred to in the first or fourth bullet above are designated technical matters, which by operation of *subsection (4)* means the matters which are required to be financed by the programme. By contrast, the decommissioning and clean-up of power stations and sites must always be financed by the programme.
234. *Subsection (7)* says that a funded decommissioning programme must contain:
- details of the steps to be taken in relation to the technical matters described in *subsection (5)*
  - estimates of the likely costs incurred carrying out the designated technical matters described in *subsection (6)*
  - details of how financial security will be provided in relation to those costs.
235. *Subsections (8) and (9)* allow the Secretary of State to charge a person who submits a programme a fee for any costs incurred by the Secretary of State in relation to the consideration of the programme, and in particular the costs of obtaining advice in relation to the programme or information required in relation to the programme under section 52(4). Regulations made under section 54 will allow the Secretary of State to set out how that fee is to be calculated and when it is to be paid.

***Section 46: Approval of a programme***

236. This section creates powers for approving a funded decommissioning programme and places certain duties on the Secretary of State before a programme can be approved or rejected. *Subsection (1)* provides that only the Secretary of State can approve or reject a programme. *Subsection (2)* gives the Secretary of State the power to require modifications to the programme or approve it subject to conditions. *Subsection (3)* allows obligations to be placed on bodies corporate associated with the operator, such as a parent company, by way of a modification of the programme under *subsection (2)* as part of the approval. *Subsection (4)* requires that the Secretary of State's powers to approve or reject a programme must be exercised with the aim of securing that prudent provision is made for the technical matters (including prudent financial provision for the designated technical matters).
237. *Subsections (5) and (6)* require that before deciding whether to approve or reject a funded decommissioning programme the Secretary of State must consult the following bodies on those aspects of the programme, and of any modifications which it is proposed to make or conditions it is proposed to impose, which relate to their functions:
- The Health and Safety Executive,
  - The Environment Agency, and
  - The Department of the Environment for Northern Ireland.
238. *Subsection (7)* requires that the operator and other persons who have obligations under the programme, or will have obligations following the proposed modification, be given the opportunity to make representations on any proposals to modify the programme or impose conditions made by the Secretary of State. *Subsection (8)* provides that, if the Secretary of State rejects a programme, the operator must be given reasons for the rejection. *Subsection (9)* requires the Secretary of State to act without

unreasonable delay in reaching a decision as to whether to approve or reject a funded decommissioning programme.

239. *Subsection (10)* provides that a reference to a site operator in this section also refers to a person who has applied for a nuclear site licence in circumstances where the application has not yet been determined.

#### ***Section 47: Prohibition on use of site in absence of approved programme***

240. This section creates an offence where a person with a nuclear site licence for a site uses the site, or permits another person to use the site, by virtue of the licence without an approved funded decommissioning programme in place (*subsections (1) and (2)*).

241. *Subsection (3)* sets out the penalties for the offences above:

- on summary conviction to a fine not exceeding the statutory maximum (currently £5,000 in England, Wales and Northern Ireland); or
- on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

Modification of approved programmes

#### ***Section 48: Modification of approved programme***

242. This section allows for a funded decommissioning programme to be modified once it has been approved, and allows for the modification of any condition attached to the programme. This section gives the Secretary of State flexibility to amend a decommissioning programme, for example to reflect advances in decommissioning technologies or where cost estimates change.

243. *Subsections (1) and (2)* provide that the Secretary of State, the site operator and any other person who has obligations under the programme can propose a modification to the programme. Where a modification is proposed by a person who falls into the last category it requires the consent of the site operator.

244. *Subsection (3)* allows obligations or additional obligations to be placed on (or removed from) bodies corporate associated with the operator, such as a parent company. *Subsection (4)* enables a modification to be made which places conditions on the approval even if the funded decommissioning programme was originally approved unconditionally.

#### ***Section 49: Procedure for revising approved programme***

245. This section establishes the procedure for making a modification to an approved funded programme. *Subsection (1)* makes it clear that this section is subject to regulations made under section 50.

246. *Subsection (2)* requires a proposal to make a modification to be in writing. If the proposal is made by the Secretary of State, written notice must be given to the site operator. If the proposal is made by any other person, written notice must be given to the Secretary of State.

247. *Subsections (3) and (4)* allow the Secretary of State to charge the site operator a fee in relation to the consideration of the proposal, and, in particular, the costs of obtaining advice in relation to the proposal or in relation to information required in relation to the proposal in accordance with section 52(4). The manner in which this fee is to be calculated and the time for its payment are to be set out in regulations under section 54.

248. *Subsection (5)* states that the operator or any other person with obligations under a programme (or who would have obligations as a result of the proposed modification), must be given the opportunity to respond in writing to any proposal by the Secretary of State to make a modification.

249. *Subsection (6)* gives the Secretary of State the power to decide whether a modification should be made. The Secretary of State must give notice of the decision and reasons for it to every person who has obligations under the programme or will have obligations as a result of the modification. Under *subsection (7)*, any decision as to whether to make a modification must be made with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).
250. *Subsection (8)* requires the Secretary of State, before deciding whether to make a modification, to consult with the Health and Safety Executive, the Environment Agency, and the Department of the Environment for Northern Ireland.

### ***Section 50: Power to disapply section 49***

251. This section provides the Secretary of State with the power to make regulations, (subject to the negative resolution procedure - see section 105), to disapply section 49 in relation to modifications proposed by a person other than the Secretary of State, as set out in *subsection (1)*.
252. Before making any such regulations, the Secretary of State must consult with the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland.
253. *Subsection (3)* allows regulations under *subsection (1)* to categorise modifications by reference to their financial consequences, including by reference to the cumulative financial effect of a number of modifications over a given period. Regulations might, therefore, set out that any operational changes which have a financial impact below a certain amount within a specified period of time are to be exempt from the requirements of section 49).
254. *Subsection (4)* provides that when the site operator modifies the plan in accordance with the regulations (so that the modification procedure in section 49 does not apply), it must notify the Secretary of State in the manner specified in the regulations.

### ***Section 51: Time when modification takes effect***

255. This section sets out when a modification to a funded decommissioning programme takes effect. Where a modification is made in line with the process set out in section 49, the modification takes effect at the time specified in the notice given to the operator of the Secretary of State's decision that the modification is to be made. That time must not be before that notice is given (*subsection (4)*).
256. Where a modification is made by a site operator under regulations disapplying the standard process (i.e. in line with *subsection (1)* of section 50), the modification takes effect at the time specified in the notice given by the operator to the Secretary of State in the manner set out in the regulations made under section 54. The time specified in the notice cannot be earlier than the time when the notice is given (*subsection (4)*).

### **Information**

### ***Section 52: Provision of information and documents***

257. This section sets out the Secretary of State's powers to obtain information from the site operator and other persons with obligations under a funded decommissioning programme, and in certain circumstances, from bodies corporate associated with the site operator. The two circumstances in which the Secretary of State can require information and documentation are:
- after a funded decommissioning programme has been submitted, but prior to approval (Condition A), or



- when a modification, which is subject to the standard approval processes as set out in section 48, has been proposed but the Secretary of State has not yet decided whether the modification should be made (Condition B).
258. *Subsections (4) and (6)* set out the procedure the Secretary of State must follow when requesting information or documents from the site operator or person with obligations under the programme. The Secretary of State must specify when the documents or information are to be made available and the form in which information is required.
259. *Subsection (5)* provides that the Secretary of State may obtain information from the site operator and any other person with obligations under the programme. In addition, in a case where Condition A applies, the Secretary of State may obtain information from any body corporate associated with the site operator, if the Secretary of State is considering imposing an obligation on the body, by way of a modification of the programme, at the time he approves it under section 46. In a case where Condition B applies, the Secretary of State may obtain information from a person who would have obligations if the proposed modification were made.
260. *Subsection (7)* provides that the Secretary of State can only request such information and documents which he considers necessary for the purposes of making a decision in relation to a case which falls within Condition A or B.
261. *Subsections (8) and (9)* allow the Secretary of State to apply to the High Court for a court order where a person has failed to comply with the Secretary of State's request. If the application is successful, the court may order a person to comply with the requirement. *Subsection (10)* provides that references to a site operator in this section also refer to a person who has applied for a nuclear site licence where the application has not yet been determined.

### ***Section 53: Power to review operation of programme***

262. This section gives the Secretary of State the power to review an approved funded programme and, as part of this, to request information about the programme from the site operator or any other person who has obligations under the programme. The power can be used at any stage in the programme's life, including any period up until the point at which the site is returned to the agreed end state and the waste disposed of as defined by the decommissioning programme. The power is only applicable to information relevant to a particular site.
263. *Subsection (3)* provides that the Secretary of State may only request information for the purpose of determining whether:
- the programme is being complied with;
  - it will be possible for the persons with obligations under the programme at a point in the future to comply with them;
  - the programme makes prudent provision for the technical matters (including the financing of the designated technical matters) (as defined in section 45).
264. *Subsection (5)* authorises the Secretary of State to require information from the site operator, any other person with obligations under an approved programme or a body corporate associated with the site operator, for the purpose of enabling the Secretary of State to decide whether to propose a modification under section 48 or the nature of any modification to be proposed. The information can be required if the Secretary of State has reason to believe that:
- the programme is not being complied with
  - it will not be possible for obligations under the programme arising at a future date to be complied with

- the programme does not make prudent provision for the matters mentioned in subsection (3)(c).
265. *Subsection (6)* allows the Secretary of State to charge a fee to the site operator for the costs incurred in obtaining advice in relation to the information obtained. *Subsection (7)* provides the fee must be paid at the time determined in regulations under section 54.
266. *Subsections (8) and (9)* allow the Secretary of State to apply to the High Court for a court order where a person has failed to comply with the Secretary of State's request. If the application is successful the court may order a person to comply with the requirement.

#### Regulations and guidance

#### ***Section 54: Nuclear decommissioning: regulations and guidance***

267. This section provides the Secretary of State with the power to make regulations (subject to the negative resolution procedure - see section 105), about the preparation, content and implementation of a funded decommissioning programme; and about the modification of such programmes.
268. *Subsection (2)* sets out a number of matters which such regulations may, in particular, contain. These include (in subsection (a)) the technical matters as set out in section 45:
- how hazardous waste (which includes radioactive waste) will be managed during the operation of the power station and disposed of at the end of the power station's life,
  - how the power station will be decommissioned at the end of its life,
  - how the site is to be cleaned up.
269. *Subsection (2)(b)* enables the regulations to cover the manner in which the estimation of costs of the technical matters identified in *subsection 2(a)* are arrived at, and how such estimates are to be verified (including the possibility for third party verification).
270. *Subsection (2)(c)* enables regulations to cover the financing of the designated technical matters, including security arrangements. *Subsection 2(d)* enables regulations to be made about payments, from funds held or accumulated for this purpose, to the site operator or another person.
271. *Subsections (2)(e)* enables regulations to set out how the Secretary of State can request information from persons with obligations under a funded decommissioning programme. *Subsection (2)(f)* enables regulations to set out the fees to be charged to recover costs which the Secretary of State incurs in obtaining advice in relation to that information
272. *Subsections (2)(g) and (h)* enable the regulations to deal with how fees payable under this Chapter are to be determined and when they are to be paid.
273. The regulations may make it an offence to contravene specified provisions of the regulations. *Subsection (4)* states that any offence must set out the nature of the offence and the sanction. The regulations must not authorise a summary offence which provides for a sanction of imprisonment or a fine exceeding the statutory maximum, or an indictable offence which provides for imprisonment for a term exceeding two years.
274. *Subsection (5)* allows the Secretary of State to publish guidance about the preparation, content, modification and implementation of a funded decommissioning programme.
275. *Subsection (6)* creates a duty on the Secretary of State to publish guidance on factors which it may be appropriate to consider when deciding whether to approve or modify a programme or the conditions attached to a programme.

276. *Subsection (7)* creates a duty on the Secretary of State to have regard to guidance in force under this section, when taking decisions in relation to operators' funded decommissioning programmes. Guidance may relate to the matters referred to in *subsections (2)(a) to (e)*. The power to publish the guidance may be exercised in order to issue revised guidance.
277. *Subsections (8) and (9)* provide that, before making regulations or publishing guidance, the Secretary of State must consult the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland, so far as the regulations or guidance relate to the roles and responsibilities of those bodies.
278. *Subsection (10)* sets out that any guidance published under this Chapter must be laid before Parliament.

***Section 55: Funded decommissioning programmes: verification of financial matters***

279. This section provides that regulations may be made under section 54 that allow the Secretary of State to rely on a third party verification of the financial estimates of the costs of designated technical matters and/or the verification of the prudence of any provision to fund those matters.

Protection of decommissioning funds

***Section 56: Protection of security under approved programme***

280. This provision is designed to ensure that in the event of the insolvency of the person responsible for a funded decommissioning programme or a person with obligations under that programme, the monies set aside for meeting the decommissioning costs or cleaning-up the site (and any other designated technical matters) remain available for that purpose and are not available to the general body of creditors. The protection in the event of insolvency applies where funds have been set aside in a trust or other arrangement for meeting the obligations under an approved programme.
281. *Subsection (3)* provides that the term "security" has a wide meaning for the purpose of funds which will be protected from creditors in the event of insolvency. The list is non-exhaustive.
282. In order to protect the security, *subsection (5)* disapplies any provision of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law where its operation would prevent or restrict the security being used for the purpose for which it was set up (meeting decommissioning and other relevant liabilities).

Enforcement

***Section 57: Offence to fail to comply with approved programme***

283. This section makes it an offence for a site operator or persons associated with the operator (such as a parent company), to fail to comply with their obligations under an approved funded decommissioning programme, unless they prove that they exercised due diligence to avoid committing the offence.
284. *Subsection (3)* sets out the sanctions in the event of a prosecution:
- on summary conviction, a fine not exceeding the statutory maximum (currently £5,000 in England, Wales and Northern Ireland); or
  - on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both.



***Section 58: Secretary of State's power of direction***

285. This section provides the Secretary of State with the power to direct a person with obligations under an approved funded decommissioning programme to take action that the Secretary of State considers necessary or appropriate in the following circumstances:
- if it has been shown that the person failed to comply with any obligations imposed by the programme
  - if the person has been engaged in unlawful conduct which the Secretary of State considers may affect the programme. *Subsection (2)* defines unlawful conduct and *subsection (3)* specifies that a person can only be considered to have been engaged in unlawful conduct on the conclusion of any appeal process.
286. *Subsection (4)* sets out that the Secretary of State can direct a person with obligations under a funded decommissioning programme to take the steps which he considers necessary or appropriate to comply with obligations under the programme.
287. *Subsection (5)* imposes a duty on the Secretary of State to consult with the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland prior to giving a direction, insofar as the direction relates to one or more of their statutory functions.
288. *Subsections (6) and (7)* allow the Secretary of State to apply to the High Court for a court order where the Secretary of State believes that a person has failed to comply with a direction. If the application is successful the court may order the person to comply with the requirement.

***Section 59: Offence of further disclosure of information***

289. This section allows for the disclosure of information obtained by virtue of section 52(4) or 53(2) or 53(5), or regulations under section 54(2)(e), only if that information is:
- disclosed as a result of section 63 or any other function under this Chapter; or
  - disclosed with the consent of the person who originally provided the information; or
  - information obtained by the Health and Safety Executive under section 63 and disclosed for the purposes of its functions under the [Nuclear Installations Act 1965 \(c. 57\)](#); or
  - information obtained by environmental agencies under section 63 and disclosed for the purposes of the functions of those agencies under the [Radioactive Substances Act 1993 \(c.12\)](#).

***Section 60: Offence of supplying false information***

290. This section creates an offence of knowingly or recklessly supplying information which is false or misleading in a material respect.
291. *Subsection (2)* sets out the sanctions in the event of a prosecution:
- on summary conviction, a fine not exceeding the statutory maximum, (currently £5,000 in England, Wales and Northern Ireland); or
  - on conviction on indictment, imprisonment for a term not exceeding two years or a fine, or both.

***Section 61: Restriction on prosecutions under this Chapter***

292. This section sets out how prosecutions generated by an offence under this Chapter are to be initiated. This includes proceedings that may be instigated for any new offences

created by regulations under section 54. Proceedings may be instituted by the Secretary of State, or in England and Wales the Director of Public Prosecutions, or in Northern Ireland the Director of Public Prosecutions for Northern Ireland.

Miscellaneous

***Section 62: Power to apply this Chapter to other nuclear installations.***

293. This section allows the Secretary of State, by order (subject to the affirmative resolution procedure – section 105), to modify section 45 (duty to submit a funded decommissioning programme) so that it applies to persons who apply for a nuclear site licence of a description specified in the order. *Subsection (2)* sets out that these sites must be sites where the person intends to build a nuclear installation for a purpose connected with the generation of electricity, or where such an installation has already been constructed (in circumstances where a programme was previously required) which that person intends to operate.

***Section 63: Co-operation with other public bodies***

294. This section allows the Secretary of State to require certain public bodies (the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland) to assist him in discharging his duties under this Chapter of the Act.

295. *Subsections (3) and (4)* allow the Secretary of State and the relevant public bodies to share information which relates to a person listed in *subsection (5)* with each other, if any of them consider that the information they hold is relevant to a function of either the Secretary of State under this Chapter or to a function of the relevant public bodies in relation to a programme.

296. *Subsection (6)* provides that disclosure under this section may not be prevented by any other restrictions on the disclosure of such information by the persons concerned.

297. *Subsection (7)* provides that references to a site operator in this section also refer to the person who has applied for a nuclear site licence but where the application has not yet been determined.

***Section 64: Continuity of obligations***

298. This section provides that the obligations on an operator (or former operator) under a decommissioning programme remain until the Secretary of State explicitly releases them from their obligations, even if it no longer holds a site licence.

299. *Subsection (4)* sets out that the Secretary of State can release the operator from some or all of their obligations under a programme. In releasing the operator, the Secretary of State may release it from:

- all of the former site operator's obligations or only specified obligations;
- its obligations in relation to part of, or the whole site;
- its obligations in relation to all nuclear installations on a site, or only to specified installations.

300. *Subsection (5)* provides that the power in *subsection (3)* applies in relation to any other person with obligations under the programme as it applies to the site operator. *Subsection (6)* provides that this section does not affect the obligations under this Chapter of any other person who applies for and is granted a nuclear site licence in relation to the site referred to.

***Section 65: Amendment of Nuclear Installations Act 1965***

301. Section 1(3) of the Nuclear Installations Act 1965 makes it an offence to install or operate a nuclear installation without a site licence issued by Health and Safety Executive. This section makes it clear that even if the operator complies with section 1(1) of the 1965 Act, he may nonetheless commit an offence if he fails to comply with section 47.

***Section 66: Disposal of hazardous material***

302. This section provides that where the Secretary of State enters into an agreement for the disposals of relevant hazardous material that is associated with a funded decommissioning programme, the agreement may include provision for a fee to be paid to the Secretary of State.
303. *Subsection (2)* requires that the Secretary of State have the consent of Treasury in relation to the fee prior to entering into such an agreement.
304. *Subsection (3)(a)* allows for the fee to include an amount set by the Secretary of State to take account of any uncertainty with the costs associated with the obligations related to the disposal of waste that might fall on the Secretary of State when entering into such an agreement. These obligations might include the costs associated with maintaining interim waste disposal stores should the repository not be available on time, for example. It can also include the costs associated with maintaining the repository once waste from new build has been placed in it.
305. *Subsection (3)(b)(i)* provides that a proportion of the fee may cover the costs of the design and construction of the repository whilst *subsection (3)(b)(ii)* allows a proportion of the fee to be set in relation to the uncertainty associated with the construction of a repository in which hazardous material is to be disposed of. In this context expenditure incurred in connection with “design and construction” might also include expenditure on related research and development, but it is not restricted only to those activities.

General

***Section 67: Meaning of “associated”***

306. This section sets out the test for determining whether one body corporate is associated with another.

***Section 68: Interpretation***

307. The definitions for ‘cleaning-up’ a site and ‘decommissioning’ an installation are taken from section 37 of the Energy Act 2004. These definitions cover the treatment, storage, transportation and disposal of hazardous material. They describe other matters, activities and substances that need to be dealt with, carried out or removed when making the site or installation suitable to be used for other purposes.