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STATUTORY INSTRUMENTS

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**2011 No. 134**

**NUCLEAR ENERGY**

**The Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011**

<i>Made</i>	- - - -	<i>25th January 2011</i>
<i>Laid before Parliament</i>		<i>27th January 2011</i>
<i>Coming into force</i>	- -	<i>6th April 2011</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 50(1), 54(1), 54(2), 55(1) and 104 of the Energy Act 2008<sup>(1)</sup>.

In accordance with sections 50(2) and 54(8) of that Act the Secretary of State has consulted the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland in so far as these Regulations relate to a function conferred on that body by or under an enactment.

**Citation and commencement**

1. These Regulations may be cited as the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 and come into force on 6th April 2011.

**Interpretation**

2. In these Regulations—

“the 2008 Act” means the Energy Act 2008 and a reference to a numbered section is to that section of the 2008 Act;

“annual report” has the meaning given in regulation 6(4);

“DTM costs” means the estimates of the costs likely to be incurred in connection with the designated technical matters;

“quinquennial report” has the meaning given in regulation 6(4);

“verification report” means a written report which contains an assessment by a verifier whether or not—

(a) the DTM costs are prudent estimates; and

(b) any provision made for the financing of the DTM costs is prudent;

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(1) 2008 c.32.

“verifier” means a person appointed by the site operator to carry out an assessment in a verification report and who is independent of the operator and any other person with obligations under the relevant funded decommissioning programme.

### **Content of funded decommissioning programmes**

**3.—(1)** A person who submits a funded decommissioning programme must show separately in that programme—

- (a) the estimates of the costs likely to be incurred in connection with the disposal of intermediate level waste and spent fuel; and
- (b) the estimates of the costs likely to be incurred in connection with all other designated technical matters<sup>(2)</sup>.

(2) In this regulation—

“intermediate level waste” means radioactive waste—

- (a) which has a level of radioactivity above four gigabecquerels per tonne (GBq/te) of alpha activity or twelve GBq/te of beta or gamma activity; and
- (b) where the heat generated by the waste does not need to be taken into account in the design of storage or disposal facilities;

“spent fuel” means nuclear fuel that has been irradiated in and permanently removed from a reactor core.

### **Fees payable in relation to funded decommissioning programmes**

**4.—(1)** A person who submits a funded decommissioning programme must pay a fee to the Secretary of State for the amount of the costs described in paragraph (2).

(2) The costs referred to in paragraph (1) are those reasonably incurred by the Secretary of State for relevant advice in relation to the consideration of—

- (a) the programme; and
- (b) information in respect of the programme which the Secretary of State has required to be provided under section 52(4).

(3) Where a person mentioned in section 48(2) proposes a modification of—

- (a) a funded decommissioning programme; or
- (b) the conditions to which the approval of the programme is subject,

the site operator must pay a fee to the Secretary of State for the amount of the costs described in paragraph (4).

(4) The costs referred to in paragraph (3) are those reasonably incurred by the Secretary of State for relevant advice in relation to the consideration of—

- (a) the proposal; and
- (b) information in respect of the proposal which the Secretary of State has required to be provided under section 52(4).

(5) Where the Secretary of State gives a notice under section 53(2) or (5) the site operator responsible for the funded decommissioning programme to which the notice relates must pay a fee to the Secretary of State for the amount of the costs described in paragraph (6).

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(2) Designated technical matters are those matters set out in section 45(6)(b) of the 2008 Act and specified in The Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010 (S.I. 2010/2850).

(6) The costs referred to in paragraph (5) are those reasonably incurred by the Secretary of State for relevant advice in relation to the consideration of information provided in response to the notice.

- (7) A site operator who submits—
- (a) a notice as provided by regulation 8(3);
  - (b) an annual report; or
  - (c) a quinquennial report,

must pay a fee to the Secretary of State for the amount of the costs reasonably incurred by the Secretary of State for relevant advice in relation to the consideration of the notice or relevant report.

(8) A person liable to a fee under this regulation must pay it within 30 days of the date that the Secretary of State makes a written demand to that person for payment.

(9) Where a fee is not paid as required under paragraph (8), the Secretary of State may recover it as a civil debt due to the Crown.

(10) In this regulation “relevant advice” means advice obtained by the Secretary of State from the Nuclear Liabilities Financing Assurance Board<sup>(3)</sup> or any person who is independent of the site operator and any other person with obligations under the relevant funded decommissioning programme, but who is not the verifier in respect of the matters on which advice is sought.

### **Information requirements**

5.—(1) Where a person submits a funded decommissioning programme to the Secretary of State for approval, the programme must be accompanied by a verification report.

(2) Where a person within section 48(2)(b) or (c) makes a proposal in respect of the modification of an approved programme or the conditions to which the programme is subject, which is a proposal to which section 48 applies, the person making the proposal must ensure it—

- (a) contains details of—
  - (i) the DTM costs; and
  - (ii) any provision made for the financing of the designated technical matters;and
- (b) is accompanied by a verification report in respect of the matters set out in the proposal.

### **Reporting requirements**

6.—(1) The site operator must make an annual report to the Secretary of State—

- (a) in respect of year 1, within 3 months of the end of that year; and
- (b) subject to paragraph (3), for each year after year 1, within 3 months of the end of that year.

(2) The site operator must make a quinquennial report to the Secretary of State—

- (a) in respect of period 1, within 6 months of the end of that period; and
- (b) for each period of 5 years after period 1, within 6 months of the end of that period.

(3) An annual report is not required under paragraph (1)(b) for a year where that year is the fifth year of period 1 or, as appropriate, a subsequent 5 year period.

(4) In this regulation—

“annual report” means a written report which—

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(3) The Nuclear Liabilities Financing Assurance Board is a Non-Departmental Public Body created to provide independent advice and scrutiny on the suitability of funded decommissioning programmes submitted to the Secretary of State. Further information about the Board can be obtained at [www.decc.gov.uk/en/content/cms/what\\_we\\_do/uk\\_supply/energy\\_mix/nuclear/new/waste\\_costs/nlfab/nlfab.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/new/waste_costs/nlfab/nlfab.aspx).

- (a) must contain details of any changes during year 1 or, as appropriate, during each year after year 1—
  - (i) to the DTM costs; or
  - (ii) any provision made for the financing of the designated technical matters;
- (b) where any such changes are detailed to the DTM costs, must contain a verification report in respect of those changes; and
- (c) may contain any notice required under regulation 8(3) where the modification to which the notice relates is to take effect on or after the date the annual report is made to the Secretary of State;

“period 1” means the five year period commencing on the date of the approval of the funded decommissioning programme;

“quinquennial report” means a written report which—

- (a) must contain details of any changes during period 1 or, as appropriate, during a subsequent period of 5 years—
  - (i) to the steps to be taken under the programme in relation to the technical matters;
  - (ii) to the DTM costs; or
  - (iii) to any provision made for the financing of the designated technical matters;
- (b) where any changes are detailed to the DTM costs or any provision made for the financing of the designated technical matters, must contain—
  - (i) a verification report in respect of those changes; and
  - (ii) details of the DTM costs and financing after those changes;
- (c) may contain any notice required under regulation 8(3) where the modification to which the notice relates is to take effect on or after the date the quinquennial report is made to the Secretary of State;

“year 1” means the year commencing on the date of the approval of the funded decommissioning programme.

### **Verification of the designated technical matters**

7.—(1) Subject to paragraph (2), the Secretary of State may for the purposes of carrying out functions under Chapter 1 of Part 3 of the 2008 Act rely on a verification report.

(2) The Secretary of State must not rely on a verification report unless the Secretary of State is satisfied that the verifier—

- (a) has the qualifications and experience to carry out the assessment set out in the verification report;
  - (b) is independent of the site operator and any person with obligations under the programme; and
  - (c) has made a relevant assurance in respect of the assessment in the report.
- (3) In paragraph (2) a “relevant assurance” means a written statement which—
- (a) contains a summary of the verification report;
  - (b) sets out the standards in accordance with which the assessment is conducted; and
  - (c) where the assessment is that the estimate of costs or the provision made for the financing is not prudent, sets out—
    - (i) the reasons for that assessment; and

- (ii) the recommendations which, if complied with, would in the verifier's opinion make the estimate or the provision prudent.

### **Modifications to an approved programme**

**8.—**(1) Paragraph (2) applies where a person within section 48(2)(b) or (c) makes a proposal in respect of a funded decommissioning programme for a modification to the programme or to the conditions to which the approval of the programme is subject, ("a section 48 proposal").

(2) Where this paragraph applies, section 49 does not apply to the section 48 proposal if—

- (a) the proposal does not relate to the financing of the DTM costs; and
- (b) the relevant change in A is less than 5%.

(3) Where section 49 is disapplied under paragraph (2), the site operator must give to the Secretary of State a written notice which includes—

- (a) a summary of the modification; and
- (b) the date the modification is to take effect.

(4) In paragraph (2)(b) "relevant change in A" means the percentage difference between—

- (a) the sum of A set out in—
  - (i) the section 48 proposal; and
  - (ii) any previous proposal under section 48 made since the relevant estimate and in respect of which section 49 was disapplied;

and

- (b) A, as set out in the relevant estimate.

(5) In this regulation—

"A" means the estimate of costs set out in regulation 3(1)(a) or, as appropriate, (b);

"approved modification" means a modification to the funded decommissioning programme made further to a decision of the Secretary of State under section 49(6)(a);

"relevant estimate" means the DTM costs set out in the later of—

- (a) the funded decommissioning programme approved by the Secretary of State under section 46;
- (b) the funded decommissioning programme as modified by the last approved modification made before the section 48 proposal; or
- (c) the last quinquennial report made before the section 48 proposal.

25th January 2011

*Charles Hendry*  
Minister of State  
Department of Energy and Climate Change

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Chapter 1 of Part 3 of the Energy Act 2008 (“the 2008 Act”) sets out the legislative framework for funded decommissioning programmes. These Regulations are made using the powers in that Chapter, in relation the preparation, content, implementation and modification of such programmes.

Regulation 3 requires that the estimates of costs of the designated technical matters in the funded decommissioning programme be shown in two parts. Regulation 4 sets out the costs which will form the basis for calculating the fees payable to the Secretary of State and matters, additional to the Act, where fees are payable by operators. Regulation 5 sets out the information which must accompany a funded decommissioning programme or a proposal to modify a programme. Regulation 6 requires that an operator must provide to the Secretary of State reports on an annual and five yearly basis and the contents of those reports. Regulation 7 provides the circumstances in which the Secretary of State may rely on verification reports. Regulation 8 disapplies section 49 of the 2008 Act to enable certain modifications to be made without the approval of the Secretary of State.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies have also been placed in the libraries of both Houses of Parliament.