

EXPLANATORY MEMORANDUM TO
THE NUCLEAR DECOMMISSIONING AND WASTE HANDLING (FINANCE AND FEES) (AMENDMENT) REGULATIONS 2016

2016 No. 702

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change (“DECC”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to extend the Funded Decommissioning Programme (“FDP”) regime for cost recovery established by Chapter 1 of Part 3 of the Energy Act 2008 (“the Act”) and the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2013 (“the 2013 Regulations”).

2.2 The 2013 Regulations require operators to pay the Secretary of State the costs reasonably incurred by the Secretary of State in considering an FDP in accordance with detailed cost recovery arrangements. However, the 2013 Regulations only apply to FDPs and only enable the costs of obtaining advice in relation to a site operator’s FDP or modification to an FDP to be recovered from the point at which the FDP or modification is submitted to the Secretary of State for approval.

2.3 The Energy Act 2013 extended the Secretary of State’s regulation making powers to broaden the cost recovery arrangements. This instrument is made pursuant to those powers and amends the 2013 Regulations to extend the cost recovery arrangements to include the costs incurred by the Secretary of State for obtaining advice in relation to:

- an agreement, an amendment to an agreement or a proposal for an agreement or amendment under section 46(3A) of the Act between the Secretary of State and the operator regarding the extent to which the Secretary of State will exercise her powers to modify an FDP;
- an agreement, an amendment to an agreement or a proposal for an agreement or amendment under section 66(1) of the Act for or in connection with the disposal of relevant hazardous material (essentially radioactive waste and other contaminated material); and
- a proposed FDP or proposed modification of an existing FDP before it has been submitted to the Secretary of State for approval.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Chapter 1 of Part 3 of the Act sets out the legislative framework for the decommissioning and clean-up of nuclear sites and requires site operators to submit an FDP to the Secretary of State for approval. The Chapter also contains several new provisions inserted by the Energy Act 2013 which extends the powers of the Secretary of State to recover the costs of advice she has obtained. This instrument, which amends the 2013 Regulations, extends the cost recovery regime set out in the primary legislation and the 2013 Regulations as set out in paragraph 2.3.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England, Wales and Northern Ireland.
- 5.2 The territorial application of this instrument is England, Wales and Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 This instrument extends the regime for recovering costs established by Chapter 1 of Part 3 of the Act and the 2013 Regulations.
- 7.2 The amendments introduced to the 2013 Regulations by this instrument enable the costs of advice obtained in respect of the matters referred to in paragraph 2.3 to be recovered from the operator thereby ultimately reducing the cost to taxpayers.
- 7.3 Regulation 3 extends the scope to recover costs set out in regulation 6 of the 2013 Regulations in two ways. Firstly to enable the Secretary of State to recover the costs incurred in obtaining advice in considering a proposal for an FDP put forward by an operator but before its submission to the Secretary of State under section 45(3)(b) of the Act. Secondly regulation 3 enables the Secretary of State to recover the costs incurred in obtaining advice in considering proposals to modify an FDP but before those proposals are submitted to the Secretary of State under section 49(2)(b) of the Act.
- 7.4 Regulation 4 inserts two new regulations into the 2013 Regulations. New regulation 6A will enable the Secretary of State to recover from the site operator the costs of advice incurred in considering an agreement, an amendment to an agreement or a proposal for an agreement or amendment which it wishes to enter into under section 46(3A) of the Act.
- 7.5 New regulation 6B will enable the Secretary of State to recover from a person wishing to enter into an agreement made under section 66(1) of the Act, the costs of advice incurred in considering an agreement, an amendment to an agreement or a proposal for an agreement or amendment.

Consolidation

- 7.6 The instrument makes amendments to the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2013. The Department is not planning to consolidate these pieces of legislation.

8. Consultation outcome

- 8.1 Under section 54(8) of the Act there is a statutory requirement to consult with the Office of Nuclear Regulation, the Environment Agency and the Department of the Environment for Northern Ireland but only in so far as an instrument relates to functions conferred on them by or under an enactment. The Department has not consulted on this instrument as it does not relate to any functions conferred on any of these bodies under any enactment.
- 8.2 Although there is no general statutory requirement to consult in respect of this instrument, the Department has consulted twice in respect of related earlier sets of regulations: firstly, with regard to the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 (“the 2011 Regulations”), and secondly with regard to the 2013 Regulations. The 2011 Regulations were made under the powers set out in sections 50, 54, 55 and 104 of the Energy Act 2008. Under sections 50(2) and 54(8) the Secretary of State was required to consult the Health and Safety Executive, the Environment Agency and the Department of the Environment for Northern Ireland in so far as the 2011 Regulations related to a function conferred on them by or under an enactment and such a consultation was undertaken. The consultation included a set of draft regulations which included provisions on (a) recovering the costs associated with the consideration of an FDP; (b) amending the procedure in the Energy Act 2008 for modifying an approved FDP; (c) the reporting requirements on operators; (d) verification in relation to an FDP; and (e) the content of an FDP. The 2011 Regulations were revoked in their entirety by the 2013 Regulations. The provisions on cost recovery in regulation 4 of the 2011 Regulations were restated in regulation 6 of the 2013 Regulations. The Department also consulted on the 2013 Regulations, seeking views on proposed amendments to the 2011 regulations. The proposed amendments related to three specific areas of the regulations: reporting requirements, verification and modification of an FDP.
- 8.3 As a result of the consultation on the 2011 Regulations the cost recovery provisions were simplified, making it explicit that the recoverable costs are only those that have been reasonably incurred. This was to take into account the need for operators to have clarity over the scale of possible charges and the necessity of securing value for money when commissioning expert analysis. As (a) this instrument follows the same approach to cost recovery adopted in the 2011 Regulations and carried through into the 2013 Regulations in that the costs that may be recovered under this instrument are also only those that are reasonably incurred; (b) the instrument applies to a narrow class of person, namely site operators of nuclear power stations; (c) the costs are small in the context of the overall costs of developing a nuclear power station; and (d) the primary legislation to make further provision for cost recovery was subject to scrutiny during the passage of the 2013 Energy Act, the Department’s view is that no further consultation was required in relation to this instrument.

9. Guidance

- 9.1 No guidance is being developed specifically for this instrument.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The 2013 Regulations provide for a review by the Secretary of State after 10 years from the day on which the Regulations came into force. The review must set out the objectives intended to be achieved by the regulatory system established by the Regulations and assess to what extent the objectives have been achieved; whether they remain appropriate; and, if so, the extent to which they could be achieved with a system that imposes less regulation. The report of the review will be published.

12.2 Separately the instrument is exempt from the requirement under section 28(2) of the Small Business, Enterprise and Employment Act 2015 to make provision to carry out a review as it falls within the exception in section 28(3) of that Act.

12.3 No sunset clause is required.

13. Contact

13.1 Nicola Robinson at the Department of Energy and Climate Change, telephone: 0300 068 6095 or email: nicola.robinson@decc.gsi.gov.uk can answer any queries regarding the instrument.