



Energy Act 2008

2008 CHAPTER 32

PART 3

DECOMMISSIONING OF ENERGY INSTALLATIONS

CHAPTER 1

NUCLEAR SITES: DECOMMISSIONING AND CLEAN-UP

Funded decommissioning programmes

46 Approval of a programme

- (1) The Secretary of State may approve or reject a funded decommissioning programme submitted under section 45 in respect of a site.
 - (2) The Secretary of State may approve a programme—
 - (a) with or without modifications, and
 - (b) unconditionally or subject to conditions.
 - (3) A modification under subsection (2) may, in particular, impose obligations, or additional obligations, on a body corporate associated with the person who submitted the programme.
- [^{F1}(3A) When approving a programme the Secretary of State may agree to exercise, or not to exercise, the section 48 power—
- (a) in a particular manner;
 - (b) within a particular period.
- (3B) An agreement under subsection (3A) may subsequently be amended by the Secretary of State and the other party to the agreement.
- (3C) The Secretary of State may not make such an agreement or amend such an agreement unless satisfied that the agreement (or the agreement as amended) includes adequate

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provision for the modification of the programme in the event that the provision made by it for the technical matters (including the financing of the designated technical matters) ceases to be prudent.

(3D) Provision in such an agreement (including the provision mentioned in subsection (3C)) may include provision—

- (a) for a determination by a third party in relation to a relevant matter specified in the agreement, and
- (b) for the Secretary of State to be bound by such a determination.

(3E) A “relevant matter” is a matter relating to the provision made by the programme for the technical matters.

(3F) Subsections (3A) to (3D) apply notwithstanding that the agreement or amendment fetters the Secretary of State's discretion.

(3G) In subsection (3A) “ section 48 power ” means the power of the Secretary of State under section 48 to propose a modification of the programme or a modification of the conditions to which the approval of the programme is subject.]

[^{F2}(3H) Where the Secretary of State makes or amends an agreement under subsection (3A), or it is proposed that such an agreement be made or amended, the site operator must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (3I), at a time determined in accordance with such regulations.

(3I) The costs are those incurred by the Secretary of State in relation to the consideration of the agreement or amendment, including, in particular, the costs of obtaining advice in relation to the agreement or amendment.]

(4) The Secretary of State's powers under subsections (1) to [^{F3}(3B)] must be exercised with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).

(5) Before deciding whether to approve or reject a programme, the Secretary of State must consult each interested body about—

- (a) the programme, and
- (b) any modification which it is proposed to make, or any condition it is proposed to impose,

so far as it relates to a function conferred on the interested body by or under an enactment.

(6) “Interested body” means—

- [^{F4}(a) the Office for Nuclear Regulation,]
- (b) in relation to a funded decommissioning programme for a site in England and Wales, the Environment Agency, and
- (c) in relation to a funded decommissioning programme for a site in Northern Ireland, the Department of the Environment for Northern Ireland.

(7) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the following persons an opportunity to make written representations about the proposed modifications or conditions—

- (a) the site operator;
- (b) any other person with obligations under the programme;

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- (c) in the case of proposed modifications, any person who would have such obligations were the modifications made.
- (8) The Secretary of State may not reject a programme without informing the site operator of the reasons for doing so.
- (9) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.
- (10) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

Textual Amendments

- F1** S. 46(3A)-(3G) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 106(2)**, 121(3)
- F2** S. 46(3H)(3I) inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 149(3)**, 156(2)
- F3** Word in s. 46(4) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 106(3)**, 121(3)
- F4** [S. 46\(6\)\(a\)](#) substituted (1.4.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(1), **Sch. 12 para. 96**; S.I. 2014/251, **art. 4**
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Commencement Information

- I1** S. 46 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(b)(i)**

Changes to legislation:

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