



# Nuclear Energy (Financing) Act 2022

## 2022 CHAPTER 15

### PART 1

#### NUCLEAR ENERGY GENERATION PROJECTS: REGULATED ASSET BASE MODEL

##### *Licence modifications*

#### **6 Licence modifications: designated nuclear companies**

- (1) The Secretary of State may modify—
  - (a) a condition of a nuclear company's electricity generation licence;
  - (b) a term of a nuclear company's electricity generation licence.
- (2) The Secretary of State may exercise the power under [subsection \(1\)](#) only for the purpose of facilitating investment in the design, construction, commissioning and operation of nuclear energy generation projects.
- (3) The power under [subsection \(1\)](#) may be exercised in relation to a nuclear company only at a time when a designation under [section 2\(1\)](#) has effect in relation to the company.
- (4) When exercising the power under [subsection \(1\)](#), the Secretary of State must have regard to—
  - (a) the duties of the Secretary of State under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);
  - (b) the interests of existing and future consumers of electricity, including their interests in relation to the cost and security of supply of electricity;
  - (c) costs, expenditure or liabilities of any description that the nuclear company may reasonably be expected to incur in carrying out its activities;
  - (d) the need to secure that the nuclear company is able to finance its activities;
  - (e) the need to secure that the nuclear company has appropriate incentives in relation to the carrying out of its activities;
  - (f) such other matters as the Secretary of State considers appropriate.
- (5) Modifications made under [subsection \(1\)\(a\)](#) may include, for example—

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*Status: This is the original version (as it was originally enacted).*

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- (a) provision about the revenue that the nuclear company may receive in respect of its activities (the company’s “allowed revenue”);
  - (b) provision about how the nuclear company’s allowed revenue is to be calculated;
  - (c) provision about the amounts that the nuclear company is entitled to receive, or is required to pay, under any revenue collection contract to which it is a party;
  - (d) provision about activities that the nuclear company must, may or may not carry on;
  - (e) provision about the management of the nuclear company’s activities, including the manner in which they are carried out;
  - (f) provision conferring functions on the Authority, including provision enabling or requiring the nuclear company to refer for determination, decision or approval by the Authority matters specified, or of a description specified, in the licence;
  - (g) provision enabling the nuclear company to refer to the CMA a decision of the Authority falling within [section 10\(3\)](#) (decisions relating to allowed revenue);
  - (h) provision for the amendment of the licence for the purpose of implementing a determination or decision of the Authority or the CMA;
  - (i) provision requiring the nuclear company to comply with any direction or instruction, or to have regard to any guidance, given by the Authority in relation to matters specified, or of a description specified, in the licence;
  - (j) provision requiring the nuclear company to co-operate with the Authority and to provide such information and assistance to the Authority as the Authority may require for the purposes of carrying out any of its functions;
  - (k) provision about the payment by the nuclear company, to the Authority or to the CMA, of such amounts as may be determined by or in accordance with the licence;
  - (l) provision about relevant licensee nuclear company administration orders (as defined in [section 31\(1\)](#)), including provision about the raising of funds for the purpose of meeting expenses arising by virtue of such an order;
  - (m) provision about the disclosure or publication of information by the nuclear company.
- (6) Modifications made under [subsection \(1\)\(b\)](#) may include, for example, provision relating to the circumstances in which the nuclear company’s electricity generation licence may be revoked.
- (7) The Secretary of State may modify—
- (a) the standard conditions incorporated in licences under [section 6\(1\)\(a\) to \(d\)](#) of the Electricity Act 1989 by virtue of [section 8A](#) of that Act;
  - (b) a document maintained in accordance with the conditions of licences under [section 6\(1\)\(a\) to \(d\)](#) of the Electricity Act 1989 or an agreement that gives effect to a document so maintained.
- (8) The Secretary of State may exercise the power under [subsection \(7\)](#) only if the Secretary of State considers it appropriate to do so in consequence of, or for purposes incidental or supplementary to, the making of a modification under [subsection \(1\)](#).
- (9) Modifications made under [subsection \(1\)](#) or [\(7\)](#) do not take effect unless the nuclear company whose licence is modified under [subsection \(1\)](#) enters into a revenue collection contract with a revenue collection counterparty.

- (10) References in this section to the activities of a nuclear company are references to the company's activities in relation to the design, construction, commissioning and operation of the nuclear project, including its activities in complying with any obligations it has under an approved funded decommissioning programme under Chapter 1 of Part 3 of the Energy Act 2008.

## **7 Licence modifications: relevant licensee nuclear companies**

- (1) The Secretary of State may modify a condition of a relevant licensee nuclear company's electricity generation licence.
- (2) The Secretary of State may exercise the power under [subsection \(1\)](#) only if the Secretary of State considers that—
- (a) the total expenditure expected to be incurred by the relevant licensee nuclear company in order to complete the construction of the nuclear project is likely to exceed any cap on such expenditure included in the licence, and
  - (b) in consequence of [paragraph \(a\)](#), an adjustment is needed in relation to how the company's allowed revenue is to be calculated.
- (3) When exercising the power under [subsection \(1\)](#), the Secretary of State must have regard to the matters mentioned in [section 6\(4\)](#).
- (4) The power under [subsection \(1\)](#) may not be exercised in relation to a relevant licensee nuclear company at any time after construction of the nuclear project has been completed.
- (5) For the purposes of this section, construction of the nuclear project is to be taken to have been completed on successful completion of such procedures and tests relating to the project as constitute, at the time they are undertaken, the usual industry standards and practices for nuclear energy generation projects in order to demonstrate that they are capable of commercial operations.
- (6) The Secretary of State must publish a statement setting out the procedure that the Secretary of State expects to follow in determining whether to exercise the power under subsection (1).

## **8 Procedure etc relating to modifications under section 6 or 7**

- (1) Before making a modification under a power conferred by [section 6\(1\)](#) or [\(7\)](#) or [7\(1\)](#) (a "relevant power"), the Secretary of State must consult—
- (a) the nuclear company whose licence is being modified,
  - (b) the Authority,
  - (c) the Office for Nuclear Regulation,
  - (d) where any part of the site for the nuclear project is in England, the Environment Agency,
  - (e) where any part of the site for the nuclear project is in Wales, the Welsh Ministers and Natural Resources Wales,
  - (f) where any part of the site for the nuclear project is in Scotland, the Scottish Ministers and the Scottish Environment Protection Agency,
  - (g) in the case of a modification under [section 6\(7\)](#), other holders of a licence being modified, and
  - (h) such other persons as the Secretary of State considers appropriate.

- (2) In the case of the exercise of a power conferred by [section 6\(1\)](#) or [\(7\)](#), [subsection \(1\)](#) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).
- (3) A relevant power—
  - (a) may be exercised generally, only in relation to specified cases, or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently for different purposes;
  - (c) includes power to make incidental, supplementary, consequential or transitional modifications.
- (4) Provision included in a licence, or in a document or agreement described in [section 6\(7\)\(b\)](#), by virtue of a relevant power—
  - (a) may make different provision for different purposes;
  - (b) need not relate to the activities authorised by the licence;
  - (c) may do anything authorised for licences of that type by [section 7\(4\)](#), [\(5\)\(a\)](#) or [\(6A\)](#) of the Electricity Act 1989.
- (5) The Secretary of State must publish details of any modifications made under a relevant power as soon as reasonably practicable after they are made.
- (6) If under [section 6\(7\)](#) the Secretary of State makes a modification of the standard conditions of a licence, the Authority must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (7) A modification made under a relevant power of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989.
- (8) The power conferred by a relevant power to “modify” (in relation to licence conditions or terms or a document or agreement) includes power to amend, add to or remove; and references to modifications are to be construed accordingly.

## 9 Expiry of modifications made under [section 6](#)

- (1) This section applies if the designation of a nuclear company under [section 2\(1\)](#) ceases to have effect in accordance with—
  - (a) [section 4\(1\)\(a\)](#) (expiry of designation), or
  - (b) [section 5\(1\)](#) or [\(3\)](#) (revocation or lapse of designation).
- (2) Any modifications made under [section 6\(1\)](#) of the nuclear company’s electricity generation licence are to be treated, from the relevant time, as not having been made.
- (3) If any modifications of licences were made under [section 6\(7\)](#) in consequence of, or for purposes incidental or supplementary to, the modification under [section 6\(1\)](#) of the nuclear company’s electricity generation licence, those modifications are to be treated, from the relevant time, as not having been made.
- (4) In subsections [\(2\)](#) and [\(3\)](#), “the relevant time” means the time when the designation of the nuclear company ceases to have effect.

- (5) Where modifications are to be treated by subsection (2) or (3) as not having been made, the Secretary of State must publish details of that fact.

**10 Decisions relating to allowed revenue of relevant licensee nuclear company: appeals to CMA**

- (1) This section applies where a relevant licensee nuclear company's electricity generation licence contains provision referred to in [section 6\(5\)\(g\)](#) (provision enabling company to refer decisions of the Authority to the CMA).
- (2) Sections 11C to 11H of, and Schedule 5A to, the Electricity Act 1989 (appeal to the CMA against a decision by the Authority) apply in relation to a decision falling within [subsection \(3\)](#) below as they apply in relation to a decision mentioned in section 11C(1) of that Act.
- (3) A decision falls within [this subsection](#) if—
- the decision is made by the Authority in the exercise of its functions relating to the regulation of a relevant licensee nuclear company,
  - in the CMA's opinion, the decision relates to the allowed revenue of the company, and
  - but for this section, the company could not under section 11C of the Electricity Act 1989 bring an appeal against the decision.
- (4) In the application of the provisions of the Electricity Act 1989 mentioned in [subsection \(2\)](#)—
- section 11C has effect as if for subsection (2) there were substituted—

“(2) An appeal may be brought under this section only by a relevant licensee nuclear company (within the meaning of [Part 1](#) of the Nuclear Energy (Financing) Act 2022).”;
  - section 11E (4) (d) is to be ignored;
  - sections 11F and 11G apply to a decision falling within [subsection \(3\)](#) as they apply to a price control decision as defined by section 11F(7);
  - paragraph 1 of Schedule 5A has effect as if for sub-paragraph (3) there were substituted—

“(3) Any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the Authority notifies its decision to the relevant licensee nuclear company.”;
  - paragraph 2 of Schedule 5A has effect as if, in sub-paragraph (2)(c), for the words from the beginning to “(as the case may be)” there were substituted “the relevant licensee nuclear company”.