

2013 No. 126

NUCLEAR ENERGY

The Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2013

<i>Made</i>	- - - -	<i>22nd January 2013</i>
<i>Laid before Parliament</i>		<i>7th February 2013</i>
<i>Coming into force</i>	- -	<i>4th March 2013</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 49(3), 50, 54(1) and (2), 55(1) and 104 of the Energy Act 2008(a).

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 them 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 2013 and come into force on 4th March 2013.

Revocation of the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011

2. The Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011(b) are revoked.

Transitional provision

3. A funded decommissioning programme submitted to the Secretary of State in accordance with the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 will be treated as satisfying the requirements relating to submission set out in these Regulations.

Interpretation

4.—(1) 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 9;

“annual reporting period” means—

(a) 2008 c. 32.
(b) S.I.2011/134.

(a) in the case of a site operator that is required to file accounts, each financial year after the first criticality reporting period;

(b) in the case of a site operator that is not required to file accounts, each period of twelve months after the first criticality reporting period;

“associated person” means a person other than the site operator who has obligations under a funded decommissioning programme;

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

“DTM verification report” means a report which contains an assessment by a verifier of—

(a) where the report accompanies the submission of a funded decommissioning programme, a first criticality report or a quinquennial report, whether or not the site operator’s DTM estimates are reasonable;

(b) where the report accompanies an annual report or a section 48 proposal, either of which contains DTM estimates that are different from the DTM estimates contained in the latest of the site operator’s—

(i) approved funded decommissioning programme;

(ii) first criticality report;

(iii) most recent annual report;

(iv) most recent quinquennial report;

(v) funded decommissioning programme as modified by the last approved modification made under section 48;

(vi) most recent modification verification report;

whether or not any such differences are reasonable;

“file accounts” means deliver accounts under section 441 of the Companies Act 2006(a);

“financial verification report” means a report which contains—

(a) an assessment by a verifier of the site operator’s compliance, during the first criticality or quinquennial reporting period as appropriate, with such of its obligations under the funded decommissioning programme relating to the financing of the costs likely to be incurred in connection with the designated technical matters as may be specified in the funded decommissioning programme for the purposes of these Regulations; and

(b) the verifier’s valuation of any assets held in a fund, and of any specified security, as at the last day of the first criticality or quinquennial reporting period as appropriate;

“financial year” means the site operator’s financial year and has the meaning given in section 390 of the Companies Act 2006;

“first criticality” means the date on which the first chain nuclear reaction in a nuclear installation on the site to which a funded decommissioning programme relates becomes self sustaining;

“first criticality report” has the meaning given in regulation 9;

“first criticality reporting period” means—

(a) in the case of a site operator required to file accounts, the period beginning on the date on which the funded decommissioning programme is approved, and ending on the last day of the financial year in which first criticality occurs;

(b) in the case of a site operator not required to file accounts, the period beginning on the date on which the funded decommissioning programme is approved, and ending on the date on which first criticality occurs;

(a) 2006 c. 46.

“fund” means a trust or other arrangement created by or on behalf of the site operator to hold and accumulate assets, other than any specified security, for the purposes of ensuring prudent provision is made for the financing of the costs likely to be incurred in connection with the designated technical matters;

“funded decommissioning programme” means—

- (a) where a funded decommissioning programme has been submitted to the Secretary of State for approval but has not been approved, the programme as submitted;
- (b) where a funded decommissioning programme has been approved by the Secretary of State and has not been subsequently modified, the programme as approved;
- (c) where a funded decommissioning programme has been modified in accordance with the 2008 Act and these Regulations, the programme as so modified;

“modification verification report” means a report which accompanies a section 48 proposal and contains—

- (a) confirmation by a verifier that the site operator has, during the compliance period, complied with such of its obligations under the funded decommissioning programme relating to the financing of the costs likely to be incurred in connection with the designated technical matters as may be specified in the funded decommissioning programme for the purposes of these Regulations, and for those purposes the “compliance period” is the period beginning with whichever is the latest of—
 - (i) the date on which the funded decommissioning programme was approved;
 - (ii) the day after the end of the first criticality reporting period;
 - (iii) the day after the end of the most recent quinquennial reporting period;
 - (iv) the day after the end of the period covered by the most recent modification verification report,

and ending no later than 5 working days before the date on which the section 48 proposal to which the report relates is made, or such longer period as may be determined in accordance with the approved funded decommissioning programme; and

- (b) the verifier’s valuation of any assets held in a fund, and of any specified security, as at a date no later than 5 working days before the date on which the section 48 proposal to which the report relates is made, or such longer period as may be determined in accordance with the approved funded decommissioning programme;

“quinquennial report” has the meaning given in regulation 9;

“quinquennial reporting period” means—

- (a) in the case of a site operator required to file accounts—
 - (i) the period of five financial years following the first criticality reporting period; and
 - (ii) any subsequent period of five financial years;
- (b) in the case of a site operator not required to file accounts—
 - (i) the five year period commencing the day after first criticality; and
 - (ii) any subsequent period of five years;

“section 48 proposal” means a proposal made under section 48 by a person other than the Secretary of State;

“specified security” means security specified for the purposes of these Regulations in a funded decommissioning programme;

“verifier” means a person independent of the site operator and any associated person who is appointed by the site operator or an associated person to produce a DTM verification report, a financial verification report or a modification verification report;

“working days” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom^(a).

(2) Where these Regulations provide that a report or a notice must be submitted to the Secretary of State, it must be submitted in writing.

Content of funded decommissioning programmes

5.—(1) A person who submits a funded decommissioning programme must show separately in that programme the estimates of the costs likely to be incurred in connection with—

- (a) the disposal of intermediate level waste and spent fuel; and
- (b) all other designated technical matters.

(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) which does not generate heat which needs 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

6.—(1) A person who submits a funded decommissioning programme must pay a fee to the Secretary of State for the amount of costs reasonably incurred by the Secretary of State for relevant advice in relation to—

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

(2) Where a person makes a section 48 proposal, the site operator must pay a fee to the Secretary of State for the amount of costs reasonably incurred by the Secretary of State for relevant advice in relation to—

- (a) the proposal;
- (b) information in respect of the proposal which the Secretary of State has required to be provided under section 52(4); or
- (c) information in respect of the proposal provided to the Secretary of State in accordance with these Regulations.

(3) 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 costs reasonably incurred by the Secretary of State for relevant advice in relation to information provided in response to the notice.

(4) A site operator who submits—

- (a) an annual report;
- (b) a first criticality 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 report.

(a) 1971 c. 80.

(5) 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.

(6) Where a fee is not paid as required under paragraph (5), the Secretary of State may recover it as a civil debt due to the Crown.

(7) In this regulation “relevant advice” means advice obtained by the Secretary of State from—

- (a) the Nuclear Liabilities Financing Assurance Board; or
- (b) any person who is independent of the site operator.

Information requirements on submission of a funded decommissioning programme

7. Where a person submits a funded decommissioning programme to the Secretary of State for approval, the programme must be accompanied by a DTM verification report.

Reporting requirements

8.—(1) The site operator must make a first criticality report to the Secretary of State within 9 months of the end of the first criticality reporting period.

(2) Subject to paragraph (4), the site operator must make an annual report to the Secretary of State in respect of each annual reporting period within 9 months of the end of the annual reporting period.

(3) The site operator must make a quinquennial report to the Secretary of State in respect of each quinquennial reporting period within 9 months of the end of the quinquennial reporting period.

(4) An annual report is not required for an annual reporting period where that period is the fifth annual reporting period of a quinquennial reporting period.

Reports: general content

9.—(1) A first criticality report, an annual report or a quinquennial report must set out, as at the last day of the period to which the report relates—

- (a) the site operator’s DTM estimates;
- (b) the site operator’s valuation of the assets held in any fund, and of any specified security; and
- (c) a statement of—
 - (i) any future payments the site operator is required by the funded decommissioning programme to make into any fund; and
 - (ii) any other future financial provision the site operator is required to make in accordance with the funded decommissioning programme.

(2) A first criticality report or a quinquennial report must—

- (a) include a review by the site operator of whether the site operator and each associated person has complied in all material respects with their obligations under the funded decommissioning programme during the period to which the report relates; and
- (b) be accompanied by a DTM verification report and a financial verification report.

(3) An annual report must be accompanied by a DTM verification report.

Reports: requirements relating to verification

10.—(1) A DTM verification report, a financial verification report or a modification verification report must contain a statement from the verifier—

- (a) providing a summary of the report;
- (b) setting out the verifier’s qualifications and experience;

- (c) setting out the reasons why the verifier considers that they are independent of the site operator and any associated person.

(2) In the case of a financial verification report, the verifier must also set out the standards and methods in accordance with which the verifier has assessed the site operator’s compliance with the funded decommissioning programme and has valued the assets in any fund and any specified security.

Modifications to which section 49 does not apply

11.—(1) Section 49 does not apply to a proposal for a modification of an approved funded decommissioning programme under section 48 (“a proposal”) if the proposal is an exempt proposal as described in paragraph (2) or (3).

(2) A proposal is an exempt proposal where—

- (a) all the modifications contained in the proposal are relevant modifications;
- (b) the proposal—
 - (i) would result in only a change in the estimates of costs described in regulation 5(1)(a) or, as appropriate, (b); or
 - (ii) relates only to the funding of the costs likely to be incurred in connection with the designated technical matters; and
- (c) the requirements of regulation 14 are complied with in relation to the proposal.

(3) A proposal that is not a proposal for a relevant modification is an exempt proposal where—

- (a) the proposal would result in only a change in the estimates of costs described in regulation 5(1)(a) or, as appropriate, (b); or
- (b) the proposal relates to the details of the steps to be taken under the programme in relation to the technical matters, and
- (c) the conditions set out in paragraph (4) are satisfied, and
- (d) the requirements of regulation 14 are complied with in relation to the proposal.

(4) The conditions referred to in paragraph (3)(c) are that the proposal would result in a relevant change in A which is—

- (a) less than 5%;
- (b) an increase of 5% or more, provided that the conditions set out in regulation 12 are satisfied; or
- (c) a reduction in the estimate of costs described in regulation 5(1)(a) of 5% or more where the reduction—
 - (i) relates directly to a reduction in the fee for the disposal of relevant hazardous material provided for in a section 66 agreement; and
 - (ii) is calculated in accordance with provisions in the funded decommissioning programme.

(5) In this regulation—

“A” means the estimates of costs described in regulation 5(1)(a) or, as appropriate, (b);

“prices index” means any prices index specified in the funded decommissioning programme for the purposes of this regulation;

“relevant change in A” is the difference, expressed as a percentage, between—

- (a) the amount of A set out in the section 48 proposal; and
- (b) the amount of A set out in the relevant estimate, adjusted in accordance with the formula—

$$A = B + \left(B \times \frac{Y - X}{Y} \right)$$

where—

- (i) B = the amount of A set out in the relevant estimate;
- (ii) X = the level of the prices index at the date of the relevant estimate;
- (iii) Y = the level of the prices index as at the date of the section 48 proposal;

“relevant estimate” means A contained in the funded decommissioning programme at the latest of—

- (a) the date of its approval by the Secretary of State under section 46;
- (b) the day after the last date, before the section 48 proposal, on which the funded decommissioning programme was modified further to a decision of the Secretary of State under section 49(6)(a);
- (c) the day after the last modification made by virtue of regulation 11(4)(b); or
- (d) the first day of the current quinquennial reporting period;

“relevant modification” means a modification specified in the funded decommissioning programme as a modification to which this regulation applies and includes a modification which is permitted only if conditions set out in the programme are met;

“section 66 agreement” means an agreement made pursuant to section 66 between the site operator and the Secretary of State and which relates to the site which is the subject of the proposal.

Modifications involving significant increases in the estimated costs of decommissioning or waste management

12.—(1) The conditions referred to in regulation 11(4)(b) are that—

- (a) the funded decommissioning programme—
 - (i) requires the holding and accumulation of a fund as a means of financing the designated technical matters;
 - (ii) specifies a method of valuing the fund and any specified security;
 - (iii) specifies a means of establishing whether the condition in paragraph (1)(b) is satisfied;
- (b) the value of the fund, together with the value of any specified security, in each case valued in accordance with the funded decommissioning programme, is, as at a date not more than 5 working days before the date on which the section 48 proposal is notified to the Secretary of State in accordance with regulation 14, greater than or equal to the required value; and
- (c) the date notified to the Secretary of State in accordance with regulation 14(1)(b) is no more than 10 working days after the date on which the section 48 proposal is notified to the Secretary of State in accordance with regulation 14.

(2) For the purposes of this regulation, “the required value” means, in relation to a section 48 proposal, the amount set out in, or determined in accordance with, the funded decommissioning programme by reference to the DTM estimates as they would be modified if the modification it proposes were to be made on the date notified to the Secretary of State in accordance with regulation 14(1)(b).

Information requirements for section 48 proposals to which section 49 applies

13.—(1) A person making a section 48 proposal to which section 49 applies must give notice to the Secretary of State which contains details of the proposed modification to the funded decommissioning programme including any changes to the DTM estimates, or to the details of the steps to be taken under the programme in relation to the technical matters.

(2) Where the proposal relates to changes to the DTM estimates, it must be accompanied by a DTM verification report.

Information requirements for section 48 proposals to which section 49 does not apply

14.—(1) Where a person submits a section 48 proposal to the Secretary of State to which section 49 does not apply, that proposal must include—

- (a) details of the proposed modification to the funded decommissioning programme including any changes to the DTM estimates, or to the details of the steps to be taken under the programme in relation to the technical matters;
- (b) the date the proposed modification is intended to take effect; and
- (c) details of the relevant paragraph of regulation 11 which allows section 49 to be disapplied in respect of the section 48 proposal and how it applies.

(2) The proposal must be accompanied by—

- (a) a DTM verification report;
- (b) a modification verification report;
- (c) in the case of a proposal to which regulation 11(2) applies, a statement from a verifier confirming that any conditions set out in the funded decommissioning programme have been met or will be met if the proposed modification is made;
- (d) in the case of a proposal to which regulation 11(4)(a) or 11(4)(c) apply, confirmation from the site operator that the requirement in regulation 11(4)(a) or, as the case may be 11(4)(c), will be satisfied at the date the relevant modification is intended to take effect;
- (e) in the case of a proposal to which regulation 11(4)(b) applies, a statement from a verifier confirming that the condition in regulation 12(1)(b) has been met.

Review

15.—(1) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) “Review period” means the period of ten years beginning with the day on which these Regulations come into force.

22nd January 2013

John Hayes
Minister of State
Department of Energy and Climate Change

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. These Regulations replace the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 (“the 2011 Regulations”). They contain a transitional provision for any funded decommissioning programme already submitted under the 2011 Regulations.

Regulation 5 requires that the estimates of costs of the designated technical matters in the funded decommissioning programme be shown in two parts. Regulation 6 sets out the costs which will form the basis for calculating the fees payable to the Secretary of State and matters where fees are payable by site operators. Regulation 7 sets out the information which must accompany the submission of a funded decommissioning programme. Regulation 8 requires that an operator must provide reports to the Secretary of State when the reactor goes critical for the first time, and then on an annual basis and a five yearly basis (a “quinquennial report”). Regulation 9 provides detail about the content of those reports and regulation 10 addresses the verification by independent third parties of the reports made to the Secretary of State.

Regulation 11 describes certain exempt modifications that can be made without the approval of the Secretary of State. These are subject to conditions and thresholds set out in these Regulations, and provide that they may only be relied upon where information relating to the modification has been provided to the Secretary of State. Regulation 12 sets out the additional requirements a site operator must meet when the modification involves a significant increase in the estimated costs of decommissioning or waste management. Regulation 13 sets out the information requirements for proposed modifications to the funded decommissioning programme to which section 49 of the 2008 Act applies. Regulation 14 sets out the information the site operator must provide where it is seeking to make a modification to which section 49 does not apply.

Regulation 15 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within ten years after the Regulations come into force. Following the review it will fall to the Secretary of State to consider whether the Regulations should be revoked or continue in force with or without amendment.

A full 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 published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk. Copies have also been placed in both Houses of Parliament.

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STATUTORY INSTRUMENTS

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