



Nuclear Energy (Financing) Act 2022

2022 CHAPTER 15

PART 1

NUCLEAR ENERGY GENERATION PROJECTS: REGULATED ASSET BASE MODEL

Introductory

1 Key definitions for Part 1

- (1) This section applies for the purposes of this Part.
- (2) “Nuclear company” means a company that holds an electricity generation licence in respect of a nuclear energy generation project.
- (3) References to a “designated” nuclear company are to a nuclear company in relation to which a designation under [section 2\(1\)](#) has effect.
- (4) A nuclear company is a “relevant licensee nuclear company” if—
 - (a) the company’s electricity generation licence contains modifications made under [section 6\(1\)](#), and
 - (b) the company is a party to a revenue collection contract.
- (5) “Electricity generation licence” means a licence under section 6(1)(a) of the Electricity Act 1989.

Designation of nuclear company

2 Designation of nuclear company

- (1) The Secretary of State may by notice given to a nuclear company designate the company in relation to a nuclear energy generation project in respect of which the company holds an electricity generation licence (“the nuclear project”).

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- (2) The Secretary of State may designate a nuclear company under [subsection \(1\)](#) only if the designation criteria are met in relation to the company.
- (3) The designation criteria are that—
 - (a) the Secretary of State is of the opinion that the development of the nuclear project is sufficiently advanced to justify the designation of the nuclear company in relation to the project, and
 - (b) the Secretary of State is of the opinion that designating the nuclear company in relation to the project is likely to result in value for money.
- (4) In this Part, “designation notice” means a notice under [subsection \(1\)](#).

3 Designation: procedure

- (1) The Secretary of State must publish a statement setting out—
 - (a) the procedure that the Secretary of State expects to follow in determining whether to exercise the power under [section 2\(1\)](#), and
 - (b) how the Secretary of State expects to determine whether the designation criteria mentioned in [section 2\(3\)](#) are met.
- (2) Before designating a nuclear company under [section 2\(1\)](#), the Secretary of State must—
 - (a) prepare draft reasons for the designation, and
 - (b) consult the persons listed in [subsection \(3\)](#) (including on the draft reasons).
- (3) Those persons are—
 - (a) the nuclear company that the Secretary of State proposes to designate;
 - (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) such other persons as the Secretary of State considers appropriate.
- (4) A duty imposed by [subsection \(1\)](#) or [\(2\)](#) may be satisfied by things done before the passing of this Act (as well as by things done after that time).
- (5) A designation notice must include—
 - (a) a description of the nuclear project,
 - (b) the Secretary of State’s reasons for the designation (amended as appropriate in light of consultation under [subsection \(2\)\(b\)](#)),
 - (c) details of any conditions imposed by the Secretary of State in relation to the designation and of the consequences of a failure to comply with any such condition, and
 - (d) the date of the notice.
- (6) The Secretary of State must—
 - (a) publish a designation notice, and

- (b) in addition to giving the designation notice to the nuclear company being designated, give a copy of it to the other persons consulted under [subsection \(2\)\(b\)](#).

4 Expiry of designation

- (1) The designation of a nuclear company under [section 2\(1\)](#) ceases to have effect—
 - (a) on the expiry date, or
 - (b) if the company enters into a revenue collection contract with a revenue collection counterparty before the expiry date, at the end of the day on which the revenue collection contract is entered into,unless it ceases to have effect sooner in accordance with [section 5\(1\)](#) or [\(3\)](#).
- (2) “The expiry date”, in relation to the designation of a particular nuclear company, is—
 - (a) the end of the period of 5 years beginning with the date of the designation notice in question, or
 - (b) where one or more notices under [subsection \(3\)](#) have been given to the company, the end of the day specified in the last such notice.
- (3) The Secretary of State may, before the expiry date that for the time being applies in relation to a designated nuclear company, give the company a notice providing that the new expiry date for the company’s designation is a day falling—
 - (a) after that date, but
 - (b) not more than 5 years from the date on which the notice is given to the company.
- (4) Before giving a notice under [subsection \(3\)](#), the Secretary of State must consult—
 - (a) the designated nuclear company,
 - (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, and
 - (g) such other persons as the Secretary of State considers appropriate.
- (5) Where the designation of a nuclear company ceases to have effect in accordance with [subsection \(1\)](#), the Secretary of State must publish details of that fact.

5 Revocation or lapse of designation

- (1) The Secretary of State may by notice given to a designated nuclear company revoke the company’s designation under [section 2\(1\)](#) if—
 - (a) the company ceases to hold an electricity generation licence in respect of the nuclear energy generation project described in the designation notice, or
 - (b) either of the designation criteria mentioned in [section 2\(3\)](#) ceases to be met in relation to the company.

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- (2) Section 3(2), (5)(a), (b) and (d) and (6) applies (with necessary modifications) in relation to the revocation under subsection (1) of a nuclear company’s designation under section 2(1) as it applies in relation to the designation of a nuclear company under section 2(1).
- (3) The designation of a nuclear company under section 2(1) ceases to have effect if—
 - (a) by virtue of section 3(5)(c), the designation notice specifies that failure to comply with a particular condition to which the designation is subject will result in the lapse of the designation, and
 - (b) the Secretary of State gives the nuclear company a notice under this subsection stating that the company has failed to comply with that condition.
- (4) Where the Secretary of State gives a notice to a nuclear company under subsection (1) or (3), the designation of the company ceases to have effect at the end of the day on which the notice is given to the company.
- (5) The Secretary of State must publish a notice given to a nuclear company under subsection (3).

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—
 - (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;

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- (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—
 - (a) the decision is made by the Authority in the exercise of its functions relating to the regulation of a relevant licensee nuclear company,
 - (b) in the CMA’s opinion, the decision relates to the allowed revenue of the company, and
 - (c) 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 \(2\)](#)—
 - (a) 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).”;
 - (b) section 11E (4) (d) is to be ignored;
 - (c) 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);
 - (d) 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.”;
 - (e) 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”.

Information

11 Provision of information to the Secretary of State

- (1) The Secretary of State may by notice require a nuclear company to provide to the Secretary of State such information as the Secretary of State may reasonably require in connection with the carrying out of the Secretary of State’s functions under or by virtue of this Part.
- (2) Information required under [subsection \(1\)](#) must be provided in such form and manner and at such time and place, and be accompanied or supplemented by such explanations, as may be specified in the notice.

- (3) A nuclear company may not be required under this section to provide any information that would be protected from disclosure or production in legal proceedings on grounds of legal professional privilege or, in Scotland, confidentiality of communications.
- (4) Except as provided by [subsection \(5\)](#), the disclosure of information under this section does not breach—
 - (a) any obligation of confidence owed by the nuclear company making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (5) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, a requirement imposed under [subsection \(1\)](#) is to be taken into account).

12 Provision of information to or by the Authority

- (1) The Authority may provide to a person within [subsection \(2\)](#) such information as the Authority considers necessary in connection with the exercise by the Authority of its functions relating to the regulation of a relevant licensee nuclear company.
- (2) The following persons are within this subsection—
 - (a) the Office for Nuclear Regulation;
 - (b) the national system operator;
 - (c) a nuclear administrator appointed under [Part 3](#) in relation to the relevant licensee nuclear company;
 - (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, Natural Resources Wales;
 - (f) where any part of the site for the nuclear project is in Scotland, the Scottish Environment Protection Agency;
 - (g) any other person with regulatory functions the exercise of which the Authority considers relevant to the exercise by the Authority of its functions relating to the regulation of a relevant licensee nuclear company.
- (3) The Authority may by notice request from a person within [subsection \(2\)](#) such information as the Authority considers necessary in connection with the exercise by the Authority of its functions relating to the regulation of a relevant licensee nuclear company.
- (4) A person to whom a request is made under [subsection \(3\)](#) must, so far as reasonably practicable, provide the requested information within such period, and in such form and manner, as may be specified in the notice.
- (5) The Authority must reimburse a person to whom a request is made under [subsection \(3\)](#) for any costs reasonably incurred by the person in providing the Authority with the requested information.
- (6) Except as provided by [subsection \(7\)](#), the disclosure of information under this section does not breach—
 - (a) any obligation of confidence owed by the person making the disclosure, or

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- (b) any other restriction on the disclosure of information (however imposed).
- (7) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by [subsection \(1\)](#) or, as the case may be, a requirement imposed by virtue of [subsection \(3\)](#) is to be taken into account).
- (8) In this section—
 - “information” includes advice;
 - “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in the Electricity Act 1989, as to which see section 4(4) of that Act).

Other

13 Sensitive material

- (1) The Secretary of State may exclude material to which subsection (2) applies from—
 - (a) draft reasons consulted on under [section 3\(2\)\(b\)](#) (including as applied by [section 5\(2\)](#)), or
 - (b) anything required to be published under this Part.
- (2) This subsection applies to material the disclosure or publication of which the Secretary of State considers—
 - (a) would be likely to prejudice the commercial interests of any person, or
 - (b) would be contrary to the interests of national security.

14 Interpretation of Part 1

- (1) In this Part—
 - “allowed revenue” has the meaning given by [section 6\(5\)\(a\)](#);
 - “the Authority” means the Gas and Electricity Markets Authority;
 - “the CMA” means the Competition and Markets Authority;
 - “company” means a company registered under the Companies Act 2006 in England and Wales or Scotland;
 - “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
 - “designated”, in relation to a nuclear company, has the meaning given by [section 1\(3\)](#);
 - “designation notice” has the meaning given by [section 2\(4\)](#);
 - “electricity generation licence” has the meaning given by [section 1\(5\)](#);
 - “functions” includes powers and duties;
 - “nuclear company” has the meaning given by [section 1\(2\)](#);
 - “the nuclear project”, in relation to a nuclear company, has the meaning given by [section 2\(1\)](#);
 - “relevant licensee nuclear company” has the meaning given by [section 1\(4\)](#);
 - “revenue collection contract” and “revenue collection counterparty” have the same meaning as in [Part 2](#) (see [sections 15](#) and [16](#)).

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- (2) References in this Part to the site for a nuclear energy generation project include references to the intended site for the project.