

**EXPLANATORY MEMORANDUM TO**  
**THE RELEVANT LICENSEE NUCLEAR COMPANY ADMINISTRATION**  
**(ENGLAND AND WALES) RULES 2023**

**2023 No. 712**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 This statutory instrument implements the detailed rules and procedures of the relevant licensee nuclear company (RLNC) special administration regime (SAR) that would protect the interests of consumers in the unlikely event of a RLNC becoming insolvent.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments.*

- 3.1 The Department considered stand-alone rules were appropriate because the special administration regime is different to “regular” administration. This is also the approach frequently used for other special administration regimes.
- 3.2 This instrument is based in part on the smart meter communication licensee (SMCL) SAR rules (the Smart Meter Communication Licensee Administration (England and Wales) Rules 2020, S.I. 2020/629) which are partly based on the SAR rules for licensed gas and electricity suppliers (the Energy Supply Company Administration Rules 2013, S.I. 2013/1046) and the Housing Administration Rules (England and Wales) Rules 2018, S.I. 2018/719. Like the SMCL and Housing Administration SAR rules, these rules take into account some of the modernisation to insolvency proceedings contained in the Insolvency (England and Wales) Rules 2016 (S.I. 2016/1024).

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws):*

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent and application of this instrument is England and Wales only. It is intended that a further instrument will follow in due course which will extend and apply to Scotland.

## **5. European Convention on Human Rights**

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

## **6. Legislative Context**

- 6.1 The Nuclear Energy (Financing) Act 2022 (the 2022 Act) makes available a special administration regime for RLNCs. An RLNC is a company that holds an electricity generation licence in respect of a nuclear energy generation project, where that licence has been amended for the purpose of facilitating investment in the design, construction, commissioning and operation of nuclear energy generation projects and the company is party to a revenue collection contract, as defined at section 15 of the 2022 Act. Under section 32 of the 2022 Act, the objective of a RLNC SAR is to secure that electricity generation commences, or continues, at the nuclear installation in respect of which the RLNC holds a licence, and to bring the RLNC SAR to an end through a rescue or a transfer as a going concern.
- 6.2 The power to make the rules is conferred by section 411 of the Insolvency Act 1986 and section 159(3) of the Energy Act 2004, as applied by section 33 of the 2022 Act.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The UK Government has made legislative commitments to bring all greenhouse gas emissions to net zero by 2050, as well as subsequent commitments to reduce carbon emissions by 78% and to decarbonise the electricity system by 2035. This will require rapid, significant changes in the energy sector. Large scale nuclear power plants are the only proven technology available today to provide continuous, reliable and low carbon electricity.
- 7.2 To support this goal, the Government introduced the Regulated Asset Base (RAB) model via the 2022 Act. Under Part 1 of the 2022 Act, the Secretary of State has the power to modify a designated nuclear company's electricity generation licence to insert new licence conditions, giving them a right to receive a regulated revenue in relation to the provision of the nuclear infrastructure in question. Part 2 of the 2022 Act allows the Secretary of State to make regulations which will give effect to the RAB revenue stream, these regulations have now been made and came into force on 23rd March. This regulated revenue would be in the form of a levy from electricity suppliers, which we expect to be passed through to consumers through their electricity bills. Ofgem has been designated as the economic regulator for nuclear RAB projects and has the powers and will have the information needed to regulate a nuclear project benefitting from the RAB model.
- 7.3 As stated above, it is expected that electricity suppliers will pass on the nuclear RAB costs to consumers. These costs will be incurred from the beginning of the construction phase, should a Final Investment Decision be taken. Therefore, Part 3 of the 2022 Act introduces a special administration regime for the purpose of protecting consumer interests. This is applicable only to companies who hold a generation licence which has been modified to insert nuclear RAB conditions and who are also a party to a revenue collection contract; it is not applied to companies which operate nuclear power stations but do not have the RAB conditions inserted into their electricity generation licence.

7.4 Implementing a SAR for RLNCs is intended to reduce the risk of consumers being deprived of the intended benefits from funding the building of a nuclear power plant using a RAB model should, for example, a company be unable to pay its debts. It also reduces the risk of requiring a replacement source of electricity generation should the company be wound up, which could further increase the cost of electricity to consumers.

7.5 Due to the protections provided by the Government Support Package, it is very unlikely that a RLNC would become insolvent, however, should this occur the 2022 Act creates a process whereby the Secretary of State or the Gas and Electricity Markets Authority (GEMA), with the permission of the Secretary of State, would be able to apply to the courts for the appointment of a nuclear administrator. The objective of the administration is to secure that electricity generation commences or continues and to bring the RLNC SAR to an end through a rescue or a transfer as a going concern. Introduction of the SAR rules ensures the full operability SAR, thus ensuring that the administrator is able to fulfil the objectives of the administration order. The nuclear administrator will need to ensure that the company continues to comply with all its regulatory and legal requirements, in a manner which ensures compliance with safety, security and environmental provisions related to the power plant and the site on which it is located.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 This is not applicable as this is a standalone statutory instrument.

## **10. Consultation outcome**

10.1 The process for developing this instrument has included informal consultation with the Insolvency Service, the Ministry of Justice, and Companies House. Statutory consultation was carried out with the Insolvency Rules Committee. Amendments were made as a result, in particular to reflect elements of the Insolvency (England and Wales) Rules 2016, in order to improve and clarify some of the procedures for the SAR process. A public consultation was not carried out because these Rules apply in the case of insolvency of a RLNC and are not of any wider application.

## **11. Guidance**

11.1 Guidance is not required for this statutory instrument.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has been prepared for this instrument. The IA looks to assess the impacts resulting directly from this legislation. It concludes that no direct significant impacts will arise. The risk of having to appoint a special administrator under the SAR is considered remote due to the adaptive nature of the RAB model making insolvency exceptionally unlikely.

- 12.4 The overall costs will vary significantly depending on several factors including the size and operational profile of the generator, and the length of the administration. The SoS has the power to modify the allowed revenue under the RAB licence. This may reduce the cost impact. There will be further administrative costs for such as the initial court application. Indirect costs such as moral hazard are considered to be negligible.
- 12.5 The main benefit will be the continued supply of low carbon electricity to consumers in the event of insolvency. Without the SAR, there is an increased risk that the UK is unable to meet its demand for electricity through the failure to complete construction or early decommissioning of a nuclear plant. Consumers will also avoid a significant sunk cost risk. The credit rating of nuclear projects may improve as a result of the additional protection, helping to lower the cost of finance and attract future investment.
- 12.6 Further consideration is made for Public Sector Equality Duty impacts. The bill impacts are expected to be negligible. Large impacts on vulnerable consumers as a result of this legislation are not expected.

### **13. Regulating small business**

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

### **14. Monitoring & review**

- 14.1 A statutory review provision is included in the instrument. The Government is required to review the Rules within 5 years after they come into force.

### **15. Contact**

- 15.1 Leigh Johnson at the Department for Energy Security and Net Zero, Email: Leigh.Johnson@BEIS.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Erin Coghlan, Deputy Director for new nuclear projects at the Department for Energy Security and Net Zero, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Andrew Bowie at the Department for Energy Security and Net Zero can confirm that this Explanatory Memorandum meets the required standard.