

BERR

Department for Business
Enterprise & Regulatory Reform

THE ENERGY BILL 2008

The Government Response
to the Consultation on Funded
Decommissioning Programme
Guidance for New Nuclear
Power Stations

OFFICE FOR NUCLEAR DEVELOPMENT

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Contents

Introduction	3
Summary of:	
• comments on questions 1 and 2	6
• comments on question 3	9
• comments on question 4	16
• key themes identified which were outside the scope of the formal consultation	21
• next steps	27
Annex A: List of questions in the consultation document	30
Annex B: List of those who responded to the consultation	31
Annex C: Terms of Reference for the Nuclear Liabilities Financing Assurance Board (NLFAB)	33
Annex D: Revised indicative timeline	36

Introduction

- 1** In January 2008 the Government announced in the White Paper on Nuclear Power¹ that, in parallel with the Energy Bill², it would publish for public consultation two sets of draft guidance on what an approvable Funded Decommissioning Programme (FDP) should contain.
- 2** The consultation document that set out the two sets of draft guidance was published on 22 February 2008.³ The finalised guidance will assist operators in understanding their obligations under the Energy Bill, and what is required for an approvable FDP. The guidance is not intended to be unduly prescriptive but instead to set out principles which the Secretary of State for Business, Enterprise and Regulatory Reform (BERR) will expect to see satisfied in the FDP prepared by a new nuclear power station operator. The guidance gives information on ways in which the operator might satisfy those principles.
- 3** The first set of guidance (Decommissioning and Waste Management Plan guidance) will assist operators in setting out and costing the steps involved in decommissioning a new nuclear power station and managing and disposing of hazardous waste and spent fuel in a way which the Secretary of State may approve. This guidance will also set out the cost modelling methodology the Government expects to use to generate its own prudent estimates of the costs of decommissioning, waste management and waste disposal for new nuclear power stations.
- 4** The second set of guidance (Funding Arrangement Plan guidance) will assist operators in setting out acceptable financing proposals to meet the costs identified. It will set out the guiding principles against which the Government would expect to assess the funding proposals submitted by operators as part of their FDP for approval under the provisions in the Energy Bill.
- 5** Section 2 of the consultation document included an indicative timeline under which the Government expects to publish its cost estimates and to be in a position to set a fixed unit price for waste disposal. We included this section for information only and views were not requested on it through the consultation. However it is evident from the number of comments received on this section that there is an appetite for more information in this area. In light of this, we have revised the indicative timeline to provide stakeholders with further opportunities to feed in views as this work progresses. The revised version is attached at Annex D of this document.

1 Meeting the Energy Challenge, A White Paper on Nuclear Power, URN 08/525, January 2008

2 Energy Bill, Session 2007-08, HL Bill 72 07-08

3 <http://www.berr.gov.uk/energy/sources/nuclear/consultations/closed-response/page47749.html>

- 6** The deadline for responses was 16 May 2008. A total of 43 formal written responses were received and these are available on the BERR website⁴. The respondents included: energy suppliers; nuclear industry organisations; environmental organisations; public sector organisations; advisory organisations; individuals and other interested parties. The Government is very grateful to all those who submitted formal written responses, and those who participated through events held during the consultation period.
- 7** The Government's response to the consultation is set out in this document. It is organised into sections on the four questions posed in the consultation document and sets out a summary of the key themes identified in the responses, followed by the Government's response. In the interests of openness and transparency, this document also includes a separate section which covers views expressed on matters that were outside the scope of the formal consultation.
- 8** All responses (both formal written responses and those fed in at consultation events) have been analysed carefully. The document does not make an attempt to respond to all of the comments received during the consultation period, which span a wide range of issues on nuclear power in general as well as views on and related to the questions in the consultation document. This document responds to the key questions or comments received. However all points raised during the consultation will be taken into account as part of the development of the draft guidance, which will undergo further testing and checking prior to publication. The aim of this further checking and testing is to give additional clarity on the factors that the Secretary of State may take into account in deciding whether or not to approve an FDP or a proposed modification to an FDP, which will enable operators to more fully understand their responsibilities. The revised timeline attached at Annex D of this document gives an indicative date of 2009 Q3 for publication of finalised guidance on an acceptable FDP.

Events held during the consultation period

- 9** The consultation period was used as an opportunity to explain and discuss the guidance at a number of events for stakeholders and other interested parties.
- 10** We held two half-day events, one in London on 17 April 2008 and one in Manchester on 1 May 2008, which were open to all stakeholders. The events began with a session on the overall aims of the guidance and how it fits into the Energy Bill and wider nuclear policy, followed by sessions on the two sections of the guidance. The table discussions focused on the questions set out in the consultation document and were recorded as an input to the consultation. The slides which the presenters spoke to at the events are available on the BERR website⁵.

4 A link to the BERR web page with the consultation responses can be found at:
<http://www.berr.gov.uk/energy/sources/nuclear/consultations-response/page47749.html>

5 <http://www.berr.gov.uk/energy/sources/nuclear/whitepaper/actions/waste-decommissioning/page47722.html>

- 11** Dr Tim Stone also gave presentations and answered questions about the guidance at a number of external events during the consultation period. Dr Stone, a senior financier with experience of major capital investment projects, was appointed by the Secretary of State to advise the Government on financing the costs of decommissioning and waste management and disposal costs for new nuclear power stations.

Code of Practice on Consultation

- 12** The Cabinet Office Code of Practice on Consultation 2005 applies to the consultation addressed by this document. This code is to be replaced by a new Government Code of Practice on Consultation⁶ which will apply from November 2008 to all central Government departments formal written consultation exercises.

⁶ <http://www.berr.gov.uk/files/file47158.pdf>

Summary of comments on questions 1 and 2

- 1.1** The consultation document posed the questions:
- 1. Do you agree or disagree that the Funded Decommissioning Programme Guidance adequately sets out what an approvable Funded Decommissioning Programme should contain in order to meet the Government's objective that operators of new nuclear power stations meet the full costs of decommissioning and their full share of waste management costs? What are your reasons? Do you have any other comments on the two sets of guidance?**
 - 2. Does the draft guidance contain sufficient information to enable operators of new nuclear power stations to understand the matters that their Funded Decommissioning Programme should contain?**
- 1.2** A number of respondents made the point that questions 1 and 2 cover similar ground. Therefore we have opted to summarise and respond to both of those questions together in this section.
- 1.3** The comments received during the consultation period generally show support for the proposals, which were seen on the whole as a sensible and practical way forward. Most of those who commented on questions 1 and 2 agreed that in general the draft guidance adequately sets out what an approvable FDP should contain and is broadly at the right level of detail to enable operators of new nuclear power stations to understand the matters that their own plans should contain. Overall, there were many comments on questions 1 and 2 about those aspects of the guidance that respondents felt could be further clarified and the key themes that we have identified are addressed below.

Comments on the need to ensure that the guidance avoids duplication with existing regulatory requirements

- 1.4** Several respondents addressed the potential overlaps between the requirements of the FDP guidance and the role of the regulators with regard to technical matters. Areas where respondents felt there was potential for duplication included: technical matters funded from operational expenditure (paragraph 4.1.5 of the consultation document); waste minimisation requirements (paragraph 4.2.14 of the consultation document); and non-radioactive hazardous waste management (paragraph 4.5.30 of the consultation document).

The Government's response

- 1.5** We recognise the importance of ensuring clarity between the role of the Secretary of State in relation to FDPs and the roles of the regulators, especially with regard to the approval of an operator's Decommissioning and Waste Management Plan (DWMP). The consultation document set out that the guidance is built on existing policy and regulatory requirements. Where additional assumptions are made in the guidance, these are intended only to add further protections to ensure that operators make adequate financial provision to meet their liabilities. The guidance should not contradict or undermine the requirements of the regulators and operators will always be obliged to satisfy the regulators that their plans are acceptable before they can be approved by the Secretary of State.
- 1.6** Furthermore, we recognise that close working between the regulators and the Secretary of State will be essential to ensure that any risk of overlaps or contradictions between the two regimes is minimised. We are taking this forward through the development of a Memorandum of Understanding (MoU) between BERR and the nuclear regulators. The purpose of this MoU will be to determine and agree the detail of the interactions between the parties in relation to the approval or subsequent modification of an operator's FDP, to ensure that all legal and regulatory requirements are met, as well as ensuring efficiency in the process. We expect to make the finalised MoU available to the public to provide greater transparency of the process.

Comments on the level of detail required in an FDP

- 1.7** A number of respondents noted the challenges inherent in requiring detailed cost breakdowns for decommissioning activity that will not take place for several decades.

The Government's response

- 1.8** We recognise this is a difficult area and will not be prescriptive on the level of detail that is expected. However we consider that paragraphs 4.2.4 and 4.2.5 of the consultation document provide a suitable description of the flexibility that will be exercised. The key test will be that the information provided by operators of new nuclear power stations is sufficiently detailed to enable the Secretary of State to be assured that both the plan, based on using equipment and techniques available at the time the plan is drafted, and the cost estimates for that plan are prudent.

Comments on Chart 1 – indicative process for submitting and following an FDP

- 1.9** A number of respondents commented on Chart 1 in the consultation document. This chart was broadly welcomed but more information on the specific timings of each stage was requested, together with clarity on the level of detail required at each stage, for example on what would be required for an “outline FDP”.

The Government’s response

- 1.10** It is difficult to estimate the likely timings of each stage in Chart 1, as this is likely to vary from case to case. It will depend on how quickly progress is made in the discussions between the operator, BERR and regulators, and also on progress in the licensing and authorisation process, which will run broadly in parallel with the discussions on financing arrangements.
- 1.11** The outline FDP should be consistent with the FDP guidance, however it may not be expected to contain all the supporting detail that will eventually be required to enable the Secretary of State, advised by the Nuclear Liabilities Financing Assurance Board (NLFAB), to approve the plan. The development of the outline FDP will, as shown in Chart 1, follow discussions between the operator, BERR and regulators, and we expect that the particular requirements of the outline FDP will be determined on a case-by-case basis.

Comments on Chart 2 – timeline setting out the phases of the Base Case to be set out in the DWMP

- 1.12** Some respondents commented that this timeline needs to be flexible to enable operators to carry out activities in parallel, potentially reducing the timescales involved.

The Government’s response

- 1.13** The timings shown in Chart 2 were estimates for a generic nuclear power station and are not fixed. We would expect some variation when this framework is applied to a specific power station design and location. The Secretary of State would consider proposals on a case-by-case basis.

Summary of comments on question 3

2.1 The consultation document posed the question:

3. Do you agree or disagree that the Base Case sets out a realistic and prudent way to estimate the potential costs of waste management and decommissioning. What are your reasons?

2.2 On the whole, those people who commented on question 3 agreed that the Base Case sets out a realistic and prudent way to estimate the potential costs of waste management and decommissioning. It was felt that the Base Case provides a reasonably comprehensive framework for the identification of waste management and decommissioning costs over the lifetime of a new nuclear power station so that adequate financial provision can be made. There were many specific comments on the assumptions made in the Base Case and the key themes we have identified are addressed below.

Comments on ensuring that the Base Case encourages efficiency and innovation in managing waste

2.3 Many respondents raised the issue of how to ensure that the volume of waste produced is minimised and that innovation in the handling of waste is encouraged and incentivised.

2.4 On decommissioning, some respondents stressed that the technology and techniques available will improve over time and were concerned about the assumption in the Base Case that decommissioning will be undertaken using equipment and techniques currently available.

The Government's response

2.5 We are keen to ensure efficiency and waste minimisation, and believe that setting a fixed unit price for the disposal of intermediate level waste (ILW) and spent fuel, based on a prudent estimate of the costs involved together with a significant risk premium, will provide an incentive for operators to innovate to minimise the volume of waste produced. Our paramount concern is to ensure that operators set aside sufficient funds to meet the full costs of decommissioning and their full share of waste management and disposal costs, but within this framework we believe there is sufficient flexibility to incentivise efficiency and innovative thinking. We recognise that techniques for decommissioning, waste management and disposal may change over time and that the operator may wish to provide further information on how each

part of its plan will be carried out during the generating life of the station, or to modify its programme (subject to approval by the Secretary of State) from time to time. Additionally the environment agencies require new nuclear power installations to use the best available techniques (BAT) to meet high environmental standards. This will help ensure that radioactive wastes created and discharges from any new UK nuclear power stations are minimised and do not exceed those of comparable nuclear power stations across the world.

2.6 While we also recognise the likelihood that technical advances may well have a significant impact on the way in which new nuclear power stations are decommissioned many decades from now, we consider it is important that operators can demonstrate that they have a workable plan for decommissioning and waste management before construction of their station begins. Furthermore, it is impossible to anticipate the impact of any future changes on overall cost, hence at the present time we remain of the view that the assumption in the Base Case is prudent and appropriate.

2.7 We also think that the provisions in section 5.6 of the guidance make adequate provision for the updating of DWMPs to reflect technological progress. The annual and quinquennial reviews should be carried out with the aim of ensuring that the DWMP, including cost estimates, remains accurate and up to date. If innovations in decommissioning techniques appear likely to substantially reduce the likely cost of decommissioning, operators can seek the Secretary of State's agreement to amend the level of contributions they make to their Fund, provided that these still ensure they will meet the full costs of decommissioning and their full share of waste management costs. The Secretary of State would consider such requests on a case-by-case basis. Once decommissioning is complete, any surplus in the decommissioning Fund will be returned to the operator.

Comments on the site end state

2.8 Several respondents queried the references in the consultation document that at the end of decommissioning the condition of the site was likely to be in a "state similar to 'Greenfield'" (paragraphs 2.3 and 4.1.9 of the consultation document). Some respondents thought that this was too prescriptive and that it would be sufficient for the site end state to be acceptable to the regulators, although other respondents felt that the site end state was not just a matter for the regulators and that the local community should have a say. Some said that the requirement should be for the site to be returned to its previous state, or alternatively to be ready for its next use, which might be industrial use, hence restoring the site to 'Greenfield' would be unreasonable.

The Government's response

2.9 Clearly the state to which the site is returned at the end of decommissioning will be influenced by its previous, and likely future, use. The intention here is

not to be overly prescriptive, but rather to ensure that the site does not leave an unacceptable legacy and is suitable for its next use. The site will need to be returned to a state agreed with the regulators and the planning authority.

Comments on the building and maintenance of interim stores

- 2.10** There were a number of comments about the assumption that operators should provide interim storage facilities for ILW and spent fuel capable of lasting for at least 100 years from when waste or spent fuel is first emplaced in them (paragraph 4.2.42 of the consultation document).
- 2.11** Some respondents noted that this implied extended periods in which wastes were in interim storage at each site, which might be expensive, or a cause of concern for local communities. It was suggested that the guidance should allow operators to consider transferring waste away from power station sites to some form of central storage, for example operators with more than one new nuclear power station might wish to bring all their waste together in a single store.

The Government's response

- 2.12** The Base Case in the consultation document set out the assumptions that:
- ILW from operations and decommissioning will be stored in safe and secure interim stores on the site of the power station until decommissioning has been completed and a geological disposal facility is available to take the waste.
 - Spent fuel will be stored in cooling ponds for a period of time, followed by storage in safe and secure interim stores on the site of the nuclear power station until decommissioning has been completed and a geological disposal facility is available to accommodate it.
 - Operators will be obliged to provide safe and secure interim storage facilities that are technically capable of being maintained or replaced to last for at least 100 years from the time waste is first emplaced in them.
- 2.13** In the absence of any proposals for alternative storage arrangements, the Government is still of the view that interim storage on each site should remain the assumption in the Base Case. However we do not wish to preclude alternative arrangements, for example an operator with more than one new nuclear power station may prefer to construct a central store, capable of being maintained or replaced to last for at least 100 years from the time waste is first emplaced in it, to store the waste from their fleet.
- 2.14** As with other issues of this kind, it will be for the operator to make the case to the Secretary of State that the alternative approach is prudent and that they will accumulate sufficient funds to meet the costs of waste management

and decommissioning, and to the regulators that it is safe, secure and environmentally sound.

Comments on the assumptions on encapsulation of spent fuel and packaging of ILW

- 2.15** A number of respondents commented on the sections of the consultation relating to the encapsulation of spent fuel and packaging of ILW. It was noted that the approach operators would need to adopt for encapsulation was closely related to the method of disposal, and hence would need to be in a form agreed with the operators of the geological disposal facility. There were also suggestions that it would be inefficient for each power station to have its own encapsulation facilities. For both of these reasons some respondents suggested that encapsulation would best be performed at the site of the geological disposal facility.

The Government's response

- 2.16** Our view remains that the operator should be responsible for the encapsulation of its spent fuel and packaging of its ILW and their transport to the geological disposal facility. However we do not believe this means that it will necessarily be the case that encapsulation should take place on the site of the nuclear power station. If operators propose alternative approaches, these proposals will be considered as part of the process of assessing their FDP.

Comments on assumptions on the life of a new nuclear power station

- 2.17** A number of respondents commented that the Base Case assumes a reactor life of 40 years, but that all the current reactor designs undergoing Generic Design Assessment have been designed for an operational life of 60 years. Some also noted that it is more common for reactor life to be extended than curtailed. There was further concern that the stipulation in paragraph 5.5.11 of the consultation document, that the Secretary of State would not expect to agree to a revision downwards of contributions to the Fund in the last five years of a new nuclear power station's generating life, might impede modifications to contributions to reflect an extension to station life.

The Government's response

- 2.18** We recognise these concerns and this issue was considered in paragraphs 2.20 – 2.23 of the consultation document. The key principle is that the funds accumulated over the operating life of the power stations must be sufficient to cover the predicted liabilities, and we remain of the view that it is appropriate for the Base Case to assume a reactor life of 40 years. However it will be open

to operators to suggest alternative station lifetimes. If operators wish to modify their programme during the generating period to extend the life of the stations beyond that 40 year period, then as well as needing the agreement of the regulators to the change and the approval of Secretary of State to modify their programme, they will need to revisit the schedule to determine and have the Secretary of State approve when the Government will take title to and liability for the waste.

Comments on the schedule for taking title to and liability for ILW and spent fuel

- 2.19** Some respondents raised concerns around the suggestion (in paragraphs 2.39, 2.40 and 4.2.20 of the consultation document) that the Government might wish to take title to and liability for some waste materials during the operation of the nuclear power station, or that payments might be required from the Fund during the operating life of the power station. There was some concern that this might undermine a key purpose of the policy to set a fixed unit price, which is to provide certainty to operators.

The Government's response

- 2.20** The rationale for keeping this option open is to ensure there is sufficient flexibility to respond to progress in the development of geological disposal being quicker than currently anticipated. If, for example, it becomes feasible to bring forward the time at which waste material can be emplaced in the geological disposal facility then this might be considered preferable to keeping it in safe and secure interim storage. The Government would expect to discuss with operators in individual cases to determine arrangements that would ensure that their waste Fund was adequate to fund payments at that time.

Suggestions on what the appropriate unit should be for the fixed unit price

- 2.21** A number of responses raised the question of what units would be used for the fixed unit price. In general, respondents took the view that the units should be related to volume, and that there should also be a clear link to the costs of disposal. It was also noted that units linked to volume might also incentivise operators to minimise waste volumes.

The Government's response

- 2.22** We anticipate that the units will be linked to volume. We are considering whether it would be appropriate to use different units of volume for ILW and spent fuel, to reflect the impact their differing characteristics might have on disposal routes.

2.23 Hence for ILW it might be possible to use a simple volume measure. However units for spent fuel will need to take into account more detailed considerations around disposal, and the impact of various assumptions around, for example, fuel burn-up and heat load. Work is ongoing in this area and will be a component of the methodology for establishing an indicative fixed unit price for the disposal of ILW and spent fuel, which is one of the areas where we will be seeking further views (see the section on 'Summary of next steps' for more information).

Comments on the assumptions in the Base Case on the management and disposal of low level waste (LLW)

2.24 A number of respondents queried the assumption in the Base Case that LLW will be disposed of at the facility currently operating in West Cumbria or a successor facility. One suggestion made in a number of responses was that the Government should consider offering a fixed unit price for LLW disposal, in line with the approach being adopted for ILW and spent fuel.

The Government's response

2.25 While we acknowledge the concerns expressed by respondents, we think that the assumption in the Base Case remains valid and we do not see a case for offering a fixed unit price for LLW.

2.26 For information, the Government published its policy for the Long Term Management of LLW in the UK⁷ on 26th March 2007. The policy statement outlines the priorities for managing LLW responsibly and safely by:

- allowing greater flexibility in managing the wide range of LLW that already exists and will arise in the future;
- maintaining a focus on safety, with arrangements supported by the independent regulators, including the Nuclear Installations Inspectorate and the environment agencies;
- seeking first to minimise the amount of LLW created before looking at disposal options, through avoiding generation, minimising the amount of radioactive substances used, recycling and reuse;
- emphasising the need to involve communities and the wider public in developing and delivering LLW management plans.

2.27 The Nuclear Decommissioning Authority (NDA) is developing a UK-wide strategy for managing LLW from the nuclear industry, including at what point in the future a replacement (or replacements) for the national disposal facility near Drigg in West Cumbria might be required and planned. The NDA

aims to publish a Government approved strategy in late 2009, following a consultation in spring 2009. The NDA consulted on the Scoping Report⁸ for the Strategic Environmental Assessment for the LLW strategy which closed on 11 September 2008.

Comments on the assumptions in the Base Case on fuel and spent fuel management

- 2.28** There were several comments on the assumption in the Base Case that new nuclear power stations will use uranium or uranium oxide fuel, and the assumption that there will be no reprocessing of spent fuel. Several respondents stressed the need for flexibility in the future, both with regard to reprocessing and the use of other fuels, such as mixed oxide fuels.

The Government's response

- 2.29** The assumption on the fuels new nuclear power stations will use is consistent with the proposals put forward by the nuclear industry as part of the Generic Design Assessment and Justification processes. Our assumption for the Base Case remains that new nuclear power stations will use uranium or uranium oxide fuel.
- 2.30** The assumption in the Base Case that there will be no reprocessing of uranium fuel follows the statement in the White Paper on Nuclear Power⁹ that:

“Having reviewed the arguments and evidence put forward, and in the absence of any proposals from industry, the Government has concluded that any new nuclear power stations that might be built in the UK should proceed on the basis that spent fuel will not be reprocessed and that plans for, and financing of, waste management should proceed on this basis.

We are not currently expecting any proposals to reprocess spent fuel from new nuclear power stations. Should such proposals come forward in the future they would need to be considered on their merits at the time and the Government would expect to consult on them.”

⁸ <http://www.nda.gov.uk/documents/upload/Strategic-Environmental-Assessment-Scoping-Report-July-2008.pdf>

⁹ Meeting the Energy Challenge. A White Paper on Nuclear Power. URN 08/525, January 2008

Summary of comments on question 4

3.1 The consultation document posed the question:

4. Do you agree or disagree that the Funding Arrangements Plan guidance sets out a prudent way to ensure that operators make adequate provision for meeting their liabilities? What are your reasons?

3.2 On the whole, those people who commented on question 4 agreed that the Funding Arrangements Plan (FAP) guidance sets out a prudent way to ensure that operators make adequate provision for meeting their liabilities. It was felt that the FAP provides a reasonably comprehensive framework for the building up of financial provision for waste management and decommissioning costs over the lifetime of a new nuclear power station so that adequate financial provision can be made for operators' liabilities. Many people made specific comments on aspects of the FAP and the key themes we have identified are addressed below.

Comments on Fund structure

3.3 There was a range of views from respondents with regard to the extent to which Funds should be either clearly segregated or linked in some way. A number of respondents supported clear segregation of Funds, for example favouring the option outlined in paragraph 5.3.3 of the consultation document, that operators might establish separate Funds for decommissioning and waste disposal costs. Important differences between these liabilities were noted, for example that most decommissioning liabilities are incurred from the time a new nuclear power station begins operation, whereas waste liabilities are incurred over the life of the power station.

3.4 However other respondents saw benefits in permitting links between Funds, or allowing shared Funds between an operator's stations, suggesting this could help minimise the risk of unfunded liabilities falling onto the taxpayer. For example, it was suggested that Funds in surplus might be allowed to support those in deficit, or that excess monies in Funds where all liabilities have been discharged could be retained in a national contingency Fund.

The Government's response

3.5 The Government believes that the guidance on Fund structure provides the correct framework to ensure that the Objective and Guiding Principles are

met. It will be for the operator to set out their proposed Fund structure to the Secretary of State for approval, for example where they propose to build more than one new nuclear power station. The Secretary of State would not expect to approve such proposals where they did not satisfy the principle of transparency.

Comments on Fund governance

- 3.6** The requirement for Funds to be independent of operators received general support. However a few respondents felt that, given that operators would be required to top up any shortfall in Funds, they should be able to exert some influence over them.

The Government's response

- 3.7** The Government believes that an independent Fund approach, with neither the operator nor the Government able to have either direct or indirect control over the Fund, is the correct way to ensure that the key principles of transparency and security are achieved. However because the operator would be required to make good any shortfall in the Fund, and therefore has a legitimate interest in the contribution schedule to the Fund and investment decisions by the Fund, a minority of trustees or directors of a Fund may be non-independent of the operator (subject to approval of the Secretary of State who would approve the criteria by which trustees or directors are appointed).

Comments on obligations on associated bodies

- 3.8** A number of respondents sought more information and greater clarity on the provisions in the Energy Bill giving the Government the power to impose obligations on corporate bodies associated with the operator.

The Government's response

- 3.9** The Secretary of State might use these powers, for example, where an operator fails to or cannot comply with its funding obligations under a programme, to ensure that any shortfall in the Fund is met in a way that minimises the need for recourse to public funds.

Comments on reporting requirements

- 3.10** There were a number of responses which supported the proposal for an annual and quinquennial review structure. However one respondent felt that the quinquennial reviews were too infrequent, while another felt that 10 years was the appropriate interval for reviewing liability assumptions and estimates.

- 3.11** Several responses noted the need for operators to maintain an accurate record of the design of, at least, the nuclear island(s), and that this system should draw on “configuration control” models from other industries. It was suggested that change control and record keeping mechanisms are already required by the regulators, and that further clarity was required about what the Government was expecting in this respect that is not already being currently undertaken by operators.

The Government’s response

- 3.12** We note the general support for the reporting requirements outlined in the draft guidance. In the interests of transparency and sufficiency it is important that Funds are regularly reviewed to ensure they remain sufficient and that both the expected costs and performance of Funds are properly monitored. The Government continues to believe that the annual and quinquennial reporting structure provides the correct balance.
- 3.13** The Government notes the responses on configuration control. We also note that robust record keeping mechanisms are already required under current site licence arrangements. However these only cover safety aspects and not changes that will impact on the waste inventory and decommissioning liability. The Government continues to believe that robust record keeping arrangements, drawing on configuration control models being undertaken in other industries and as carried out under existing site licence arrangements, provide an appropriate model to ensure that operators are able to accurately assess the financial impact of operational or technical changes on FDPs.

Comments on the Secretary of State’s powers to approve, modify or reject plans

- 3.14** Some respondents expressed concern at the broad scope of the Secretary of State’s powers to impose modifications of FDPs on operators. It was suggested that key principles or assumptions should, once agreed, not be subject to modification unless agreed by both the Secretary of State and the operator.
- 3.15** There was also concern at the extent to which the Secretary of State’s approval is required for modifications to plans. A number of respondents noted that this implied regularly re-submitting plans for approval even when the changes were very minor and technical, which seemed onerous.

The Government’s response

- 3.16** We note the concern of some respondents about the Secretary of State’s powers to modify an FDP. However this power will be limited by the requirement in the Energy Bill that the Secretary of State’s aim must be

to ensure that prudent provision is made for decommissioning and waste management, for the estimates of the costs of taking those steps and the security provided to meet the costs, and the Government therefore does not agree that these powers are too broad. Section 5.13 of the consultation document also addresses this issue. We believe that given the timescales involved in building, operating and decommissioning a nuclear power station it would be very difficult to future-proof a programme to a degree where limits could be imposed on the Secretary of State's power to modify an FDP.

- 3.17** The Government will provide further clarity in due course on the material amount by which a change in operators' liabilities (due to an operational and technical change) will lead to the operator having to submit the revised FDP to the Secretary of State for approval. It will be important to ensure that the material amount is set at a level whereby FDPs are only re-submitted to the Secretary of State for significant operational and technical changes which have a material impact on waste or decommissioning costs, and not minor changes. The Government will lay regulations on this material amount in 2009 and this will be preceded by a consultation on the draft regulations.
- 3.18** In coming to a decision about whether to require an FDP to be modified, the Secretary of State will be advised by the NLFAB, an independent body of experts, where the modification concerns the funding arrangements.

Comments on the target value of the Fund

- 3.19** Several responses addressed section 5.5 of the consultation document on the target value for the Fund, and in particular the expectation that the Fund will be expected to accumulate at least 100% of the inflation, risk and uncertainty adjusted value of the operator's predicted decommissioning liabilities. It was suggested that further clarification was needed on the definition of risk and uncertainty and that there was a risk of excessive conservatism.

The Government's response

- 3.20** We believe that, in line with the Objectives and Guiding Principles, that Funds will need to build in a contingency and aim to meet a target which is at least equal to the actual expected risk, uncertainty and inflation adjusted costs. However, in line with the non-prescriptive nature of the guidance, it will be for operators to submit plans to the Secretary of State which outline the level of contingency required for risk and uncertainty, taking into account, for example, the Fund structure and investment policy which they propose. In any case, through the annual and quinquennial reporting structures the liabilities and size of a Fund would be regularly reviewed and arrangements modified to ensure that Funds remain on track to meet their target value.

Comments on protection against an insufficient Fund/early station closure

- 3.21** The proposals in the draft guidance in this area attracted a considerable number of comments. There was recognition that protection needs to be in place in the unlikely event of a reactor closing early for technical reasons, but a number of respondents stressed that this should not be expected to cover the risk that early closure is required for political reasons.
- 3.22** There were some questions about whether the insurance market would be able to deliver appropriate protection, with the suggestion that alternative mechanisms should be found. Some felt that parent company guarantees could play a role, given that the operators are likely to be part of large multinational companies. However others questioned the value of parent company guarantees, noting that during the long periods of operation, changes in the control of the operators of new nuclear power stations were quite likely.

The Government's response

- 3.23** The Government believes that it is very important that operators are able to discharge their liabilities in full from day one of operation, and that protection is in place should a Fund prove insufficient. In line with the non-prescriptive nature of the guidance, there will be flexibility about how protection against an insufficient Fund can be provided and operators will be able to suggest a package of measures, which will be assessed on a case-by-case basis by the Secretary of State, advised by the NLFAB. The guidance gives examples of the situations we expect operators to provide protection against. We will continue to work with potential operators, the financial industry and insurance bodies to explore what packages are available and stimulate interest in developing suitable products.

Comments on tax issues

- 3.24** Several responses addressed the issue of the tax status of Funds. Some thought that the current tax regime might introduce additional costs to operators relative to setting aside non ring-fenced Funds. Others sought further clarity about what tax regime might apply, and noted that any changes in taxation rules would have an effect on the Fund.

The Government's response

- 3.25** The Government acknowledges the responses received on this issue and appreciates the need for clarity and certainty in this area. The Government will continue to examine whether it may be appropriate to take action to ensure a level fiscal playing field between nuclear power and other forms of electricity generation.

Summary of key themes identified which were outside the scope of the formal consultation

Views expressed on the Government's policy to set a fixed unit price

- 4.1** Section 2 of the consultation document, which sets out background information on the Government's policy to set a fixed unit price for operators of new nuclear power stations for disposal of ILW and spent fuel, and a schedule for the Government to take title to and liability for these materials, was for information only and views were not sought on it as part of the consultation. However many respondents commented upon this policy.
- 4.2** A number of respondents broadly welcomed the policy to set a fixed unit price, noting for example the benefits it brings of giving certainty to operators on their long term liabilities. However these respondents generally also expressed interest in how a fixed unit price will be established, in particular the level of the risk premium, and the importance of transparent and robust cost modelling was emphasised.
- 4.3** Other respondents emphasised the range of uncertainties around the future costs of waste disposal and were sceptical about whether it will be feasible to set a credible fixed unit price with current information. There were some respondents who took the view that the fixed unit price might represent a subsidy to the operators of new nuclear power stations. A number of respondents argued that the policy to set a fixed unit price should have been the subject of consultation.

Comments on the views expressed

- 4.4** Although this section was included for information rather than for consultation, it is clear that this has attracted a great deal of interest and comment. There is evidently an appetite for more information in these areas, and a desire for further opportunity to comment as the Government's detailed thinking develops.

- 4.5** In light of this, we have revised the indicative timeline set out on page 20 of the consultation document, to provide stakeholders with further opportunities to feed in views as this work progresses. More detail is provided in this document in the section on 'Summary of next steps'. Some of the specific points made by respondents are addressed below.
- 4.6** Firstly, we accept that modelling the costs of decommissioning and the management and disposal of ILW and spent fuel is not straightforward, but do not think the challenges are insurmountable. We are working closely with the NDA, drawing on its parametric cost model for the costs of the geological disposal facility in our cost modelling work. We will be open and transparent about our cost modelling and the methodology to be used for setting an indicative fixed unit price and will subject the BERR cost model to external peer review before we finalise and publish it.
- 4.7** On the question of whether the policy to set a fixed unit price should have been the subject of consultation, the Government considers that a consultation on this point was not required. On the question of whether the fixed unit price represents a subsidy, we recognise that this is an important and serious concern. However the UK Government's clear policy is that "it will be for energy companies to fund, develop and build new nuclear power stations in the UK, including meeting the full costs of decommissioning and their full share of waste management costs."¹⁰
- 4.8** The methodology by which a fixed unit price is set will be clear and transparent. It will be subject to public consultation before it is finalised. It will also be subject to ensuring compliance with EU State Aid law. We recognise that the costs of disposal are subject to uncertainty and propose to deal with this by including in the fixed unit price a significant risk premium set over and above expected costs. This will help to ensure that the operator bears the risks around uncertainty in waste costs and to provide material protection for the taxpayer.
- 4.9** We are confident that the combination of a robust mechanism, tough sanctions in the legislation and safeguards put in place through regulations and guidance will ensure that the risk of costs falling to the UK Government is remote at all times.

Views expressed on the materiality/de minimis threshold

- 4.10** A number of respondents addressed the Government's intention to set a materiality threshold that will determine when modifications to an FDP need to be submitted to the Secretary of State for approval, due to a change in the operator's decommissioning liabilities as a result of an operational and technical change which impacts on such liabilities. A materiality threshold would also determine the contents of annual reports that will be submitted to the Secretary of State by operators and Fund managers. There was general

support for the Government's suggestion to set materiality threshold levels at a certain percentage of the net present value (adjusted for inflation) of the then current estimate of an operator's decommissioning liabilities.

- 4.11** There were differing views on the percentage level that should determine when a modified FDP needs to be submitted to the Secretary of State for approval. A few respondents felt that the 5% threshold suggested in paragraph 3.27 was too low, some thought that it was about right, while others believed it to be too high. In general, respondents were keen for further information.
- 4.12** There were also different views about what percentage level should determine the contents of the annual report. Some felt that the 1% threshold suggested in paragraph 3.29 of the consultation document was realistic. Others felt that the figure was too low and would mean that routine minor technical and operational changes to a station would be considered material; as a result annual reports would be very long and burdensome to put together.

Comments on the views expressed

- 4.13** While outside the scope of the formal consultation, we welcome the broad support for the establishment of materiality thresholds, and for these to be established at a percentage level of the net present value of an operator's decommissioning liabilities. We were grateful for the number of comments on what the percentage levels should be, and note the differing views in this area. It is still the Government's intention to lay regulations on the materiality threshold in 2009, and this will be preceded by a consultation on the draft regulations.

Views expressed on the NLFAB

- 4.14** A number of points were raised throughout the consultation in relation to the NLFAB, the new advisory body which is in the process of being set up to advise the Secretary of State on the suitability of the FAPs submitted by potential operators of new nuclear power stations. Whilst outside of the scope of the formal consultation, a summary of these points are presented here.
- 4.15** A number of respondents expressed support for the formation of the NLFAB, whilst also raising the importance of getting the right balance of technical and financial expertise amongst the Board members.

Comments on the views expressed

- 4.16** We are confident that we have struck the right balance that will allow us to ensure the effective operation of the NLFAB. A Chairman and members of the Board are currently being recruited. Details of membership and the Board's activities will be available on the BERR website in due course.

Views expressed on the need for guidelines on how the NLFAB will interact with other regulatory and advisory bodies

- 4.17** It was suggested that there should be clear and concise guidelines on how the NLFAB will interact with other regulatory and advisory bodies, and how the inter-relationships will be managed.

Comments on the views expressed

- 4.18** The Terms of Reference for the NLFAB (included at Annex C of this document) make it clear that there will be no overlap between the functions of this advisory board and any existing regulators. The NLFAB will advise the Secretary of State only on the new requirement for an FAP as part of an approved FDP. However, it is recognised that the NLFAB may wish to draw on the experience and advice of other bodies in preparing their advice, and this will be managed through the NLFAB secretariat provided by BERR as part of the Office for Nuclear Development.

Views expressed on whether the Secretary of State will follow the advice of the NLFAB

- 4.19** Some respondents questioned whether, as an advisory body, the advice of the NLFAB may not be followed by the Secretary of State.

Comments on the views expressed

- 4.20** It is right that the final decision for approving (or rejecting) an operator's FDP (including the FAP) should remain with the Secretary of State given the importance and impact of any decision. However, the advice of the NLFAB will be an important input to the Secretary of State's decision. The importance of expert advice on the financial aspects of the FDP is recognised in clause 52 of the Energy Bill, which enables the Secretary of State to rely on such advice in circumstances to be set out in regulations. Furthermore, the advice provided by the NLFAB to the Secretary of State on whether to approve an FAP will be made public, and therefore any decision by the Secretary of State which goes against this advice will be open to scrutiny.

Views expressed on the potential role for the NLFAB in reviewing and comparing the performance of Funds

- 4.21** It has been suggested by some respondents that the NLFAB could have a role in reviewing and comparing the performance of Funds, with the intention of sharing best practice amongst them.

Comments on views expressed

- 4.22** The FDP guidance describes the mechanisms which will be put in place to review Fund performance, including annual and quinquennial reviews. As the Terms of Reference state, the NLFAB will provide public advice to the Secretary of State on the ongoing suitability of an approved FAP at the time of these reviews. In addition, it is expected that if minded to modify the funding arrangements of an FDP, the Secretary of State would consult the NLFAB before doing so. While it is not envisaged that the NLFAB will operate at the level of comparing the performances of different Funds, it could potentially make recommendations to improve an FAP by drawing on any experience it develops in this area.

Suggestions that the NLFAB could be made a statutory consultee in the Energy Bill

- 4.23** It was suggested that the NLFAB could be made a statutory consultee in the Energy Bill and have similar powers to other regulators.

Comments on views expressed

- 4.24** Both of these would be inappropriate given the form of the NLFAB as an advisory body rather than a regulatory body. The board will be providing advice on a small number of programmes and as such the Government does not believe that a full statutory body would offer the taxpayer the best value for money, given the amount of work that it might expect to do and the fact that it would be providing a high level of scrutiny on an ad hoc rather than a full-time basis. The Government believes that the recruitment process will help ensure that people of the right calibre are duly selected and that the publication of reports produced by the NLFAB will help ensure that its advice is rigorous and independent.

Further views expressed on the NLFAB

- 4.25** The Terms of Reference clarify some further points raised in the consultation, including comments around how the NLFAB is funded (3.6 and 3.7 of the Terms of Reference) and how it is independent from the Government (2.1a and 2.1c of the Terms of Reference), along with the fact that advice on the suitability (or otherwise) of an FAP will be made public.

Suggestions on a right of appeal for the operator

- 4.26** Although outside of the scope of the consultation exercise some respondents took the opportunity to raise the point that the Energy Bill should contain a right of appeal for the operator beyond that provided by judicial review.

Comments on the views expressed

- 4.27** Judicial review may be used to challenge ministerial and regulatory decisions. Furthermore judicial review may in certain circumstances hear a case concerning the merits of such a decision. We believe that this is sufficient and is the proper route for challenge. As a result the Government believes that there is no requirement for a right of appeal beyond judicial review.
- 4.28** In addition the Energy Bill requires the Secretary of State to exercise his powers to approve or modify the programme with the aim of ensuring that it makes prudent provision for the relevant matters. Where he fails to do so the Secretary of State would be acting beyond those powers, which in turn would be subject to judicial review.
- 4.29** This approach mirrors that of other areas of regulatory activity in the nuclear industry, for example, under the Nuclear Installations Act, where an appellant may have recourse to judicial review of a decision.
- 4.30** Clause 52 of the Energy Bill allows for regulations to be made regarding verification of FDPs by independent third party experts. This will enable ministers to rely on such experts' verification of FDPs (and their assessment of the prudence of FAPs). We believe this independent verification should give operators of new nuclear power stations further confidence on the importance of expert advice to the Secretary of State in taking his decisions. In addition, the NLFAB will be able to request the input of appropriate sources of expertise if required, during the course of its work, including the use of advice from existing regulatory, public or other bodies.

Summary of next steps

The Energy Bill

Finalising the draft guidance

- 5.1** The draft DWMP and FAP guidance will be finalised, including taking into account the points raised during this consultation, following Royal Assent of the Energy Bill. This guidance is statutory and will be laid before Parliament to ensure transparency. As guidance it cannot compel but the DWMP and FAP guidance taken together are intended to set out the matters which the Secretary of State may take into account in determining whether to approve, approve with modifications, or modify an FDP.

Future development of the guidance

- 5.2** There are a number of individual requirements set out in the guidance that each operator will need to address in its FDP. In assessing a programme, the Secretary of State and the NLFAB (in relation to funding matters), will consider whether it adequately meets the Secretary of State's objective of ensuring that the operator has sufficient arrangements in place as tested against the principles outlined in the guidance itself. The Secretary of State recognises that circumstances will vary for each operator and that differing approaches may be appropriate. As such the guidance is not intended to be prescriptive.
- 5.3** Both sets of guidance (DWMP and FAP) will be amended as appropriate to take account of future changes in circumstances.

Regulations

- 5.4** The Energy Bill contains powers to make regulations in a number of areas including the preparation, content, implementation and modification of FDPs. The purpose of the regulations in the areas referred to will be to set out the matters which the FDP must address (in order to gain approval by the Secretary of State) as well as a framework that would enable operators to understand their obligations under an FDP more fully.
- 5.5** The Energy Bill allows for regulations to be made on:
- How fees which the Secretary of State has the power to charge the operator under the clauses are to be determined and when they will be required to be paid. This could include certain costs incurred by NLFAB in assessing programmes submitted by operators.

- A materiality threshold whereby an operational and technical change to a power station which materially changes the operator's cost estimates of decommissioning liabilities or the amount of waste disposal liabilities would require the submission of a proposal to modify the FDP to the Secretary of State for approval.
 - What criteria would need to be met when obtaining verification from independent third parties in relation to the approval or modification of an FDP in order for the Secretary of State to rely on that third party verification.
- 5.6** The Energy Bill also allows for an order to be made, which sets out certain technical matters undertaken during the generating life of the station, which must be financed from the Fund.
- 5.7** The regulations will be made as part of the implementation of the Energy Bill in 2009. The Government will consult on a draft of the regulations outlined above.

Cost modelling, the fixed unit price and the indicative timeline

- 5.8** As outlined earlier in this document, a large number of responses referred to section 2 of the consultation document, with regard to the Government's policy to set a fixed unit price for operators of new nuclear power stations for disposal of ILW and spent fuel and a schedule for the Government to take title to and liability for these materials, although this was included for information and not for consultation. Some of the specific points made by respondents have been addressed above. However it is clear that there is an appetite for more information in these areas, and a desire in many cases for further opportunity to comment as the Government's detailed thinking develops.
- 5.9** In light of this, we have revised the indicative timeline set out on page 20 of the consultation document, to provide stakeholders with further opportunities to feed in views as this work progresses.
- 5.10** The indicative timeline set out three deliverables, in addition to the finalised guidance on an acceptable FDP. These were:
- a methodology to determine how the fixed costs of building a geological disposal facility should be apportioned to and shared between operators of new nuclear power stations;
 - a cost model with our updated estimates of total costs for waste management, disposal and decommissioning;
 - a methodology for establishing an indicative fixed unit price for the disposal of ILW and spent fuel.

5.11 In order to provide further opportunities for comment, and to test our emerging proposals, we intend to:

- Hold discussions on key points during autumn 2008. We plan to produce short discussion papers on each of the three issues set out above and use these as a basis for seeking input from stakeholders. These papers will also be published on the BERR website.
- Hold a formal public consultation in early 2009 on a full set of proposals in these three areas.

5.12 The finalised approach will then be published in summer 2009. Annex D of this document sets out a revised indicative timeline, which reflects the above.

Annex A: List of questions in the consultation document

Question 1

Do you agree or disagree that the Funded Decommissioning Programme Guidance adequately sets out what an approvable Funded Decommissioning Programme should contain in order to meet the Government's objective that operators of new nuclear power stations meet the full costs of decommissioning and their full share of waste management costs? What are your reasons? Do you have any other comments on the two sets of guidance?

Question 2

Does the draft guidance contain sufficient information to enable operators of new nuclear power stations to understand the matters that their Funded Decommissioning Programme should contain?

Question 3

Do you agree or disagree that the Base Case sets out a realistic and prudent way to estimate the potential costs of waste management and decommissioning. What are your reasons?

Question 4

Do you agree or disagree that the Funding Arrangements Plan guidance sets out a prudent way to ensure that operators make adequate provision for meeting their liabilities? What are your reasons?

Annex B: List of those who responded to the consultation

The respondents listed below in alphabetical order include: energy suppliers; nuclear industry organisations; environmental organisations; public sector organisations; advisory organisations; individuals and other interested parties.

- 1** Barkham, Hazel
- 2** British Energy
- 3** Centrica
- 4** Copeland Borough Council
- 5** Costain
- 6** Cumbria County Council
- 7** Cumbrians Opposed to a Radioactive Environment
- 8** Davies, Philip
- 9** Different By Design
- 10** EDF Energy
- 11** E.ON UK
- 12** Environment Agency
- 13** Greater Manchester SERA
- 14** Greenpeace UK
- 15** Health and Safety Executive
- 16** Iberdrola and ScottishPower
- 17** IBM
- 18** Lanyon, Peter
- 19** MacKerron, Gordon
- 20** McCann, David
- 21** McLaughlin, Margaret Isabel
- 22** Moody's Investors Service
- 23** Nuclear Industry Association
- 24** Nuclear Liabilities Fund
- 25** Nuclear Risk Insurers
- 26** Nuclear Technologies

- 27** Nuclear Legacy Advisory Forum
- 28** Richards, Hugh
- 29** Riesen, Sibylle
- 30** RWE npower
- 31** Sadgrove, Kit
- 32** Scottish and Southern Energy
- 33** Shetland Islands Council
- 34** Stop Hinkley
- 35** Studsvik UK
- 36** UKAEA
- 37** Unite
- 38** Vattenfall
- 39** Watson, Hester
- 40** Welsh Anti-Nuclear Alliance
- 41** Welsh Groups Network
- 42** Westinghouse Electric Company
- 43** Zurich

Annex C: Terms of Reference for the Nuclear Liabilities Financing Assurance Board (NLFAB)

1. Context

Clauses in the Energy Bill 2008 create a framework for ensuring that operators of new nuclear power stations have secure financing arrangements in place to meet the full costs of decommissioning and their full share of waste management costs. To achieve this, the Energy Bill 2008 requires any operator of a new nuclear power station to have a Funded Decommissioning Programme (FDP), approved by the Secretary of State, in place before construction of a new nuclear power station begins and to comply with this programme thereafter. The FDP prepared by the operator of a new nuclear power station must include:

- provision for the steps necessary to decommission the installation and manage and dispose of hazardous waste;
- an estimate of the costs of taking those steps;
- details of any security to be provided in relation to those costs.

Following the Energy Bill, the Government will publish two sets of guidance on what an FDP should contain. This guidance will assist operators in understanding their obligations under the Energy Bill, and what is required for an approvable FDP. The guidance is not intended to be unduly prescriptive but instead to set out principles which the Secretary of State will expect to see satisfied in the FDP prepared by an operator. The guidance gives information on ways in which the operator might satisfy those principles.

The first set of guidance (Decommissioning and Waste Management Plan guidance) will assist operators in setting out and costing the steps involved in decommissioning a new nuclear power station and managing and disposing of hazardous waste and spent fuel in a way which the Secretary of State may approve. This guidance also sets out the cost modelling methodology the Government expects to use to generate its own prudent estimates of the costs of decommissioning, waste management and waste disposal for new nuclear power stations.

The second set of guidance (Funding Arrangement Plan (FAP) guidance) will assist operators in setting out acceptable financing proposals to meet the costs identified. It sets out the Guiding Principles against which the Government will assess the funding proposals submitted by operators as part of their FDP for approval under the Energy Bill.

The FAP must set out how the operator will meet the identified costs over the expected lifetime of the new nuclear power station, but will also have to show how costs would be met in the event of early decommissioning, i.e. should the nuclear power station stop generating earlier than expected and liabilities crystallise early.

2. Terms of reference

2.1 Responsibilities of the Board:

- a. The Board will provide independent advice to the Secretary of State for Business, Enterprise and Regulatory Reform.
- b. The Board will provide public advice to the Secretary of State on the suitability of the Funding Arrangements Plan ("FAP") element of the Funded Decommissioning Programmes submitted by operators for approval by the Secretary of State, as required by the Energy Bill 2008. The suitability should be determined by the extent to which the proposals put forward by operators will meet the Objective and Guiding Principles outlined in the FAP guidance document.
- c. The Board will decide how it reaches its conclusions.
- d. The Board will provide public advice to the Secretary of State on the ongoing suitability of an approved FAP at the time of annual and quinquennial reviews of an operator's approved Funded Decommissioning Programme, to ensure that the FAP in place continues to adhere to the Guiding Principles and will meet the Objective set out in guidance.
- e. The Board will provide advice to the Secretary of State on any proposed changes to the FAP guidance, or to an approved FAP, including advice on modifications proposed by the Secretary of State.

2.2 The Department for Business, Enterprise and Regulatory Reform:

- a. Will endeavour that matters relevant to the Board carrying out their responsibilities listed above are brought to the Board's attention within a reasonable time, including any proposed changes to the guidance or to an approved Funded Decommissioning Programme.
- b. Will examine all issues raised by the Board within its terms of reference.
- c. Will consider all advice received from the Board.

2.3 The Department for Business, Enterprise and Regulatory Reform will include a summary of the work of the Board within its annual report.

- 2.4 The Department for Business, Enterprise and Regulatory Reform will provide the secretariat to the Board, and ensure that it is appropriately resourced to discharge its function effectively.

3. Membership

- 3.1 The Board will consist of a Chair and 6 Members.
- 3.2 The Chair, appointed by the Secretary of State for Business, Enterprise and Regulatory Reform, will be responsible for supervising the work of the Board and ensuring that its objectives are achieved.
- 3.3 The Board will be composed of people with a range of relevant skill and expertise, including current or former fund manager(s), financial expert(s), nuclear specialist(s), economist(s) and legal expert(s), appointed by the Secretary of State in line with the Nolan Principles for Public Appointments.
- 3.4 Initial appointments will be for three years. Sponsoring Ministers retain the right to terminate appointments at any time in light of individual members' performance, changes in the Board's work requirements, or completion of the work required of the Board.
- 3.5 The Board will meet as required in each year, dependent on when operators submit Funded Decommissioning Programmes for approval, or the requirements of the Secretary of State. It is not currently expected that the Board will meet more than 6 times per year.
- 3.6 The Board itself will decide what other appropriate sources of expert input are required, if any, during the course of its work, including the use of advice from existing regulatory, public or other bodies. The Board must agree in advance the related costs with the BERR secretariat which will commission any such work on its behalf, and it is intended that the Secretary of State will charge operators a fee to cover these costs, as provided for in the Energy Bill 2008.
- 3.7 The Department for Business, Enterprise and Regulatory Reform will reimburse the Chair and Members for their work for the Board. They will also be fully reimbursed for all reasonable travel and subsistence costs incurred during the course of their work.
- 3.8 The Board is set up by and answerable to Ministers and is funded by the taxpayer. It must therefore comply with the Cabinet Office guide "Non-Departmental Public Bodies a Guide for Departments".

Annex D: Revised indicative timeline

This updates the indicative timeline set out in the consultation document for publication of cost estimates for waste management, disposal and decommissioning and a fixed unit price for waste disposal.

Indicative Date and Status	Action
2008 Q1 DONE	<ul style="list-style-type: none"> ● Publish for consultation: cost modelling methodology for estimating the costs of waste management, disposal and decommissioning, and Funded Decommissioning Programme guidance.
2008 Q2 DONE	<ul style="list-style-type: none"> ● DEFRA to publish White Paper on Managing Radioactive Waste Safely and invite communities to express an interest in discussions about potential involvement in the siting process. ● NDA develop their parametric cost modelling exercise so that outputs can be incorporated in BERR's cost modelling.
2008 Q3	<ul style="list-style-type: none"> ● Publish consultation responses and the Government response on the BERR website.
2008 Q4 (To be arranged)	<ul style="list-style-type: none"> ● Discussions with stakeholders on: <ul style="list-style-type: none"> – a methodology to determine how the fixed costs of building a geological disposal facility should be apportioned to and shared between operators of new nuclear power stations; – a cost model with our updated estimates of total costs for waste management, disposal and decommissioning; – a methodology for establishing an indicative fixed unit price for the disposal of ILW and spent fuel. ● Undertake an external peer review of BERR's cost model. ● Test the price methodology for establishing a fixed unit price for the disposal of ILW and spent fuel with the financial industry.
2009 Q1-Q2	<ul style="list-style-type: none"> ● Publish for formal consultation detailed proposals on cost model and methodologies described above.
2009 Q3	<ul style="list-style-type: none"> ● Publish finalised guidance on an acceptable Funded Decommissioning Programme. ● Publish final versions of the cost model and methodologies described above.
Mid – late 2009	<ul style="list-style-type: none"> ● Earliest date for a possible operator to request a fixed unit price for the disposal of ILW and spent fuel.

