

Title: : AMENDMENTS TO PART 3, CHAPTER 1 OF THE ENERGY ACT 2008 (as amended): NUCLEAR SITES: DECOMMISSIONING AND COST RECOVERY

IA No: DECC0089

Lead department or agency: DECC

Other departments or agencies:

Impact Assessment (IA)

Date: 13/04/2012

Stage: Final

Source of intervention: Domestic

Type of measure: Primary legislation

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Summary: Intervention and Options

RPC: Amber

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB in 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
Zero	-£0.8m	£0.4m	No	Out of Scope

What is the problem under consideration? Why is government intervention necessary?

The Energy Act 2008 (the Act) requires prospective operators of new nuclear power stations in the UK to have a Funded Decommissioning Programme (FDP) approved by the Secretary of State before nuclear-related construction can begin. This must set out the operator's costed plans for decommissioning the power station and management and disposal of the waste it will produce, and make prudent financial provision for those costs.

The Act also allows the Secretary of State to enter into an agreement that sets out the manner in which he will exercise his powers (under the Act) to modify an approved FDP. This will be in the form of a contract between the Secretary of State and operator, and is enabled under Section 46 of the amended Energy Act 2008. This is known as a Section 46 (S46) Agreement.

Alongside the FDP, the Secretary of State will expect to enter into a contract with the operator regarding the terms on which the Government will take title to and liability for the operator's spent fuel and intermediate level waste (ILW) for disposal in the GDF. This is known as the Waste Transfer Contract (WTC).

Robust scrutiny of the FDP, S46 agreement and WTC is essential in order to meet the Government's objectives of ensuring that operators make prudent provision for the costs of decommissioning and waste management and disposal, and in so doing the risk of recourse to public funds is remote. Given the complex commercial nature of the FDP, S46 agreement and WTC, support from external sources of technical, legal and financial expertise will be essential in order to ensure robust scrutiny. In addition to this, the Nuclear Liabilities Financing Assurance Board (NLFAB), an advisory non-departmental public body, has been established to provide independent scrutiny of and advice to the Secretary of State on the financial arrangements of the FDP.

On the basis of DECC's recent experience, DECC will require technical, financial and legal support, and engagement with the NLFAB, during the development phase of the FDP, prior to its submission. This is to facilitate and support meaningful engagement between DECC and prospective operators while they are defining their approach to the FDP.

The Act currently allows DECC to charge a fee to a site operator in order to recover the costs of obtaining advice in relation to an operator's FDP, upon its submission to DECC. However, the Act does not allow the Government to recover:

- 1) The costs incurred by DECC for advice received in relation to agreeing a WTC or agreeing a S46 Agreement between the Secretary of State and a nuclear site operator;
- 2) The costs incurred by DECC in relation to advice received prior to the submission of the FDP i.e. for the period between a notification by the operator of its intention to submit an FDP and the submission date.

These costs are currently incurred as an operational expense to Government.

Government intervention is therefore required to ensure that current legislation is amended to ensure that costs can be recovered in relation to advice received on (1) and (2). This will ensure consistency with the Coalition Agreement commitment to no public subsidy for new nuclear.

What are the policy objectives and the intended effects?

The overall policy objective is to enable new nuclear investment in the UK without public subsidy. This intervention will contribute to this objective by extending the scope of the existing legislation to allow for the recovery of costs for external advice pertaining to the WTC, Section 46 Agreement, and by extending the recovery of costs in relation to the FDP such that the regime becomes effective from the point of notification by the operator of its intent to submit an FDP.

The intended effect is to allow for the recovery from site operators of all costs of external advice commissioned by the Government relating to waste and decommissioning agreements with new build operators. In so doing, potential costs to the taxpayer will be remote.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Three options were considered:

Option 1: Do nothing - leave the current legislation unchanged;

Option 2: Non-regulatory approaches such as (a) voluntary agreements with prospective operators or (b) prospective operators to pay advisers directly for advice provided to the Department, and;

Option 3: Amend the legislation (the preferred option).

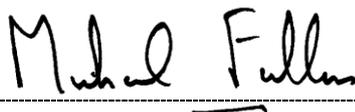
Option 3 - amending the legislation is the preferred option because it removes taxpayer costs relating to external advice sought in relation to the new nuclear waste and decommissioning site operator agreements.

Will the policy be reviewed? It will be reviewed in 2018 (this is to allow the FDP annual and five-yearly review process to have completed one cycle before reviews)

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro N/A	< 20 N/A	Small N/A	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 30/04/2013

Summary: Analysis & Evidence

Policy Option 1

FULL ECONOMIC ASSESSMENT : Do Nothing – Do not Amend the Regulations.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Zero
N/A	N/A				

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Zero	Zero	Zero

Description and scale of key monetised costs by 'main affected groups'

Zero. By definition, there are no costs associated with the 'do nothing' option which is to retain the existing regulations.

Other key non-monetised costs by 'main affected groups'

Zero. By definition, there are no costs associated with the 'do nothing' option which is to retain the existing regulations.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	Zero	Zero	Zero

Description and scale of key monetised benefits by 'main affected groups'

Zero. By definition, there are no costs associated with the 'do nothing' option which is to retain the existing regulations.

Other key non-monetised benefits by 'main affected groups'

Zero. By definition, there are no costs associated with the 'do nothing' option which is to retain the existing regulations.

Key assumptions/sensitivities/risks

N/A

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Zero	Benefits: Zero	Net: Zero	N/A	Out of Scope

Summary: Analysis & Evidence

Policy Option 2

FULL ECONOMIC ASSESSMENT : Non-regulatory approaches to cost-recovery; (a) voluntary agreements with prospective operators for the recovery of costs or (b) prospective operators to pay advisers directly for advice provided to the Department

Price Base Year 2009	PV Base Year 2012	Time Period Years 2	Net Benefit (Present Value (PV)) (£m)		
			Low: Zero	High: Zero	Best Estimate: Zero

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Zero	Zero	Zero
High	Zero	£0.7m	£0.8m
Best Estimate	Zero	Zero	Zero

Description and scale of key monetised costs by 'main affected groups'

The central estimate is for zero additional costs as non-regulatory approaches to cost recovery are infeasible in practice because (a) there is no vires for the Secretary of State to enter into a voluntary agreement for the recovery of costs so such an approach would not provide a legally transparent and stable arrangement and operators could refuse to agree and; (b) direct payment would require the Government's advisers to be under contract to the prospective operator, which would be inconsistent with the provision of unbiased advice to the Secretary of State. By not amending the legislation the current requirements would under our central case continue to apply and consequently there would be no new or additional costs to operators.

As stated above a non-regulatory approach is not feasible, However, by way of illustration, and purely for comparison purposes, the estimated 'high' costs per new nuclear power station above would be equivalent to the central estimates under Option 3 (Amend the legislation) for the recovery of costs in relation to advice on the FDP, WTC and S46 agreements.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Zero	Zero	Zero
High	Zero	£0.7m	£0.8m
Best Estimate	Zero	Zero	Zero

Description and scale of key monetised benefits by 'main affected groups'

As stated above, a non-regulatory approach is not feasible and hence the central estimate is for zero benefits. However, by way of illustration, and purely for comparison purposes, the estimated 'high' benefit scenario reflects the Government recovering the full costs from industry which are equivalent to the central estimates under Option 3.

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The estimates of high costs/benefits are equivalent to the central estimates under Option 3. Assumptions are set out in the summary box below and in paragraph 29.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In Scope of OIOO?	Measure qualifies as
Costs: Zero	Benefits: Zero	Net: Zero	NA	Out of Scope

FULL ECONOMIC ASSESSMENT : Amend the Legislation

Price Base Year 2009	PV Base Year 2012	Time Period Years 2	Net Benefit (Present Value (PV)) (£m)		
			Low: zero	High: zero	Best Estimate: zero

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Zero	£0.38m	£0.4m
High	Zero	£1.0m	£1.1m
Best Estimate	Zero	£0.7m	£0.8m

Description and scale of key monetised costs by 'main affected groups'

Costs per power station: The amendment would impose extra costs on the operator of each new nuclear power station by enabling the Government to recover from the operator the costs of external advice commissioned by the Government in relation to the suite of waste and decommissioning financing documents.

- *Funded Decommissioning Programme (FDP):* recovering the cost of advice received in the period between notification of intent to submit a FDP and formal submission of the FDP. Estimated (central) that the cost of this advice will be c.£500k over a period of around 9 months.
- *Waste Transfer Contract (WTC):* recovering the cost of advice received in relation to agreeing a WTC, including advice received prior to receiving the documents. Estimated (central) that the cost of this advice will be c.£150k over a period of 18 months.
- *Section 46 Agreements:* recovering the cost of advice received in relation to S46 agreement, including advice received prior to receiving the documents. Estimated (central) that the cost of this advice will be c.£150k over a period of 18 months.

Societal Costs: Overall the policy is estimated to have zero net impact at societal level as it enables the complete transfer of costs from Government to industry.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Zero	£0.38m	£0.4m
High	Zero	£1.0m	£1.1m
Best Estimate	Zero	£0.7m	£0.8m

Description and scale of key monetised benefits by 'main affected groups'

Cost recovery from industry represents a benefit to Government of equal value (£0.8m). At societal level the policy is therefore estimated to have a zero net impact.

Other key non-monetised benefits by 'main affected groups'

None.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
<ul style="list-style-type: none"> • Key assumptions are: (1) the appraisal includes only costs that will be incurred prior to the agreement of a WTC and S46. Thereafter provisions for Government recovering costs will be included within the terms of these contracts and are therefore out of scope of this IA. Similarly, costs related to advice on a FDP are for those incurred prior to submission of the FDP; thereafter costs can currently be recovered under the existing legislation; (2) The analysis is based on one operator submitting a FDP in 2012 and; (3) total costs for FDP advice are incurred in year 0; total costs for WTP and S46 advice are incurred pro-rata in year 0 and year 1. • The cost estimates presented above are on a 'per power station' basis due to the uncertainty around how many new nuclear power stations that will be constructed in the UK. Sensitivity analysis is however provided at paragraph 25 showing the estimated impact for a fleet of new nuclear powers stations of 10-15GW (3-5 stations) in total by 2030. • Cost estimates are based on the cost of advice already procured by the Department. 		

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.4m	Benefits: Zero	Net: -£0.4m	No	Out of Scope

Evidence Base

One-In-One-Out

1. The proposed amendments to the existing legislation would create a comprehensive cost recovery framework through which all external adviser costs relating to the waste and decommissioning agreements can be charged back to the site operator. As such, it is estimated that the changes would result in an Equivalent Annual Net Cost to Business (EANCB) of -£0.4m per operator over an appraisal period of two years i.e. the period of time over which external advice would be sought prior to submission and agreement of the three waste and decommissioning documents.
2. Whilst the amendments will increase costs on nuclear operators they are considered out-of-scope of the One-IN-One-Out (OIOO) rule under exemption 10 of the current methodology¹. This is because the measures would fall within the definition of a “fee” or “charge” imposed by Government on industry to ensure full cost recovery and therefore compliance with the policy of no-subsidy to new nuclear. The costs recovery mechanism does not in itself lead to an expansion in the level of regulatory requirements or activities, but rather ensures that recourse to the taxpayer is remote in the course of prospective nuclear operators complying with the existing regulations.

Net Cost / Benefit at Societal Level

3. The overall policy objective is to enable investment in new nuclear in the UK without public subsidy. The proposed amendments to the existing regulations will contribute to this objective by enabling Government to recover the full costs incurred in procuring external advice on the Funded Decommissioning Programme (FDP), Waste Transfer Contract (WTC) and Section 46 (S46) documents.
4. The policy will therefore increase costs for prospective nuclear operators, but there will be a benefit to Government of equivalent value from the transfer of these costs. At societal level the policy is therefore estimated to have a zero net impact.

Problem Under Consideration

5. The Energy Act 2008 (the Act) requires operators of new nuclear power stations to have arrangements in place to meet the full costs of decommissioning and their full share of waste management and disposal costs. The Act requires the operator of a new nuclear power station to submit to the Secretary of State a Funded Decommissioning Programme (FDP) for approval before construction of the new nuclear power station commences and prohibits the use of a site in the absence of an approved FDP.
6. Under current legislation, once an FDP is approved, the Secretary of State has the power under Section 48 of the Act to modify an FDP. This is done by following the procedure set out in section 49 of the Act with a view to securing that prudent provision is made for an operator's full costs of decommissioning and their full share of waste management costs.
7. Under Section 46 of the Act the Secretary of State can enter into an agreement setting out the manner in which he will exercise his powers under the Act to modify an approved FDP. This agreement will be in the form of a contract between the operator and the Secretary of State (the Section 46 Agreement). The Secretary of State cannot enter into such an agreement unless he is

¹ HM Government, One In, One Out (OIOO) Methodology, July 2011.
<http://www.bis.gov.uk/assets/biscore/better-regulation/docs/o/11-671-one-in-one-out-methodology>

satisfied that adequate provision is made for the Modification of the FDP in the event that the arrangements cease to be prudent.

8. Additionally, the Government will expect to enter into a Waste Transfer Contract (WTC) with the operator regarding the terms on which the Government takes title to and liability for the operator's spent fuel and intermediate level waste. The Government expects such waste to be disposed of in the same geological disposal facility as that constructed for legacy waste disposal.
9. Therefore it is expected that the approval of an FDP will involve three documents; the main FDP, the WTC and the Section 46 Agreement. The Government expects that external advice will be commissioned in relation to all of these documents.

Rationale for intervention

10. The amendments are needed to implement the Coalition's policy of no subsidy to new nuclear. As a result of the amendment to Section 46 of the Act, certain new categories of costs have emerged that need to be covered. Under the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 (the Regulations), the Secretary of State is able to recover external adviser costs relating to the FDP once the FDP has been submitted for Secretary of State approval. External advice procured in relation to the WTC and the Section 46 Agreement are not currently recoverable from the site operators under the Act.
11. We know that prospective operators expect to have significant, detailed discussions on the waste and decommissioning finance arrangements prior to submission of an FDP; for these discussions to be meaningful it is often necessary to engage external advisers to assist those discussions due to the commercial nature of the arrangements. The costs are not recoverable under the current Regulations. The level of involvement of the external advisers will depend on the number and nature of issues that are to be discussed with operators on their proposals and how quickly issues can be resolved. The estimated total costs (undiscounted) are £500k for the FDP and £150k each for the WTC and S46 documents.

Policy Objective

12. The policy objective is to ensure that the Act enables the Secretary of State to minimise the taxpayer burden by creating a comprehensive cost recovery framework through which all external adviser costs relating to the waste and decommissioning agreements can be charged back to the site operator.

Description of options considered (including do nothing):

Option 1: Do nothing

13. The 'do nothing' option was considered and ruled out: the legislation as currently drafted does not provide an appropriate balance between external advisor costs the Secretary of State's can recover and actual costs relating to the waste and decommissioning agreements which are likely to be incurred.

Option 2: Other non-legislative options

14. Other non-legislative options were considered such as the Secretary of State providing letters of comfort, or in some other way, issuing statements upon which an operator could create a legitimate expectation over how the Secretary of State would act when attempting to recovering costs. Forms of self regulation such as codes of conduct or cost recovery codes cannot be used to deliver benefits because the Act does not give the vires to the Secretary of State to relieve operators of their burdens

by any route other than regulations. We do not consider repealing the Regulations or forms of self regulation to be a viable option. The non-legislative options would be:

- a. For the department to enter into a voluntary agreement with prospective operators for the recovery of costs;
- b. For prospective operators to pay advisers directly for advice provided to the Department.

15. There are no vires for the Secretary of State to enter into a voluntary agreement for the recovery of costs and so option a) would not provide a legally transparent and stable arrangement for the recovery of costs; operators could refuse to agree. Option b) would require the Government’s advisers to be under contract to the prospective operator, which would not be consistent with the provision of unbiased advice to the Secretary of State or be a transparent arrangement in which the public could have confidence. We have therefore discounted these non-legislative options from further consideration.

Option 3: Amend the Energy Act (the preferred option)

16. This is our preferred option. Revising the legislation so that advice on the wider waste and decommissioning framework and work *prior* to submission of an operator’s FDP are recoverable would remove costs to taxpayers. The proposed amendments are therefore consistent with the overall policy objective of enabling new nuclear investment in the UK without public subsidy.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

17. Table 1 below summarises the direction of the impact (cost/benefit) of each of the options.

Table 1: Expected impacts from policy options

Policy Option 1 Do nothing	Policy Option 2 Non-legislative approach (e.g. voluntary agreement or direct payment from operators to advisers)	Policy Option 3 Amend the legislation
By definition, no additional costs or benefits to operators or the government over the baseline. Taxpayers would continue to incur costs in relation to external advice.	Not feasible in practice; not delivering robust arrangements in which the public can have confidence.	Additional cost to operator. Equivalent reduction in taxpayer costs as the costs of external advice is recovered from operator. Zero net cost at societal level.

Quantification of Option 3 (Preferred) – Amend the Legislation

18. The tables below set out the estimates of the costs to new nuclear operators from amending the regulations in order to create a comprehensive cost recovery framework in relation to advice procured on the FDP, WTC and S46 documents. The appraisal is based on the costs to an operator of one new nuclear power station as (i) the suite of FDP agreements will be required for each site, rather than for each operator that could potentially have multiple sites, and (ii) there is uncertainty over the number of new nuclear power stations that will be built in the UK and the timescales over which they will be deployed. This is consistent with the methodology used for the recent Impact Assessment on Amendments to Nuclear Decommissioning (Finance and Fees) Regulations 2011.

19. The central estimates presented below are based on actual costs incurred by the Department to date in procuring advice on each aspect of the waste and decommissioning agreements. The cost ranges reflect the uncertainty at this time about how costs may vary as the level of advice sought will depend on the number and nature of issues that are to be discussed with operators on their proposals and how quickly issues can be resolved. We are confident that the high estimates reflect the maximum cost of advice likely to be required by Government based on experience to date. As Government gains experience of running the assessment process and increases its knowledge base over time, it is possible that the average volume of external advice and associated costs to be recovered from industry could be reduced.
20. It is assumed that the costs relating to advice on the FDP, WTC and S46 start to be incurred at the same time (i.e. year 0). For discounting purposes, total costs related to the FDP are expected to be incurred over a period of 9 months (i.e. within year 0), while total costs related to the WTC and S46 agreements are apportioned pro-rata over a period of 18 months (i.e. within year 0 and year 1).

Funded Decommissioning Programme

21. As reported in table 2, the cost of advice likely to be required by Government and subsequently recovered from industry in relation to the FDP document is estimated at between £250k-£750k in total, with a central estimate of £500k. It is expected that all costs will be incurred over the period of nine months prior to submission of the main FDP document.

Table 2: Estimated costs to operators in relation to FDP advice, 2009 prices

		Total Cost (£)*	Net Present Value (£)
Costs	Low	£250k	£250k
	Central	£500k	£500k
	High	£750k	£750k

* Assumed that costs are incurred over a period of 9 months.

22. As reported in tables 3 and 4 respectively, the cost of advice likely to be required by Government on the WTC and S46 agreements and subsequently recovered from industry is estimated at between £100k-£200k in total over a period of 18 months prior to these contract being agreed.

Waste Transfer Contract

Table 3: Estimated costs to operators in relation to WTC advice, 2009 prices

		Total Cost (£)**	Net Present Value (£)
Costs	Low	£100k	£99k
	Central	£150k	£148k
	High	£200k	£198k

** Assumed that costs are incurred pro-rata over a period of 18 months.

Section 46 Agreement

Table 4: Estimated costs to operators in relation to S46 advice, 2009 prices

		Total cost (£) ^{***}	Net Present Value (£)
Costs	Low	£100k	£99k
	Central	£150k	£148k
	High	£200k	£198k

^{***} Assumed that costs are incurred pro-rata over a period of 18 months.

Summary of Total Costs to Industry

23. Table 5 below summarises the central Net Present Value (NPV) estimates for each of the policy options. For the preferred option, it is estimated that the total cost to an operator in NPV terms would be around £0.8m (2009 prices) over an appraisal period of two years.

Table 5: Net Cost/Benefit of each Policy Option, Central Estimates, 2009 Prices.

	Net Cost / Benefits of Policy Option		
	Policy Option 1 <i>Do nothing</i>	Policy Option 2 <i>Non Legislative Options</i>	Policy Option 3 <i>(Preferred Option)</i> <i><u>Amend the Energy Act</u></i>
Funded Decommissioning Programme (FDP)	zero	zero	(£500k)
Waste Transfer Contract (WTC)	zero	zero	(£148k)
Section 46 Agreement	zero	zero	(£148k)
Total	zero	zero	(£796k)

Estimated Societal Impact

24. The creation of cost recovery mechanisms mean that the estimated costs to industry represent a benefit to Government of equal value (£0.8m) to that estimated above. At societal level the policy is therefore estimated to have a zero net impact as the amendments will effectively allow a transfer of cost from Government to industry.

Scaling of monetised costs per site to account for potential for multiple new nuclear power stations

25. While there is uncertainty over the level and timescales of new nuclear deployment, the Government is clear that nuclear should be free to contribute as much as possible to the need for new low carbon electricity generating capacity². The Carbon Plan³, published by DECC in December 2011 set out modelling results that suggested new nuclear could contribute between 10-15GW by 2030, equivalent to between 3 to 5 new multiple reactor nuclear power stations. Table 6 below therefore provides estimates of the NPV of benefits for a fleet of between 3-5 new nuclear plants, based on the modelled deployment trajectories (operational start dates of new reactors) underpinning the Carbon Plan.

Table 6: NPV of Costs/Benefits to Industry from Preferred Option for Amending the Energy Act – Sensitivity Analysis on Levels of New Nuclear Deployment, (2009 prices).

Number of New Nuclear Sites and Cumulative Capacity by 2030	NPV of Policy Option to 2030		
	Policy Option 1 <i>Do nothing</i>	Policy Option 2 <i>Non Legislative Options</i>	Policy Option 3 <u>(Preferred Option)</u> <u>Amend the Energy Act</u>
1 site (c.3.2GW - 3.3GW)	zero	zero	(£796k)
3 sites (c.10GW)	zero	zero	(£2.1m)
5 sites (c.15GW)	zero	zero	(£3.2m)

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

26. These measures have a financial impact on operators but the precise value will depend on the extent of external advice required by the Government in relation to these activities. The level of advice sought will depend on the number and nature of issues that are to be discussed with operators on their proposals and how quickly issues can be resolved. The cost ranges presented for the preferred option reflect the level of uncertainty at this time.

27. As explained in paragraph 19, the central estimates presented are based on actual costs incurred by the Department to date in procuring advice on each aspect of the waste and decommissioning agreements.

28. The analysis demonstrates that the costs to be recovered from industry are likely to be relatively small in the context of both the costs associated with a Funded Decommissioning Programme and the costs of new build nuclear power stations.

²DECC, National Policy Statements for Energy Infrastructure, July 2011.
http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx

³ DECC, The Carbon Plan: Delivering Our Low Carbon Future, December 2011.
http://www.decc.gov.uk/en/content/cms/tackling/carbon_plan/carbon_plan.aspx

Risks and assumptions

Assumptions

29. The analysis is based on the following assumptions:

- The counterfactual is that the existing legislation in the Energy Act (2008) remains un-amended as reflected in our 'do nothing' option.
- The analysis, as reflected in the summary sheets, is based on the costs to an operator in relation to one new nuclear power station. This is because (i) the suite of FDP agreements will be required for each site, rather than for each operator that could potentially have multiple sites, and (ii) there is uncertainty over the number of new nuclear power stations that will be built in the UK and the timescales over which they will be deployed. This is consistent with the methodology used for the recent Impact Assessment on Amendments to Nuclear Decommissioning (Finance and Fees) Regulations 2011.
- The appraisal includes only costs that will be incurred prior to the agreement of a WTC and S46 agreement. Thereafter provisions for Government recovering costs will be included within the terms of these contracts and are therefore out of scope of this IA. Similarly, costs related to advice on a FDP are for those incurred prior to submission of the FDP; thereafter costs can currently be recovered under the existing legislation.
- An appraisal period of 2 years has been used based on the assumption that a new nuclear operator submits a FDP in 2012; total costs for FDP advice are incurred in year 0; total costs for WTP and S46 advice are incurred pro-rata in year 0 and year 1.
- The HM Treasury Green Book discount rate of 3.5% has been used to produce the NPV estimates.
- Sensitivity analysis is provided showing the estimated impact for a fleet of new nuclear power stations of 10-15GW (3-5 stations) in total by 2030.
- The central estimates presented below are based on actual costs incurred by the Department to date in procuring advice on each aspect of the waste and decommissioning agreements.

Risks

30. If the legislation does not provide an adequate framework for cost recovery, there is a risk that the FDP approval process will place greater financial burden on the taxpayer if only certain financial adviser costs are recoverable. Furthermore, if the provisions in respect of cost recovery are not amended there is a risk that Government scrutiny and its capacity to engage in a timely fashion could be reduced if the Government is constrained in its ability to see sufficient external advice.

Direct costs and benefits to business calculations (following OIOO methodology)

31. The proposed amendments to the legislation would result in additional costs to nuclear operators. As such, it is estimated that the changes would result in an Equivalent Annual Net Cost to Business (EANCB) of -£0.4m per operator over an appraisal period of two years i.e. the period of time over which external advice would be sought prior to submission and agreement of the three waste and decommissioning documents.
32. As a cost recovery mechanism (exemption 10: fees and charges) that does not lead to an expansion in the level of regulatory activity, the changes are considered out-of-scope of the One In, One Out (OIOO) rule and the estimated EANCB per operator should therefore be categorised Out-of-Scope under the current methodology.

Wider impacts

33. These proposed amendments relate to cost recovery in relation to external advice relation to the new nuclear waste and decommissioning framework. All the companies likely to build new nuclear power stations will face the same legislation and the same regulatory requirements. There are no exemptions in the Regulations for business of certain sizes. Therefore, whilst as a matter of law SMEs are caught under the Regulations the reality is that prospective nuclear operators are all very large businesses due to the large capital requirements and the extensive regulatory function that is required to operate in the sector. Also because the nuclear industry is highly regulated due to safety, security and environmental considerations, nuclear operators will have highly developed and sophisticated regulatory functions within their organisational structures.
34. The estimated costs to be recovered from industry are small in the context of the nuclear power industry. For example, they should be viewed relative to the significant up front construction costs for a new nuclear power station which are estimated to be in the region of £3.0 billion - £4.2 billion per GW for a First of a Kind (FOAK) plant, equivalent to between £9.5 billion - £13.2billion for a 3.2GW multiple reactor station⁴.

Summary and preferred option with description of implementation plan

35. The preferred option is as set out in the paragraph 16. Following an assessment of the non-legislative options to reduce levels of perceived regulatory risk around the Secretary of State's ability to modify an FDP it was concluded that only legislative options, that is amendments to the Energy Act 2008, would give sufficient certainty to the Government in respect of cost implications for the taxpayer in relation to external advice it procures.
36. The amendments will be implemented through the Energy Bill 2012. The number of businesses that will be affected by the legislative change will be small. We have ongoing and systematic contact with these businesses and we are clear that any failings in the regime would be made clear to us. We can, however, see the merits of undertaking a review once the regime is fully up and running and will do so at an appropriate point after the agreement of the first FDP once sufficient experience of operating the FDP approval process has been gained by operators and Government.

⁴ PB Power, Electricity Generation Cost Model - 2011 Update, August 2011.
<http://www.decc.gov.uk/assets/decc/11/about-us/economics-social-research/2127-electricity-generation-cost-model-2011.pdf>