

Justification of Practices Involving Ionising Radiation Regulations 2004

Secretary of State's Decisions as Justifying Authority on the Regulatory Justification of New Nuclear Reactor Designs currently known as the AP1000 and the EPR

Statement by the Secretary of State on provision in Regulation 17(1) to hold an inquiry or other hearing

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Secretary of State's Decision on the Holding of an Inquiry or Other Hearing

1. The Secretary of State has decided that on consideration of all the circumstances it would not be expedient to the making of his decisions in respect of the Regulatory Justification of the generation of electricity by the EPR and AP1000 nuclear reactors to hold a public inquiry or other hearing. The reasons for this are set out below.

Legislative background

2. The UK legislation governing the Regulatory Justification process¹ provides in Regulation 17(1) that "the Justifying Authority may cause an inquiry or other hearing to be held if it appears to him expedient to do so in connection with the exercise of any of his functions under these Regulations". The Regulations do not require an inquiry or other hearing to be held. Nor do they define what is meant by "inquiry or other hearing".

Consultation process

Consultation on Regulatory Justification process

3. The Regulatory Justification consultation process has taken over three years. It began with a consultation on a proposed process for the Regulatory Justification of new nuclear power stations². This was published in May 2007 alongside a public consultation on the "in principle" new nuclear decision³.

¹ The Justification of Practices Involving Ionising Radiation Regulations 2004, Statutory Instrument 2004 No. 1769 <http://www.opsi.gov.uk/si/si2004/20041769.htm>

² <http://www.berr.gov.uk/files/file39199.pdf>

³ The Role of Nuclear Power in a Low Carbon UK Economy, Consultation Document, May 2007 <http://nuclearpower2007.direct.gov.uk/>

4. The consultation noted “We will need to consider whether or not to hold an inquiry or other hearing as part of the decision-making process. Under Regulation 17 of the Justification Regulations there is power to hold such an inquiry or hearing, although there is no requirement to do so. A decision will be taken in the course of the assessment process under the Justification Regulations.”
5. A response to this consultation was published in January 2008 as Annex B to the White Paper on Nuclear Power⁴. This did not refer directly to the provision in Regulation 17(1) but said that the guidance to be published on the process for submitting Regulatory Justification applications would include plans for public engagement.

Call for Regulatory Justification applications

6. A call for Regulatory Justification applications for new nuclear power station designs was published in March 2008⁵. This encouraged applicants for Regulatory Justification decisions to make full applications covering all areas which might be considered relevant to a decision. It also indicated that public engagement activities would be held as part of the later public consultation on the proposed decision.

Consultation on application by the Nuclear Industry Association

7. This was confirmed by the public consultation on the Application by the Nuclear Industry Association which was published in December 2008⁶. It invited responses across all the areas covered by the application and asked for “suggestions about the way in which the Government proposes to engage with the public in the later stage of the consultation process”.

Consultation on proposed decisions

8. A further consultation on the proposed decisions was published on 9 November 2009⁷. This recorded responses to the previous consultation on the Application. It recorded that “A number of respondents to the consultation on the Application requested a public inquiry, arguing that a public inquiry chaired by someone independent of the Government was needed to ensure an open and transparent decision.” It said further that “The Secretary of State has not concluded at this stage that it is necessary to hold an inquiry or other hearing as part of the Regulatory Justification process. However, the Secretary of State will keep this under review in considering the responses to this consultation and does not propose to make a final decision on holding an inquiry or other hearing until the

⁴ Meeting the Energy Challenge: A White Paper on Nuclear Power, January 2008
http://decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/white_paper_08/white_paper_08.aspx

⁵ The Justification of Practices Involving Ionising Radiation Regulations 2004, Guidance for applications relating to new nuclear power, March 2008

⁶ The Justification of Practices Involving Ionising Radiation Regulations 2004, Consultation on the Nuclear Industry Association’s Application to Justify New Nuclear Power Stations
http://decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/new/reg_just/reg_just.aspx

⁷ http://www.decc.gov.uk/en/content/cms/consultations/reg_just_cons/reg_just_cons.aspx

end of the process.”

9. The consultation document also recorded that respondents supported the holding of one or more public engagement events, but that there had been no detailed suggestions as to the format of any events, and asked respondents to confirm their interest in attending a stakeholder meeting on 19 January 2010.
10. The meeting was held on 19 January and the nuclear regulators, the applicant and representatives from the Department of Energy and Climate Change all attended. Attendees were afforded the opportunity to put points of view across and to put questions to the regulators. A transcript of the meeting was published on the Department’s website⁸.
11. Several of those who attended argued that a public inquiry should be held. While some of those attending took the opportunity to voice particular concerns to the Department, none took the opportunity to ask questions directly of the regulators or the applicant.

Wider consultations

12. In addition to the opportunities for people to make their views known through the Regulatory Justification consultations in the same period the Department also conducted the consultation on the “in principle” decision on new nuclear, which led to the 2008 White Paper. This was required by the courts to meet the test of constituting the “widest public consultation”, was one of the largest consultations ever conducted in the UK and included numerous stakeholder events, site specific events and nine events across the UK for a representative sample of members of the public. The Department also conducted specific consultations on the draft Nuclear National Policy Statement, including site exhibitions and public meetings, and on the arrangements for decommissioning and waste financing.

Reasons for the Secretary of State’s decision

13. This statement is published alongside the Secretary of State’s decisions⁹ that the generation of electricity by the EPR and AP1000 nuclear reactors is Justified under the terms of the Regulations and the documents setting out the reasons for those decisions.
14. In making his decisions without holding an inquiry or other hearing, the Secretary of State has taken into account the following considerations.
15. Under the Regulations, the purpose of holding an inquiry or other hearing would be to assist the Secretary of State in making his decision. The final decision would remain for the Secretary of State to make, taking into account any additional information resulting from the inquiry.

⁸ http://www.decc.gov.uk/en/content/cms/consultations/reg_just_cons/reg_just_cons.aspx

⁹ http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/new/reg_just/reg_just.aspx

16. The main reason for holding an inquiry or other hearing would therefore be to aid the effectiveness of the Secretary of State's decision making by investigating more thoroughly any issues which had not been adequately addressed through the process of public consultation on a proposed decision and the reasoning and evidence on which it was based. The final decision on whether to hold an inquiry is therefore best taken in the light of the completed analysis from the consultation. The Secretary of State's view is that the consultation processes have been sufficient to identify the information he needs to take these decisions; to provide sufficient opportunity for interested parties to make their views known; and to allow him to balance the competing arguments, interests and evidence bases in the relevant areas. He does not consider that a further inquiry or other hearing would provide particularly greater opportunities to further any of these objectives.
17. In coming to this conclusion and taking his decisions the Secretary of State has taken into account all written responses received to the consultations, oral statements made at the 19 January meeting, and advice received. Those from whom advice was sought and received included the statutory consultees, who are health, safety and environmental regulators; other Government bodies with an interest in the nuclear industry; Integrated Decision Management, a firm of consultants employed by the Secretary of State to provide technical advice on the Application, on responses to the consultations and on the final decisions; and a group of independent experts who also provided technical advice on the Application, responses to the consultation and the final decisions.
18. The Secretary of State has taken into account that an inquiry might provide a further opportunity for respondents to the above consultations, or other persons, to make their views known to him. However, given the opportunities already provided for interested parties to make their views known, he considers that it is unlikely that a further opportunity to make representations would add materially to the information available to him in making his decisions. He notes that there have been three separate and substantial consultations in the course of this process, one of which included a public engagement event. In addition to this each stage of the process has been well documented and publicised and responses have been accepted in a number of different formats.
19. He notes that some consultees also suggested that a public inquiry would provide people with the opportunity to cross-examine those giving evidence and thereby test the quality of information being considered. The Secretary of State does not consider such a process is necessary to enable him to reach a view on the quality of the information he should take into account and believes that the consultations mentioned above, combined with advice from several different sources, have given adequate opportunity to obtain third parties' views on the issues raised by the applications and to test the information relevant to a decision on the applications.
20. The Secretary of State is also aware of arguments that an independent inquiry might allow him to better weigh the conflicting arguments, interests and evidence bases in the relevant areas. However, he considers that the extensive consultation process that has been undertaken here, including the public

engagement event which allowed interested parties to attend and put their cases directly to his Department and the regulators, has provided him with extensive information on the arguments, interests and evidence and the extent to which they conflict and need to be weighed. He does not consider that an inquiry would provide any greater insight into the competing factors that he needs to consider in coming to his decision on the Regulatory Justification applications.

21. Furthermore, the Secretary of State has considered every aspect of the decisions from the point of view of whether any information or argument was lacking, the absence of which might weaken the robustness of the decision or whether there was any aspect of the decisions that might benefit from a further, more public and adversarial approach.
22. He is confident that his decisions take full account of all relevant information available to him and that the evidence base and reasoning behind the decisions have been subject to full public scrutiny. The consultation has been conducted on the basis of setting out the evidence and argument in writing and exposing it to scrutiny by a wide range of people in a way which would be likely to draw out all competing arguments and interests and expose any flaws, over the extended period in which these issues have been in the public domain.
23. The Secretary of State therefore does not think that there is benefit to be gained in holding an inquiry either in bringing further arguments or information to the debate; or in giving him a better understanding of the competing arguments and interests; or in extending the opportunity for people to contribute to the debate.
24. The Secretary of State is also mindful of the importance to the applicants and third parties of his taking a decision on the applications without undue delay, so that decisions on investment and other activities by them can be taken in the light of his decision and help meet the UK's objectives of securing supplies of low-carbon energy. He also considers that there is a public interest in him taking the decisions without undue delay. As set out above, he considers that all of the pertinent issues have been addressed in the course of the consultations and insufficient further information or other benefit would be gained by holding an inquiry to justify delaying the making of these decisions.
25. The Secretary of State is also conscious of the potential cost of an inquiry to all involved.

Conclusion

26. The Secretary of State, having considered all the evidence put to him in the course of the public consultation process, has concluded that he has sufficient information before him to balance the competing arguments, interests and evidence bases in the relevant areas and make a decision, and that interested parties have been provided with sufficient opportunity to make their views known. He therefore concludes that insufficient further information or other benefit would be gained by holding an inquiry to justify delaying the making of these decisions and that it is not expedient for him to arrange for the holding of an inquiry or other hearing as part of the process

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