



# Energy Act 2008

## 2008 CHAPTER 32

### PART 3

#### DECOMMISSIONING OF ENERGY INSTALLATIONS

#### CHAPTER 1

##### NUCLEAR SITES: DECOMMISSIONING AND CLEAN-UP

##### *Funded decommissioning programmes*

#### **45 Duty to submit a funded decommissioning programme**

- (1) This section applies where, on or after the day on which this section comes into force, a person applies for a nuclear site licence in respect of a site to which subsection (2) applies.
- (2) This subsection applies to—
  - (a) a site on which the person intends to construct a nuclear installation for a purpose for which a licence under section 6(1)(a) of the Electricity Act 1989 (c. 29) or Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I.)) (generating licences) is required, and
  - (b) a site to which this section previously applied by virtue of paragraph (a) and on which the person intends to operate a nuclear installation which was constructed for such a purpose.
- (3) The person must—
  - (a) give written notice of the application to the Secretary of State, and
  - (b) prepare and submit to the Secretary of State a funded decommissioning programme.
- (4) A funded decommissioning programme is a programme which—
  - (a) makes provision for the technical matters, and

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- (b) specifies how the implementation of that provision, so far as it relates to the designated technical matters, is to be financed.
- (5) The technical matters, in relation to a site, are—
- (a) the treatment, storage, transportation and disposal of hazardous material (within the meaning of section 37 of the Energy Act 2004 (c. 20)) during the operation of a nuclear installation on the site,
  - (b) the decommissioning of any relevant nuclear installation and the cleaning-up of the site, and
  - (c) activities preparatory to the matters mentioned in paragraph (b);
- and for the purposes of paragraph (a) a nuclear installation is not to be regarded as being operated at a time when it is being decommissioned.
- (6) The designated technical matters, in relation to a site, are—
- (a) such of the matters within subsection (5)(a) or (c) as are specified by the Secretary of State by order, and
  - (b) the matters within subsection (5)(b).
- (7) The funded decommissioning programme must, in particular, contain—
- (a) details of the steps to be taken under the programme in relation to the technical matters,
  - (b) estimates of the costs likely to be incurred in connection with the designated technical matters, and
  - (c) details of any security to be provided in connection with those costs.
- (8) A person who submits a programme must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (9), at a time determined in accordance with such regulations.
- (9) The costs are those incurred by the Secretary of State in relation to the consideration of the programme, including, in particular, the costs of obtaining advice in relation to—
- (a) the programme, or
  - (b) information required in relation to the programme in accordance with section 52(4).

**Commencement Information**

**II** S. 45 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

**[<sup>F1</sup>45A Costs incurred in considering proposed programmes**

- (1) A person who informs the Secretary of State of a proposal to submit a funded decommissioning programme under section 45 must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (2), at a time determined in accordance with such regulations.
- (2) The costs are those incurred by the Secretary of State in relation to the consideration of the proposed programme (or any particular aspect of it), including, in particular, the costs of obtaining advice in relation to it.]

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### Textual Amendments

F1 S. 45A inserted (E.W. N.I.) (18.2.2014) by Energy Act 2013 (c. 32), ss. 149(2), 156(2)

## 46 Approval of a programme

- (1) The Secretary of State may approve or reject a funded decommissioning programme submitted under section 45 in respect of a site.
  - (2) The Secretary of State may approve a programme—
    - (a) with or without modifications, and
    - (b) unconditionally or subject to conditions.
  - (3) A modification under subsection (2) may, in particular, impose obligations, or additional obligations, on a body corporate associated with the person who submitted the programme.
- [<sup>F2</sup>(3A) When approving a programme the Secretary of State may agree to exercise, or not to exercise, the section 48 power—
- (a) in a particular manner;
  - (b) within a particular period.
- (3B) An agreement under subsection (3A) may subsequently be amended by the Secretary of State and the other party to the agreement.
- (3C) The Secretary of State may not make such an agreement or amend such an agreement unless satisfied that the agreement (or the agreement as amended) includes adequate provision for the modification of the programme in the event that the provision made by it for the technical matters (including the financing of the designated technical matters) ceases to be prudent.
- (3D) Provision in such an agreement (including the provision mentioned in subsection (3C)) may include provision—
- (a) for a determination by a third party in relation to a relevant matter specified in the agreement, and
  - (b) for the Secretary of State to be bound by such a determination.
- (3E) A “relevant matter” is a matter relating to the provision made by the programme for the technical matters.
- (3F) Subsections (3A) to (3D) apply notwithstanding that the agreement or amendment fetters the Secretary of State's discretion.
- (3G) In subsection (3A) “ section 48 power ” means the power of the Secretary of State under section 48 to propose a modification of the programme or a modification of the conditions to which the approval of the programme is subject. ]
- [<sup>F3</sup>(3H) Where the Secretary of State makes or amends an agreement under subsection (3A), or it is proposed that such an agreement be made or amended, the site operator must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (3I), at a time determined in accordance with such regulations.

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- (3I) The costs are those incurred by the Secretary of State in relation to the consideration of the agreement or amendment, including, in particular, the costs of obtaining advice in relation to the agreement or amendment.]
- (4) The Secretary of State's powers under subsections (1) to [F4(3B)] must be exercised with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).
- (5) Before deciding whether to approve or reject a programme, the Secretary of State must consult each interested body about—
- (a) the programme, and
  - (b) any modification which it is proposed to make, or any condition it is proposed to impose,
- so far as it relates to a function conferred on the interested body by or under an enactment.
- (6) “Interested body” means—
- [F5(a) the Office for Nuclear Regulation,]
  - (b) in relation to a funded decommissioning programme for a site in England and Wales, the Environment Agency, and
  - (c) in relation to a funded decommissioning programme for a site in Northern Ireland, the Department of the Environment for Northern Ireland.
- (7) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the following persons an opportunity to make written representations about the proposed modifications or conditions—
- (a) the site operator;
  - (b) any other person with obligations under the programme;
  - (c) in the case of proposed modifications, any person who would have such obligations were the modifications made.
- (8) The Secretary of State may not reject a programme without informing the site operator of the reasons for doing so.
- (9) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.
- (10) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

#### Textual Amendments

- F2** S. 46(3A)-(3G) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 106(2)**, 121(3)
- F3** S. 46(3H)(3I) inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 149(3)**, 156(2)
- F4** Word in s. 46(4) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 106(3)**, 121(3)
- F5** S. 46(6)(a) substituted (1.4.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(1), **Sch. 12 para. 96**; S.I. 2014/251, art. 4

#### Commencement Information

- I2** S. 46 in force at 6.4.2009 by [S.I. 2009/45](#), **art. 4(b)(i)**

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008, Cross Heading: Funded decommissioning programmes. (See end of Document for details)

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#### **47 Prohibition on use of site in absence of approved programme**

- (1) This section applies where a person is required to submit a programme under section 45 by reason of an application made for a nuclear site licence in respect of a site.
- (2) It is an offence for the person to use or permit another person to use the site, by virtue of the licence, at a time when there is no programme submitted in accordance with that requirement and approved under section 46.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

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#### **Commencement Information**

**I3** S. 47 in force at 6.4.2009 by [S.I. 2009/45](#), [art. 4\(b\)\(i\)](#)

**Changes to legislation:**

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Funded decommissioning programmes.