

# **A Consultation on the Restructuring of the Health and Safety Executive's Nuclear Directorate**



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# Glossary

These terms have the following meanings when used in this consultation document:

<b>Term/Abbreviation</b>	<b>Meaning</b>
Board	The board of the NSC
Conventional health and safety or general health and safety	Health and safety with no specific nuclear element, currently regulated by the Field Operations Directorate of the HSE under HSWA, for example electrical safety, machinery-guarding, work at heights and storage and use of chemicals.
DECC	Department of Energy and Climate Change
DEFRA	Department of Environment, Food and Rural Affairs
DfT	Department for Transport
Duty holders	Any person or company subject to duties under any relevant piece of legislation (e.g. nuclear site operators licensed under the NIA).
DWP	Department for Work and Pensions
CAA	Civil Aviation Authority
EA	Environment Agency
Environment agencies	EA and SEPA
Existing regulators	NII, OCNS, RMTT and TRANSEC
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc. Act 1974
IAEA	International Atomic Energy Agency
IRRs	Ionising Radiations Regulations 1999
LRO	Legislative Reform Order
LRRA	Legislative and Regulatory Reform Act 2006
MCA	Maritime and Coastguard Agency
MoD	Ministry of Defence

ND or Nuclear Directorate	Nuclear Directorate of the HSE, comprising NII, OCNS and UKSO
NIA	Nuclear Installations Act 1965
NII	Nuclear Installations Inspectorate, which is part of the ND
NSC or statutory corporation	Nuclear Statutory Corporation
Nuclear material	In the context of this consultation document, this refers to uranium, plutonium or thorium. Nuclear material is a category of radioactive material (see below).
Nuclear site	A site, subject to regulation by the existing regulators, where activities involving the use of nuclear material are carried out.
Nuclear White Paper	Meeting the Energy Challenge: a White Paper on Nuclear Power, published in January 2008
OCNS	Office for Civil Nuclear Security, which is part of ND
ORR	Office of Rail Regulation
Parliamentary Scrutiny Committees, Parliamentary Committees or Scrutiny Committees	The Delegated Powers and Regulatory Reform Committee in the House of Lords and the Regulatory Reform Committee in the House of Commons.
Radioactive material	In the context of this consultation document, this refers to material which emits ionising radiation. This includes medical isotopes, nuclear material (see above) and other radioactive material used in various industrial applications.
RMTT	Radioactive Materials Transport Team, the part of the Dangerous Goods Division in DfT dealing with the regulation of radioactive materials.
Regulatory functions or the functions	The functions currently carried out by the existing regulators.
Safeguards functions	The functions currently carried out by UKSO in relation to nuclear safeguards (see paragraphs 3.8-3.11).
Safety functions	The functions currently carried out by NII in relation to nuclear safety (see paragraph 3.5).
Security functions	The functions currently carried out by OCNS in relation to nuclear security (see paragraph 3.7).
SEPA	Scottish Environment Protection Agency

Sensitive nuclear material	In the context of this consultation document, this refers to material defined as 'nuclear material' (see above) but excluding material in its natural or depleted forms (e.g. uranium with an isotopic content of 0.72% or less of uranium 235).
Transport functions	The functions currently carried out by RMTT and TRANSEC in relation to the safety and security of the transport of radioactive matter.
TRANSEC	The Transport Security and Contingencies Directorate of the Department for Transport
UKSO	UK Safeguards Office, which is part of ND

## List of Key Documents Referred to in the Consultation Document

Document	Where to obtain a copy
Carriage of Dangerous Goods and use of Transportable Pressure Equipment Regulations 2009 <sup>1</sup>	<a href="http://www.opsi.gov.uk/si/si2009/uksi_20091348_en_1">http://www.opsi.gov.uk/si/si2009/uksi_20091348_en_1</a>
Hampton Principles	<a href="http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/assessing-regulatory-system/page44042.html">http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/assessing-regulatory-system/page44042.html</a>
Health and Safety at Work etc. Act 1974	<a href="http://www.hse.gov.uk/legislation/hswa.pdf">http://www.hse.gov.uk/legislation/hswa.pdf</a> (text current at September 2006)
Legislative and Regulatory Reform Act 2006	HTML version: <a href="http://www.opsi.gov.uk/acts/acts2006/ukpga_20060051_en_1">http://www.opsi.gov.uk/acts/acts2006/ukpga_20060051_en_1</a> PDF version: <a href="http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060051_en.pdf">http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060051_en.pdf</a>
Meeting the energy challenge: a white paper on nuclear power, published in January 2008	<a href="http://www.berr.gov.uk/energy/sources/nuclear/whitepaper/page42765.html">http://www.berr.gov.uk/energy/sources/nuclear/whitepaper/page42765.html</a>
Nuclear Installations Act 1965	<a href="http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1965/cukpga_19650057_en_1">http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1965/cukpga_19650057_en_1</a>
Nuclear Regulatory Review: Summary Recommendations	Summary Recommendations: <a href="http://www.berr.gov.uk/files/file49848.pdf">http://www.berr.gov.uk/files/file49848.pdf</a> Government's response: <a href="http://www.berr.gov.uk/files/file49849.pdf">http://www.berr.gov.uk/files/file49849.pdf</a>
Nuclear Safeguards Act 2000	<a href="http://www.opsi.gov.uk/acts/acts2000/pdf/ukpga_20000005_en.pdf">http://www.opsi.gov.uk/acts/acts2000/pdf/ukpga_20000005_en.pdf</a> (unamended text)
Regulators' compliance code: a statutory code of practice for regulators	<a href="http://www.berr.gov.uk/files/file45019.pdf">http://www.berr.gov.uk/files/file45019.pdf</a>
The Combined Code on Corporate Governance	<a href="http://www.frc.org.uk/corporate/combinedcode.cfm">http://www.frc.org.uk/corporate/combinedcode.cfm</a>

<sup>1</sup> To come into force 1 July 2009.

# List of Consultation Questions

No.	Question	Relevant Chapter
<b>Part A: Questions relating to the Proposals</b>		
(A.1)	Do you agree with the proposal to create a new sector-specific independent nuclear regulator which reports to Ministers and HSE? Please explain your answer.	3
(A.2)	Do you agree with the governance and accountability arrangements set out in Chapter 3 of this consultation document? Please explain your answer.	3
(A.3)	Do you agree with the transfer of DfT's regulatory functions in relation to the transport of radioactive materials? Please explain your answer.	3
(A.4)	Are there any other relevant matters that the Government should consider? If so, please provide details.	3
<b>Part B: Questions relating to the legislative process and the pre-conditions of the Legislative and Regulatory Reform Act 2006</b>		
(B.1)	Are there any alternative non-legislative means that would satisfactorily remedy the difficulties that the proposals in this consultation document intend to address, without the use of a legislative reform order? If so, please provide details.	4
(B.2)	Are the proposals put forward in this consultation document proportionate to the policy objectives? Please explain your answer.	4
(B.3)	Do the proposals put forward in this consultation document taken as a whole provide a fair balance between the public interest and any person adversely affected by them? Please explain your answer.	4
(B.4)	Do the proposals put forward in this consultation document remove any necessary protections? If so, please provide details.	4

No.	Question	Relevant Chapter
(B.5)	Do the proposals put forward in this consultation document prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise? If so, please provide details.	4
(B.6)	Do you consider the provisions of the proposals to be constitutionally significant? If so, please provide details.	4
(B.7)	On the basis of the information provided on each of the LRO procedures in Chapter 5 do you agree with our view that the affirmative procedure should apply to the scrutiny of this proposal? If not, please state your reasons.	5
<b>Part C: Questions arising from the partial Impact Assessment</b>		
(C.1)	Do you consider that the partial impact assessment set out in Annex D provides an accurate assessment of the likely impact, costs and benefits of the proposals?	Annex D
(C.2)	The Government estimates that creating the NSC would result in a maximum increase in fees payable by duty holders of 12-16% in the first year and between 3 and 7% per annum thereafter. The Government would welcome your view on whether or not the estimated increase is justified by the potential benefits of setting up the new body.	Annex D
(C.3)	Please provide any further information that is relevant to the Impact Assessment?	Annex D

Further details about the consultation process are set out in paragraphs 1.21–1.34.

Please send your response by **22 September 2009** to:

- our consultation mailbox: [ndrestructuring@decc.gsi.gov.uk](mailto:ndrestructuring@decc.gsi.gov.uk)
- or by post to:

Thomas Wood  
 The Department of Energy and Climate Change  
 3 Whitehall Place  
 London  
 SW1A 2HD

A response form is included at Annex A.

# Chapter 1: Executive Summary

## Aim of the Consultation

- 1.1** This consultation paper sets out the Government's proposals to improve the organisational framework for the sustained delivery of robust, effective and efficient nuclear regulation in the UK<sup>2</sup> in the context of a rapidly changing global nuclear environment. This consultation document aims to:
- inform stakeholders and the wider public of the proposals for reform and restructuring of some of the existing nuclear regulators;
  - reassure stakeholders and the wider public that the proposals will not change the requirements and standards with which duty holders must comply; and
  - seek responses to the specific questions contained in this consultation document (for full list see pages 6-7) and any other views that consultees wish to make about the proposals.

## Why is Change Needed?

- 1.2** The nuclear industry, in this country and internationally, is changing rapidly and this presents a number of challenges to the UK's<sup>3</sup> nuclear regulators. These challenges include:
- the changing requirements of ageing nuclear power reactors and the generating companies' aim of keeping them producing electricity safely, reliably and economically in order to meet current and anticipated energy demands;
  - the on-going decommissioning and active management of legacy nuclear plants including high-hazard facilities;
  - the assessment of potential new nuclear power stations and their subsequent licensing, construction, operation and decommissioning;

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<sup>2</sup> Paragraph 1.20 sets out how the regulation of nuclear activities and radioactive materials transport applies to England, Wales, Scotland and Northern Ireland.

<sup>3</sup> See footnote [2].

- structural changes in the industry associated with these developments, including greater private sector involvement, competition, increased use of contractors and the entry of new players into the UK market, including from overseas;
- the increasingly competitive global nuclear skills market, which affects the nuclear regulators' ability to recruit the highly-qualified and experienced staff required, which is important given that a significant proportion of the existing inspectors are approaching retirement age; and
- changes in the expectations and interests of society including in the accountability, transparency and efficiency of public sector bodies.

**1.3** The UK's nuclear regulators have a reputation for technical excellence and effectiveness. All the regulators which would be subject to the reforms<sup>4</sup> have implemented, or have ongoing, business improvement programmes aimed at further enhancing efficiency and at providing world-class regulation in a changing national and international environment. The Government also transferred the operations of the Office for Civil Nuclear Security and the UK Safeguards Office to the Health and Safety Executive's Nuclear Directorate (ND) in 2007 to make improvements to the consistency of regulation and reduce regulatory interfaces for duty holders.

**1.4** However, there is now a real prospect of new nuclear power stations being built in the UK, with potential benefits not only for energy security and carbon emissions, but also for UK jobs in manufacturing and construction. This, set alongside the other significant challenges (described above), has led the Government to consider that it is timely and appropriate to legislate and amend the organisational means by which the UK regulates both its current and potential future nuclear facilities. This would be to bring about the business improvements referred to above and other changes more quickly and effectively.

## Summary of the Proposals

**1.5** The changes predominantly affect the Health & Safety Executive's Nuclear Directorate (ND) and two parts of the Department for Transport: the Radioactive Materials Transport Team (RMTT) and the Transport Security and Contingencies Directorate (TRANSEC). All the regulators are widely respected for their high level of technical

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<sup>4</sup> See paragraph 1.8 below.

competence and professionalism<sup>5</sup>. The proposals for reform therefore seek to build on the existing regulatory strengths, whilst creating a modern organisation that is empowered to meet the challenges of the changing nuclear environment; creating a world-class regulator that is widely-acclaimed for its excellence in this new environment.

- 1.6** The Government proposes to enact legislation to create a stronger, more clearly focused regulator with greater autonomy and flexibility to address the changing industrial and societal environment.
- 1.7** The proposals would effect two key changes:
- **the creation of a new sector-specific independent regulator, with a predominantly non-executive board, which reports to: (i) Ministers in respect of its regulatory functions; and (ii) Ministers and the HSE in respect of strategies and business planning; and**
  - **the transfer of the statutory responsibilities for the exercise of transport, security and safeguards<sup>6</sup> functions (described below) from the Secretaries of State for Transport, and Energy and Climate Change to the new regulator.**
- 1.8** The new regulator would be a statutory corporation (referred to as the Nuclear Statutory Corporation or NSC<sup>7</sup>) and would have responsibility for the functions currently carried out by ND and by RMTT, as well as those functions of TRANSEC which relate to the transport of radioactive materials, for example:
- the regulation of the safety and security of nuclear sites (except for security at defence nuclear sites, which would remain with MoD);
  - the regulation of the transport of radioactive materials (including nuclear materials) by road and rail; as well as
  - safeguards functions.
- 1.9** The Chief Inspector will, for the first time, become a position formally provided for in legislation, ensuring that the new body has an authoritative regulatory leader.

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5 For example the IAEA's review in 2006 of the UK regulatory regime noted that the Nuclear Directorate is "a long-established and well-regarded nuclear regulatory agency...", page 11 <http://www.hse.gov.uk/nuclear/regulatoryreview/irrsreducedscope.pdf>. Also, the IAEA's Appraisal for the United Kingdom of the Safety of the Transport of Radioactive Material in 2002 found "the regulatory framework in the UK for the transport of radioactive material is well developed". [www-pub.iaea.org/MTCD/publications/PDF/Pub1143\\_scr.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/Pub1143_scr.pdf)

6 The Secretary of State is responsible for the safeguards and security functions in the relevant legislative provisions, however the functions are carried out by the HSE (through the OCNS and UKSO) on behalf of the Secretary of State under an agreement made pursuant to section 13 of HSWA.

7 The name of the NSC has not been decided at this stage, so for ease of reference within this document is referred to as the Nuclear Statutory Corporation or NSC.

- 1.10** The NSC would have greater organisational and financial freedom than is available to the existing nuclear regulators, whilst remaining accountable to Ministers and HSE (for details of the relationship see Chapter 3).
- 1.11** The NSC would have its own predominantly non-executive board that would be constituted to provide the strong, dynamic and strategic leadership needed to deliver a forward-thinking world-class regulator. The board would set the NSC's business plans and strategies (subject to Ministerial and HSE approval). The NSC board would not be able to take specific or individual regulatory or operational decisions, which in practice would be delegated to the Chief Inspector, who may in turn delegate certain of those operational functions to appropriate NSC staff.
- 1.12** These reforms are designed to lead to improvements in the transparency, accountability and consistency of regulatory activities, thereby seeking to enhance the confidence of all stakeholders, both duty holders and those with wider interests. The reforms would be expected to offer clear and direct benefits to industry and workers as well as society as a whole, which would benefit from efficient and continued robust and effective regulation of nuclear hazards. A more detailed explanation of the benefits of the proposals is set out in paragraphs 3.19-3.40.
- 1.13** The proposed reforms will not reduce the independence of the regulator from both political influence and industry pressure. The new body's board will play a vital role in ensuring the NSC's independence, for example through the adoption of appropriate operating procedures and external interface arrangements (e.g. with industry) at all levels across the organisation. The new body will be more accountable (by reporting both to HSE and to ministers) and more transparent (through the creation of a statutory corporation for this purpose). The proposals will not change the requirements and standards with which duty holders must comply and the new regulator would remain in the public sector.
- 1.14** A partial Impact Assessment (IA) for the specific provisions in this consultation document is included at Annex D. DECC and DWP would welcome your response to the questions about the IA on page 7.
- 1.15** The Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA) would continue to regulate the environmental aspects of nuclear activities (see paragraph 3.17 for explanation).
- 1.16** It is expected that a European Directive setting up a framework for the safety of nuclear installations will be agreed in Brussels shortly. The Directive reflects the current international framework for nuclear safety, in particular requirements in the IAEA Convention on Nuclear Safety, which the UK already complies with. It also gives EU Member States some flexibility in relation to its implementation. The Directive is

aimed, amongst other things, at building and reinforcing the role and independence of national regulators. This aim is consistent with proposals set out in this document.

## Who will be Affected by the Proposals?

- 1.17** This consultation may be of interest to a wide variety of groups, including the duty holders who are currently regulated by ND and the affected parts of DfT, the regulators' employees who will be affected by the restructuring, regulatory partners such as the environment agencies and any other person or group with an interest in the nuclear regulators' governance and structural arrangements.

## How will these Proposals be Taken Forward?

- 1.18** We propose to effect the reforms by means of a Legislative Reform Order (LRO) under section 2 (*Power to promote regulatory principles*) of the Legislative and Regulatory Reform Act 2006 (LRRRA). An LRO is a form of secondary legislation and is scrutinised by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords (see the detail set out in Chapters 4 for an explanation of the powers under the LRRRA to make an LRO). The parliamentary process for LROs is explained in Chapter 5 and Annex B.

## Anticipated Timetable

- |   |                   |
|---|-------------------|
| ● 12 week consultation commences                              | 30 June 2009      |
| ● Close consultation  | 22 September 2009 |
| ● Lay LRO in parliament & Government response to consultation | End 2009          |
| ● LRO to be made (if approved)                                | Spring 2010       |
| ● Nuclear statutory corporation created                       | Autumn 2010       |

## Devolution

- 1.19** The LRRRA imposes certain restrictions regarding LROs and the devolution agreements:
- **Scotland** – A Minister cannot make an LRO under Part 1 of the LRRRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
  - **Northern Ireland** – A Minister cannot make an LRO under Part 1 of the LRRRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
  - **Wales** – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO which is within the legislative competence of the Assembly.
- 1.20** The consultation proposals deal with matters reserved to the UK Parliament in relation to Scotland and Wales (i.e. health and safety including nuclear safety regulation, security and transport regulation and safeguards) and so cover both Scotland and Wales. In Northern Ireland the regulation of health and safety, including nuclear safety, and of the safety and security of radioactive materials transport are the responsibility of the Northern Ireland authorities, although there are no nuclear installations in Northern Ireland. The regulatory functions of the proposed new regulator would therefore extend to Great Britain only, with the exception of nuclear security regulation and safeguards which would extend also to Northern Ireland. Nevertheless, the Government recognises that the Devolved Administrations<sup>8</sup> will have an interest in the proposals and in developing appropriate relationships with the proposed new regulator, once established.

## Consultation

- 1.21** This consultation is being conducted in accordance with the provisions of section 13 of the LRRRA (which requires departments to consult interested parties in relation to LRO proposals) and the Government's Code of Practice on Written Consultations (the criteria of which are set out in Annex C). This consultation document contains the information

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<sup>8</sup>Northern Ireland Assembly, Scottish Parliament, National Assembly for Wales.

recommended by the Better Regulation Executive (BRE) for LRO proposals.

- 1.22** The draft of the Legislative Reform Order (LRO) is not included, but a list of the regulatory functions that would be affected by the proposals is included in Annex E.
- 1.23** If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Marjorie Addo  
Consultation Co-ordinator  
Department of Energy and Climate Change  
Area 7C  
Nobel House  
17 Smith Square  
London  
SW1P 3JR

Email: [consultation.coordinator@decc.gsi.gov.uk](mailto:consultation.coordinator@decc.gsi.gov.uk)

## Responding to the Consultation Document

- 1.24** Comments are invited from all interested parties and not just from those to whom the document has been sent. Please feel free to pass this consultation document to any other interested party. This includes all the questions on which we would welcome your views as well as those specific questions highlighted in the body of the consultation paper.
- 1.25** Please send your response by **22 September 2009** to:

- our consultation mailbox: [ndrestructuring@decc.gsi.gov.uk](mailto:ndrestructuring@decc.gsi.gov.uk)
- or by post to:

Thomas Wood  
The Department of Energy and Climate Change  
3 Whitehall Place  
London  
SW1A 2HD

A response form is included at Annex A.

**1.26** Further copies of this consultation document may be obtained from:

Publications Orderline, ADMAIL 528, London SW1W 8YT  
Tel: 0845-015 0010  
Fax: 0845-015 0020  
Minicom: 0845-015 0030  
[www.berr.gov.uk/publications/reports/](http://www.berr.gov.uk/publications/reports/)

**1.27** An electronic version can be downloaded from DECC's website at:  
[http://decc.gov.uk/en/content/cms/consultations/hse\\_restruct/hse\\_restruct.aspx](http://decc.gov.uk/en/content/cms/consultations/hse_restruct/hse_restruct.aspx)

**1.28** The consultation is scheduled for 12 weeks over the summer. Whilst this covers the holiday period, it was considered important to progress proposals to meet parliamentary timetables. During this time, the Government wishes to discuss the proposals with as many interested parties as possible. Please use the contact details above (paragraph 1.25) to contact the Consultation Team and discuss the possibility of a meeting.

## Next Steps

**1.29** The results of this consultation will be published by DWP and DECC. If appropriate we will revise the proposals set out in this consultation document to take account of those views. We do not intend to conduct a further formal consultation on the revised LRO although we may informally discuss aspects of it with stakeholders before it is laid before Parliament.

## Disclosure

**1.30** Normal practice will be for details of representations received in response to this consultation document to be disclosed, and for respondents to be identified. While the LRRRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LRO. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

**1.31** You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.
- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

**1.32** Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and email messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post-consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form at Annex A.

## Confidentiality and Freedom of Information

**1.33** It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.

**1.34** If we receive a request for disclosure we will take full account of your explanation but we cannot give an assurance that confidentiality will be maintained in all circumstances.

# Chapter 2: Background to the Policy and Legislation at Issue

## Background to the Government Policy

- 2.1** Nuclear power and its associated activities necessarily involve the use of hazardous radioactive materials, and the protection of people's health and of the environment is thus of the highest priority. This has been recognised by successive governments and is embodied in strict UK legislation as well as in international agreements and conventions with which the UK is in full compliance.
- 2.2** The UK's<sup>9</sup> nuclear and radioactive regulatory regime is undertaken by a number of regulators:
- The Nuclear Installations Inspectorate (NII), which is part of the HSE's Nuclear Directorate (ND);
  - The Office for Civil Nuclear Security (OCNS), which is part of the ND;
  - The Radioactive Materials Transport Team (RMTT), which is part of DfT;
  - The Transport Security and Contingencies Directorate (TRANSEC), which is part of DfT;
  - The Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA); and
  - The Office of Rail Regulation (ORR), the Civil Aviation Authority (CAA) and the Maritime and Coastguard Agency (MCA).
- 2.3** HSE also regulates the safety of non-nuclear activities at nuclear sites (for example electrical safety, machinery-guarding, work at heights and storage and use of chemicals). In addition the UK Safeguards Office (UKSO), which is part of the ND, fulfils the international nuclear safeguards-related reporting obligations of the UK Government and oversees the application of international safeguards measures to ensure the UK complies with its obligations not to use civil nuclear material for nuclear explosives purposes.

<sup>9</sup> See paragraph 1.20 sets out how the regulation of nuclear activities and radioactive materials transport applies to England, Wales, Scotland and Northern Ireland.

- 2.4** Change has been an inherent aspect of the UK's nuclear industry: from being largely state owned and operated in the 1950's and 60's, to today where facilities are mainly owned and/or operated by the private sector. Many of today's nuclear facilities will be reaching the end of their generating lifespan within the next 10 to 15 years and greater attention both by operators and the regulators is required to ensure their continued safe operation, decommissioning or clean-up. Increasingly stringent international expectations and standards have brought greater domestic and international interest, not only in safe design and operation of the facilities themselves but also in the organisations that regulate them.
- 2.5** Society has also changed significantly since the 1950s, with increased public interest in safety and the environment, along with demands for greater accountability and transparency of public bodies. The Government also places increased demands on regulators to regulate consistently, effectively and efficiently. Such considerations of regulatory consistency and efficiency led to the transfer of the OCNS and UKSO operations from the Department of Trade and Industry (DTI)<sup>10</sup> to the ND in 2007.
- 2.6** Between the 1980s and the early 21st century there was an international decline in interest in nuclear power. This led to reductions in specialist nuclear training courses, fewer graduates with nuclear expertise and a gradual increase in the average age of the UK's nuclear engineers, scientists, and therefore nuclear inspectors. This, along with the increasingly competitive global skills market, has hindered the implementation of the ND's identified business improvement initiatives (see also paragraphs 1.3 and 1.4).
- 2.7** As a short term solution the Government sanctioned a significant increase in salaries for NII inspectors in 2007 and again in 2008/9. In addition, the ND established a satellite office in London and is preparing to establish one in Cheltenham, both of which are strategic recruitment locations. Although recruitment rates have improved, the Government recognises that a longer term solution needs to be delivered, which will not only address staffing difficulties, but will ensure that the regulators' valuable resources are utilised effectively and efficiently; elements of the proposals set out in Chapter 3 are designed to provide that longer term solution.

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<sup>10</sup> The transfer of the OCNS and UKSO operations was from DTI; since 2008 the Government department responsible for nuclear security and safeguards is DECC.

- 2.8** Developing concern about climate-change and energy security has led the UK, along with many other countries, to identify nuclear power as a form of reliable, low-carbon electricity. Following a public consultation, the Government published the Nuclear White Paper<sup>11</sup> in January 2008 and set out its view that *“it is in the public interest that new nuclear power stations should have a role to play in this country’s future energy mix alongside other low-carbon sources ...”*. The Government believes that nuclear power can contribute to the UK’s objectives on climate change and energy security as well as provide potential benefits to the UK through the creation of a supply chain and create demand for specialist skills (e.g. in manufacturing and construction). An efficient and effective regulatory process is key to achieving this.
- 2.9** When the Government published the Nuclear White Paper in January 2008, it commissioned Dr Tim Stone to review the UK’s nuclear regulatory regime and explore ways of enhancing further its transparency and efficiency, whilst maintaining its effectiveness. This was to ensure it is better able to handle the challenges of new nuclear power stations, alongside those created by ageing existing facilities and the large decommissioning programme. The review focused on the ND as this is where the challenges and resource constraints would be most clearly manifested.
- 2.10** Dr Stone’s review<sup>12</sup> supported the conclusion of an expert review undertaken by the International Atomic Energy Agency (IAEA) in 2006<sup>13</sup>, in which the UK’s nuclear regulatory regime was described as “mature and transparent, with highly-trained and experienced inspectors.” He made a number of recommendations designed to address the ND’s immediate and longer-term needs, and which reflected emerging views within the Government and across the nuclear industry. Those recommendations specifically relevant to the proposals set out in this consultation document include:
- the creation of a governing body; and
  - ensuring the regulator is structured to give it the financial and organisational flexibility needed to meet its business needs on a sustainable basis.

11 <http://www.berr.gov.uk/energy/sources/nuclear/whitepaper/page42765.html>

12 Nuclear Regulatory Review: Summary Recommendations: <http://www.berr.gov.uk/files/file49848.pdf> and the Government’s response: <http://www.berr.gov.uk/files/file49849.pdf>

13 <http://www.hse.gov.uk/nuclear/regulatoryreview/irrsreducedscope.pdf>

**2.11** The Government has considered Dr Stone's recommendations in the context of the background described above. The Government, with the full support of existing regulators, has decided to propose a number of reforms to reinvigorate the organisational arrangements of nuclear regulation. The objective is to ensure that the regulators are better able to adapt to the current and future challenges set out in paragraph 1.2 of this document.

**2.12** Key to these proposals is the establishment of a new sector-specific nuclear regulatory body that would be autonomous but remain within the auspices of the HSE (so as to be better able to benefit from that organisation's extensive regulatory experience). The Government believes that the features of the body described in the table in Chapter 3 would enable it to continue to address its immediate responsibilities and its anticipated ones, in a robust and sustainable way.

# Chapter 3: Structural Reform of the Nuclear Directorate: Details of the Proposal

## The Proposals

### Summary

- 3.1** Section 2 of the LRRRA permits a Minister to make an LRO for the purpose of securing that regulatory activities are carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. It also specifically allows for the creation of a new regulatory body to which functions are transferred by an LRO. The Government is of the view that the proposals set out below would deliver direct improvements to the transparency, accountability and consistency of regulatory activities.
- 3.2** The restructuring would create a statutory corporation (i.e. a body with its own legal personality) within the auspices of the HSE and sponsored by DWP. The name of the new body has not been decided at this stage and so it is referred to as either the NSC or the statutory corporation in this document for ease of reference.
- 3.3** The NSC would carry out the functions of the existing regulators (i.e. NII, OCNS, RMTT and TRANSEC), the functions associated with international safeguards obligations (UKSO) as well as the responsibilities for the regulation of conventional health and safety matters at nuclear sites.
- 3.4** The NSC would be a small, public sector body (although not staffed by Civil Servants) with approximately 240 technical specialists transferring from the existing regulators. It would have an independent, predominantly non-executive board that would report to both Ministers and HSE (see details of the proposed reporting arrangements in Table 3.15 below). This arrangement would minimise the regulatory interfaces for nuclear industry duty holders and the continued relationship with HSE would ensure that the NSC's approach to nuclear and conventional health and safety remains consistent with HSE's approach to conventional health and safety.

## The Affected Regulatory Functions

- 3.5 Safety functions: NII** (part of the HSE's ND) is the nuclear safety regulator for the civil and defence related nuclear sites in Great Britain. Nuclear sites are subject to the Nuclear Installations Act 1965 (as amended), and the Chief Inspector of Nuclear Installations grants nuclear site licences (on behalf of HSE) and attaches conditions to them covering safety and radioactive waste management requirements. The NII inspects sites to ensure compliance of license conditions and takes enforcement action where appropriate. NII also publishes standards against which it judges the adequacy of the industry's arrangements for ensuring the safety of a wide range of licensed nuclear facilities. To ensure that both license holders and the NII have the scientific and engineering knowledge to make judgments about the adequacy of safety measures, ND also oversees research into nuclear safety issues on behalf of HSE and the Secretary of State for Energy and Climate Change, recovering any costs for this from industry.
- 3.6** Crown (i.e. MoD-controlled) nuclear sites, are exempt from the licensing requirements of the NIA.<sup>14</sup> Working alongside the Defence Nuclear Safety Regulator (DNSR), NII has an enforcement role at those sites, under the provisions of HSWA and associated regulations.
- 3.7 Security functions: OCNS** (part of the HSE's ND) is the security regulator for the UK's civil nuclear industry, including both on site and the security of sensitive nuclear material (see Glossary page 4) in transit, and it exercises those functions on behalf of the Secretary of State. It is responsible for approving security arrangements within the industry and enforcing compliance. It also undertakes security vetting of nuclear industry personnel with access to sensitive nuclear material or information. The Government policy development associated with nuclear security functions is undertaken by DECC.
- 3.8 Safeguards functions: UKSO** (part of the HSE's ND) fulfils international nuclear safeguards-related reporting obligations of the UK Government and oversees the application of international safeguards measures in the UK to ensure compliance with its international safeguards obligations not to use civil nuclear materials for nuclear explosives purposes. The Government policy development associated with nuclear safeguards is undertaken by DECC.
- 3.9** The Euratom Treaty gives the European Commission competence in safeguards, making it the primary safeguards regulator in the UK. UKSO relies on legislative powers held by the Secretary of State, including safeguards-specific regulations, to access safeguards-related

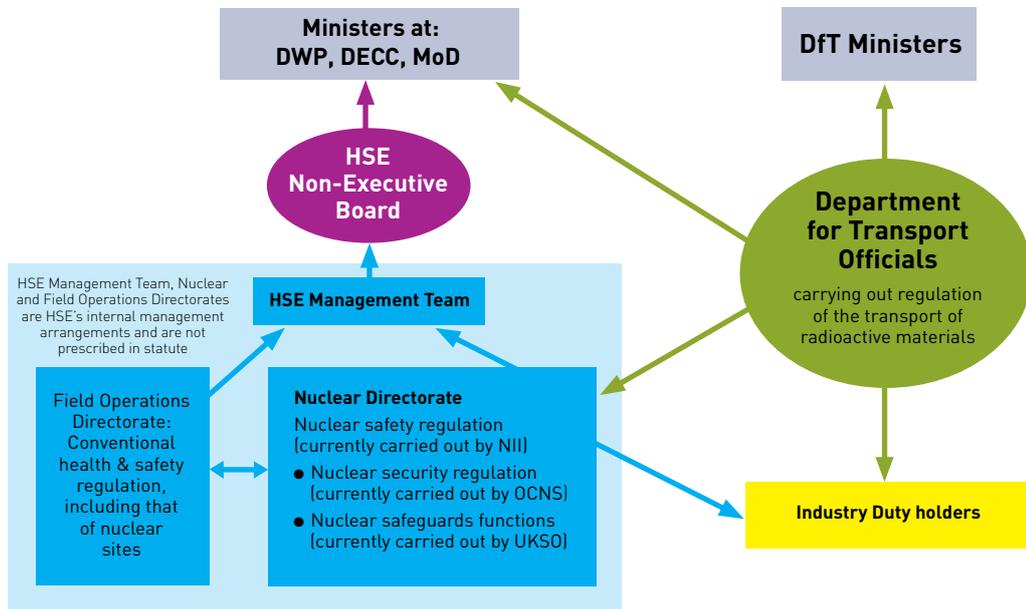
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<sup>14</sup> DNSR is an MOD body which oversees, on behalf of the Secretary of State for Defence, the safety of activities where there are exemptions from legislation, ensuring as far as practical, the achievement of levels of safety at least as good as statute.

information and associated locations. In this capacity, UKSO provides a regulatory interface between UK industry and the IAEA and European Commission nuclear safeguards inspectorates.

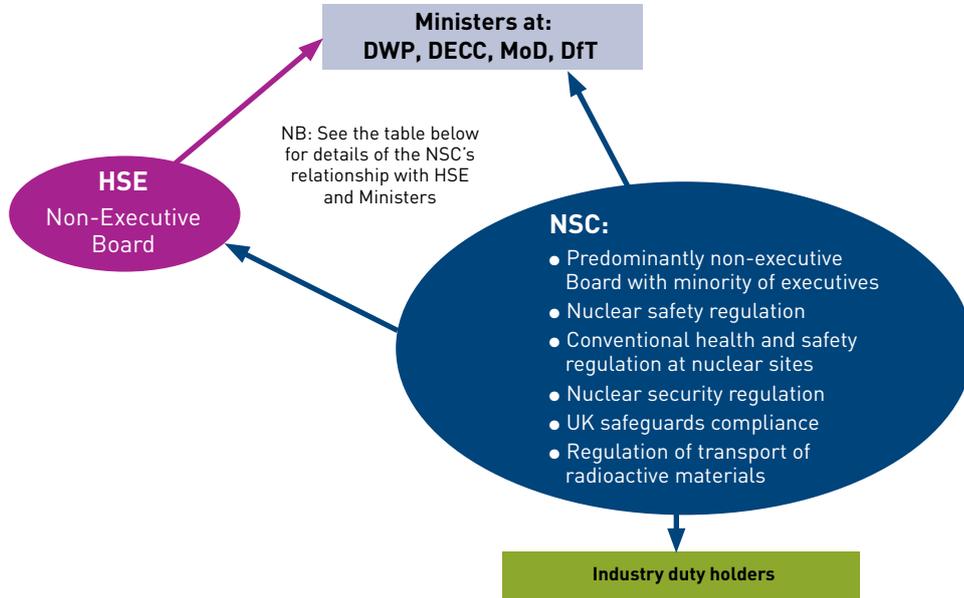
- 3.10 As a result of its expertise in these areas, UKSO provides invaluable advice and assistance to the Government on related matters, including in international forums.
- 3.11 The safety, security and safeguards functions relate only to nuclear material, a category of radioactive material (see Glossary page 2).
- 3.12 **The transport functions: RMTT** (part of DfT) is the regulator for the safety of the transport of radioactive material (including nuclear material) by road and rail. **TRANSEC** (also part of DfT) is the regulator for the security of the transport of non-nuclear radioactive material by road and rail. Together these functions are referred to as 'the transport functions.' Regulation of the security of sensitive nuclear materials in transit by road and rail throughout the United Kingdom and worldwide when carried on UK-flagged vessels, is carried out by OCNS.
- 3.13 Diagram showing existing regulatory structure

**Existing regulatory structure**



3.14 Diagram showing proposed regulatory structure

**Proposed regulatory structure**



3.15 The table below compares the current arrangements and the proposals.

CURRENT SITUATION	PROPOSAL
<b>The Functions in practice</b>	
Set out in paragraphs 3.5 – 3.14 above.	<p>The NSC would carry out the safety, security, safeguards and transport functions currently carried out by NII, OCNS, UKSO and DfT respectively.</p> <p>The creation of the NSC would result in an organisational restructuring only. The proposals would not change the requirements and standards with which duty holders must comply.</p>
<p><b>Conventional Health and Safety:</b></p> <p>Conventional health and safety at nuclear sites is regulated by other divisions of the HSE.</p>	<p><b>Conventional Health and Safety:</b></p> <p>The NSC would also regulate conventional health and safety at nuclear sites, but would work with HSE to ensure that conventional health and safety is developed consistently at both nuclear and at non-nuclear sites.</p>

CURRENT SITUATION	PROPOSAL
<p><b>Environmental impacts:</b></p> <p>The environment agencies regulate the environmental aspects of nuclear activities.</p>	<p><b>Environmental impacts:</b></p> <p>The environment agencies would continue to regulate the environmental aspects of nuclear activities (for explanation, see paragraph 3.17 below).</p>
<p><b>Other regulators:</b></p> <p>Although the main regulatory interactions are those listed above, some duty holders may also have to deal with other regulatory bodies (e.g. the Maritime and Coastguard Agency, the Office of Rail Regulation or the Civil Aviation Authority) but this interaction is minimal for nuclear site licensees.</p>	<p><b>Other regulators:</b></p> <p>Duty holders interactions with regulators that are not subject to the proposals, would remain unchanged.</p>
The Legal Position	
<p><b>General:</b></p> <p>ND and its component parts (NII, OCNS and UKSO), are part of HSE, which is a statutory body, at arm’s length from central Government and duty holders and it has a broad portfolio of regulatory responsibilities. HSE exists in law, but the ND and its parts have no legal identity and represent only organisational sub-divisions within HSE. However reputational goodwill is attached to the names of NII, OCNS and UKSO.</p>	<p><b>General:</b></p> <p>The NSC would be a new sector-specific independent regulator, at arm’s length from central Government and the duty holders. It would be a public sector body, although not part of the Civil Service and its employees would not be Civil Servants. It would have its own legal personality separate from the HSE although it would report to HSE in some situations (see below).</p>

CURRENT SITUATION	PROPOSAL
<p>HSE appoints inspectors to carry out many of its statutory functions, particularly those relating to enforcement. Individual inspectors carry warrants to show they have been appointed and which statutory powers they are entitled to exercise.</p> <p>Since HSE and the Secretary of State discharge the relevant functions on behalf of the Crown they benefit from Crown immunity from criminal prosecution (namely the principle that the Crown is immune from legal proceedings brought against it save where the law provides otherwise).</p>	<p>The NSC would appoint inspectors to carry out many of its statutory functions, particularly those relating to enforcement. Individual inspectors would be issued with warrants to show they have been appointed and which statutory powers they are entitled to exercise.</p> <p>Given that it will not discharge the functions on behalf of the Crown (hence its employees will not be Civil Servants), the Government will work to ensure that a similar form of immunity from criminal prosecution applies to the functions and the relevant persons that are transferred to NSC.</p>
<p><b>Safety:</b></p> <p>HSE is named as the regulator responsible for the nuclear safety functions as well as conventional health and safety at nuclear sites, in the relevant pieces of legislation. In practice HSE carries out these activities through NII.</p>	<p><b>Safety:</b></p> <p>The NSC would be named in legislation as the body responsible for the nuclear safety functions. It would also be named in legislation as the body responsible for regulating conventional health and safety matters at nuclear sites. These functions may be encompassed within one general duty in relation to safety on nuclear sites.</p>

CURRENT SITUATION	PROPOSAL
<p><b>Security &amp; Safeguards:</b></p> <p>The Secretary of State delegates the security and safeguards functions to the HSE (as a legal entity) by an agreement made under section 13 of HSWA. In practice HSE carries out these functions through OCNS and UKSO.</p>	<p><b>Security &amp; Safeguards:</b></p> <p>The NSC would be named in legislation as the body responsible for security and safeguards in the UK, and would have the necessary legislative and administrative powers and duties to undertake these functions and ensure compliance with the UK's international security and safeguards obligations.</p> <p>The security functions carried out by the NSC may have significant national security implications. The Secretary of State may have access to, for example, information that the NSC does not. It may therefore be necessary for the Secretary of State to retain a power to direct the NSC or duty holders in individual cases, though not in the normal course of fulfilment of those security functions. Therefore some security functions may be shared by the Secretary of State and the NSC.</p> <p>If both the NSC and the Secretary of State hold overlapping statutory functions, a Memorandum of Understanding would set out the circumstances in which the Secretary of State would expect to use these functions.</p>

CURRENT SITUATION	PROPOSAL
<p><b>Transport:</b></p> <p>The Secretary of State for Transport is the competent authority for the transport functions. In practice, the transport functions are carried out by inspectors within the RMTT and TRANSEC. DfT is a central Government department headed by a Minister.</p> <p>The Secretary of State for Energy and Climate Change is responsible for the security of the transport of civil nuclear materials. In practice this is carried out by HSE by an agreement made under section 13 of HSWA. HSE carries out the functions through OCNS.</p> <p>The competent authorities for air and sea transport are the Civil Aviation Authority (CAA) and the Maritime and Coastguard Agency (MCA) respectively. RMTT advises both the CAA and MCA on matters relating to the safe transport of radioactive materials by sea and air.</p> <p>Secretary of State for Defence is responsible for the transport of radioactive materials in relation to defence activities.</p> <p>The roadside inspection of vehicles that may be carrying radioactive material is undertaken by the police.</p>	<p><b>Transport:</b></p> <p>The NSC would be named as the competent authority, with legislative responsibility for the transport functions relating to radioactive and civil nuclear materials.</p> <p>Bringing the safety functions of the NII together with those of RMTT, and the transport security functions of TRANSEC together with those of OCNS would allow for the exploitation of synergies between these functions.</p> <p>The NSC would take over the role of advising MCA and CAA, currently carried out by RMTT.</p> <p>The roadside inspection of vehicles that may be carrying radioactive material will continue to be undertaken by the police</p>

CURRENT SITUATION	PROPOSAL
<p><b>Regulations:</b></p> <p>HSE, through ND, recommends amendments to existing regulations or new regulations in relation to nuclear safety, security and safeguards to DECC Ministers. DECC Ministers then present proposed regulations to Parliament for scrutiny.</p> <p>DfT Ministers lay amendments or new regulations relating to the transport functions before Parliament.</p> <p>DECC Ministers lay amendments or new regulations relating to the secure transport of sensitive nuclear materials before Parliament.</p>	<p><b>Regulations:</b></p> <p>The HSE would continue to recommend to DECC Ministers amendments to or new regulations relating to nuclear safety. The NSC would have the power to recommend such regulations to HSE. This will ensure that HSE is able to maintain consistency of health and safety regulation.</p> <p>The NSC would recommend to DECC Ministers, amendments to or new regulations relating to security and safeguards subject to consultation with HSE.</p> <p>The NSC would recommend to DfT Ministers, amendments to or new regulations relating to the transport functions.</p> <p>The NSC would recommend regulations on charging and fees to DWP Ministers</p> <p>In all cases the relevant Ministers would be responsible for deciding whether or not to lay the amendments or new regulations and where the Ministers were in favour of the recommendation they would then present the regulations to Parliament for scrutiny.</p>

CURRENT SITUATION	PROPOSAL
<b>Division of Responsibilities between regulators and Government departments</b>	
<p><b>Policy and advice to Ministers and Government departments:</b></p> <p>DECC carries out policy functions relating to UK compliance with international obligations in relation to nuclear safety, and ND provides support to DECC in this regard. ND is responsible for policy for the operational aspects of nuclear safety, but DECC is responsible for all policy relating to nuclear security and safeguards.</p> <p>ND, on behalf of HSE, has a duty to advise central Government in relation to nuclear safety, security and safeguards. ND works closely with departmental officials to provide appropriate regulatory inputs to wider Government decision-making. On occasion the HSE board may provide a formal response to specific requests for advice from Ministers.</p> <p>DfT carries out policy and operational functions relating to the UK's compliance with international obligations for the safety of the transport of nuclear and radioactive materials and the secure transport of radioactive materials.</p>	<p><b>Policy and advice to Ministers and Government departments:</b></p> <p>The NSC would work closely with departmental officials, including within DECC and DfT, to provide appropriate specialist advice and regulatory inputs to wider Government decision-making. The duty to advise Ministers would be detailed within the LRO, and this relationship may be laid out in further detail under framework agreements and memoranda of understanding between the NSC and central Government departments.</p> <p>The NSC would take on the policy functions currently carried out by ND on behalf of HSE and DECC would retain its existing policy functions. The transfer of RMTT and TRANSEC would mean redefining DfT's policy functions. It is anticipated that DfT would retain responsibility for the integration and cohesion of the radioactive and nuclear transport functions with the regulation of the carriage of dangerous goods as a whole.</p>

<b>CURRENT SITUATION</b>	<b>PROPOSAL</b>
<p><b>Ministerial and Government department responsibilities:</b></p> <p>The Secretary of State for Work and Pensions is responsible to Parliament for securing the health and safety of work activities in Great Britain (except nuclear safety) and the management of the activities of HSE. The HSE board reports to DWP’s Ministers on these matters.</p> <p>The Secretary of State for Energy and Climate Change is responsible to Parliament for nuclear safety and security of civil nuclear sites, the security of the transport of nuclear materials, as well as ensuring that the UK and the regulated bodies comply with international requirements for nuclear safety, security and safeguards. Similar arrangements exist for defence nuclear sites through MoD Ministers. The Secretary of State for Defence is responsible to Parliament for nuclear safety and security at defence related nuclear sites.</p> <p>The Secretary of State for Transport is responsible to Parliament for the safety and security of radioactive materials during their transportation.</p> <p>The Ministers are able to discharge these responsibilities through the regulators and by holding them to account for the performance of the regulatory functions.</p>	<p><b>Ministerial and Government department responsibilities:</b></p> <p>DWP Ministers would be responsible for overseeing the accounting and financial functions of the NSC (see below).</p> <p>The Secretaries of State for Energy and Climate Change, Defence, and Transport would retain their respective responsibilities to Parliament.</p> <p>The Ministers would be able to discharge these responsibilities through the new regulator and by holding it to account for the performance of the regulatory functions. Accountability of NSC to Ministers is explained below.</p>

CURRENT SITUATION	PROPOSAL
<b>Governance and Accountability</b>	
<p><b>General:</b></p> <p>ND is part of the HSE. Its finances and operations are managed as part of the wider HSE's finances and operations, which are scrutinised and overseen by DWP, the HSE's sponsor department. Similarly, RMTT and TRANSEC are part of DfT (a central Government department).</p>	<p><b>General:</b></p> <p>Given its continued relationship with the HSE (which is sponsored by DWP), DWP would be the sponsor department of the NSC.</p> <p>The NSC would have greater financial and operational flexibility to manage its business needs on an on-going and sustainable basis, for example it would be able to establish its own specifically-designed operating practices and have freedom to spend its income in accordance with its business plan (see Financial Arrangements section of table below).</p>
<p><b>The HSE board:</b></p> <p>ND does not have its own board. HSE has a non-executive board which is responsible to Ministers for the performance of all of its functions, including those carried out by the Nuclear Directorate.</p>	<p><b>The NSC board:</b></p> <p>One of the key changes under the proposals is that the NSC would have its own dedicated, largely non-executive board. It would be independent, predominantly non-executive and small and flexible in size (with a maximum of 8 non-executive members and a maximum of 5 executives, including the Chief Inspector).</p> <p>The board will be responsible for the non-regulatory aspects of the NCS, including strategic and annual business planning, reporting, staffing and resources, and for reporting on these matters to HSE and Ministers.</p> <p>The board will be able to appoint executives to it, but the majority of its members must be non-executive positions.</p> <p><b>Non-executives:</b></p> <p>The Chair of the NSC board would also sit on the HSE board to ensure consistency of health and safety regulation. The Chair would be appointed by DWP Ministers, in consultation with DECC and DfT Ministers.</p>

CURRENT SITUATION	PROPOSAL
	<p>The other non-executive appointments would be made by HSE. HSE would chair an appointments panel, which would include representatives from interested departments where appropriate (e.g. DWP, DECC and DfT). In addition to the Chair, one of the non-executives could, if the HSE chose, be appointed from the HSE board.</p> <p>Some NSC board members would need to have an understanding of the interests of employers, employees and wider public interests and bodies representative of these groups should be consulted on the nominations for these non-executive posts. A member with financial experience would also be appointed.</p> <p>Given the key role the board has to play, the Government would seek to attract high-calibre individuals from a variety of backgrounds and areas of expertise to fill board positions. However, the board would be expected to act collectively, solely in the interests of the NSC and its functions and not to use their position to act on behalf of other bodies, special interest groups or boards.</p> <p>All the non-executive appointments made by the HSE would be subject to Ministerial approval and made in accordance with the Code of Practice for Ministerial Appointments to Public Bodies, published by the Commissioner for Public Appointments. DWP Ministers would give such approval, having consulted with DECC and DfT Ministers.</p> <p>Remuneration of the non-executive board members would be approved by Ministers.</p>

<b>CURRENT SITUATION</b>	<b>PROPOSAL</b>
<p><b>Regulatory head:</b></p> <p>The HSE board does not take specific or individual regulatory or operational decisions and delegates such decisions to its staff.</p> <p>In practice the functions of granting a nuclear site licence, attaching and enforcing conditions are delegated to the Chief Inspector. The Chief Inspector in turn delegates those operational functions to ND staff, as appropriate.</p> <p>Although the appointment of the Chief Inspector (made by the HSE board) is not set out in statute it is widely recognised as an important and influential position occupied by a person with all the competencies necessary to act as the single authoritative competent head of the nuclear safety regulatory function within HSE. DECC and DWP Ministers are consulted in this process.</p>	<p><b>Regulatory head:</b></p> <p>The position of Chief Inspector will become a statutory office for the first time.</p> <p>The NSC board would not be able to take specific or individual regulatory or operational decisions (e.g. granting licenses or taking enforcement action). These decisions would be delegated to the Chief Inspector who may in turn delegate certain of those operational functions to appropriate NSC staff.</p> <p>The Chief Inspector will be appointed to sit on the NSC board, as an executive. The NSC board will make this appointment, subject to Ministerial consent.</p>
<p><b>Reporting in relation to the regulatory functions:</b></p> <p>The HSE board reports informally to DECC and MoD ministers for the nuclear regulatory functions and the Chief Inspector reports on an informal basis to DECC and MoD's Ministers on the regulation of the nuclear industry and its safety.</p>	<p><b>Reporting in relation to the regulatory functions:</b></p> <p>The NSC and the Chief Inspector would report to the same Ministers in respect of the discharge of the functions, but as is currently the case, independence in regulatory decision-making will be maintained because Ministers will not be able to influence individual regulatory decisions in respect of safety matters.</p>

CURRENT SITUATION	PROPOSAL
<p><b>Strategy and annual business plan:</b></p> <p>The ND produces an annual strategy and business plan which is published on the HSE website. The ND does not produce separate annual reports, but contributes to the HSE annual report.</p>	<p><b>Strategy and annual business plan:</b></p> <p>The NSC would produce a long-term strategy and an annual business plan which would be approved by Ministers and HSE. NSC would report to Ministers and HSE on its performance against the objectives set out in those documents in quarterly and annual reports, which would be published.</p> <p>HSE’s oversight would ensure it can share its experience as a regulator of high-hazard industries and that the NSC’s application of general health and safety principles is consistent with HSE’s approach on non-nuclear sites.</p> <p>The strategy would be prepared following appropriate consultation and stakeholder engagement.</p>
<p><b>Power of direction:</b></p> <p>Ministers currently have the power to direct the HSE although not in relation to individual regulatory decisions. This is to ensure, for example, that Ministers are able to comply with their international duties in relation to nuclear safety and security.</p> <p>So far as it is known, Ministers have never exercised this power.</p>	<p><b>Power of direction:</b></p> <p>Ministers would have the same power to direct the NSC as they currently do for HSE, and for the same reasons.</p> <p>The Secretary of State will not have the power to direct the NSC to act in regard to individual enforcement decisions.</p> <p>HSE would also have a power to direct the NSC, but only in respect of the strategy and annual business plan and conventional health and safety. This is to ensure that NSC’s approach to health and safety is consistent with HSE’s, whilst ensuring that NSC has sufficient flexibility to determine how best to deliver its strategy and business plan.</p> <p>It is not anticipated that Ministers or the HSE would exercise the power of direction routinely or on a day-to-day basis.</p>

CURRENT SITUATION	PROPOSAL
<p><b>Governance standards:</b></p> <p>The HSE is required to have regard to the principles of good regulation and the Regulators' Compliance Code: a Statutory Code of Practice for Regulators<sup>14</sup>, except in respect of OCNS, whose functions are exempted under the Nuclear Industries Security Regulations 2007<sup>15</sup>.</p>	<p><b>Governance standards:</b></p> <p>The NSC will be required to have regard to the principles of good regulation and the Regulators' Compliance Code: a Statutory Code of Practice for Regulators<sup>16</sup>, except in respect of the OCNS functions, which would continue to be covered by an exemption for national security reasons. The NSC will also be required to comply with the Combined Code on Corporate Governance<sup>17</sup> so far as it is appropriate in the circumstances of the NSC, for a statutory corporation to do so.</p>
Financial Arrangements	
<p><b>General:</b></p> <p>ND operates as one of a number of business units within HSE and its finances are consolidated within HSE's. The majority of HSE's budget is provided by a grant from DWP, although the majority of ND's budget is recovered from duty holders. HSE is part of the Civil Service and as such is required to comply with guidelines on public expenditure.</p> <p>The transport functions are incorporated into DfT's central financial arrangements.</p> <p>HSE is a Crown body and the Crown is considered to be large enough to cover its financial risks, without needing to take out insurance.</p>	<p><b>General:</b></p> <p>The NSC would be a public sector, arm's length body. It would not be part of the Civil Service. It would have increased freedom to set its own budgets and make use of its resources without the need to obtain Departmental approval (except in relation to the part of the budget that is provided by a grant from DWP).</p> <p>The Framework Agreement that would be entered into between DWP and the NSC would require it to spend its revenue in accordance with its strategy and annual business plans (which would be subject to Ministerial and HSE approval). It would also be required to follow Governmental financial guidelines.</p> <p>Freedom over its expenditure is not intended to give the NSC unlimited powers to raise charges on industry – see boxes below on scrutiny of finances.</p> <p>The NSC would not be a Crown body. Consideration would need to be given to how it insures itself against financial risks (e.g. by taking out commercial insurance or being indemnified by the Crown).</p>

15 <http://www.berr.gov.uk/files/file45019.pdf>

16 Legislative and Regulatory Reform (Regulatory Functions Order) 2007.

17 <http://www.berr.gov.uk/files/file45019.pdf>

18 <http://www.frc.org.uk/CORPORATE/COMBINEDCODE.CFM>

CURRENT SITUATION	PROPOSAL
<p><b>Funding</b></p> <p>The ND currently recovers almost 98% of its costs from industry, with the remainder being supplied by a grant from the sponsor department, DWP. DfT does not recover its costs from duty holders, with all of its costs being funded from DfT's budget allocation.</p> <p>ND's costs are recovered under the provisions of section 24A of the Nuclear Installations Act 1965 and various other fees regulations<sup>19</sup>. These pieces of legislation do not specify fees, but enable ND to recover expenses actually incurred, which must be reasonable. Rates are reviewed, usually quarterly, in line with HSE's published charging policy.</p>	<p><b>Funding</b></p> <p>The funding arrangements will remain the same in the short term, with the NSC recovering most, but not all, of its costs from duty holders. There is the possibility that the NSC would seek to recover more of its costs from duty holders in the future.</p> <p>There is no intention for any immediate change to the present cost recovery arrangements to include transport duty holders, but options for extending the scope of cost recovery would be considered by the NSC after its establishment.</p> <p>Any future proposal to change the scope of activities for which the NSC could recover its costs would be subject to a separate consultation with the appropriate interested parties and subject to Ministerial approval and is not connected to the proposal to create the NSC.</p> <p>NSC would recover its costs under the same provisions that ND recovers its costs currently. These provisions would restrict future charging increases to the costs actually incurred, which would have to be reasonable. Nevertheless, charges are likely to be higher than if the NSC is not created because the NSC would have higher running costs (e.g. to fund a board and extra support functions – see the partial impact assessment at Annex D). It would also be able to set its own remuneration conditions for its inspectors, which can be expected to exceed Civil Service levels. Such remuneration conditions would be vital to ensure the NSC remains able to recruit and retain a full complement of staff in a competitive market and would help to deliver regulatory efficiencies, for example through speedier decision-making.</p>

<sup>19</sup> e.g. Nuclear Industries Security (Fees) Regulations 2005

## CURRENT SITUATION

### Scrutiny of budgets and accounts:

ND's budgets are managed as part of HSE's and its spend and income is consolidated within HSE's aggregate position.

ND produces a Memorandum Trading Account which shows expenditure and income for the year. This high level summary is shown in a note to HSE's annual accounts.

HSE's accounts (including ND's) are audited by the National Audit Office (NAO).

## PROPOSAL

### Scrutiny of budgets and accounts:

A board member would be appointed with financial experience.

The NSC would have its own budgets and financial controls as well as produce its own annual report and accounts, enabling the public and duty holders to have access to more detailed information on the finances of nuclear regulation, therefore creating greater transparency.

The NSC would have additional flexibility such as the power to borrow (subject to certain conditions such as demonstrating value for money) and the ability to fund projects in support of delivering its business plan.

The accounts will be audited by the NAO or an external auditor appointed by the Comptroller and Auditor General (C&AG) and the audited statement of accounts will be laid in Parliament.

## Reliability of income from small number of duty holders

As is currently the case for ND, the NSC would recover most of its costs from a small number of large duty holders. The NSC's income could be significantly reduced should a major duty holder experience financial difficulties. In this situation the Government would ensure that the NSC had sufficient resources to discharge its functions, thereby also ensuring that Government complies with its international duties to ensure that the regulator is adequately resourced.

CURRENT SITUATION	PROPOSAL
<b>Staff</b>	
<p>HSE employees are Civil Servants. Those working for ND are employed under HSE's terms and conditions. Similarly, DfT is part of the Civil Service and those working for RMTT and TRANSEC are employed on DfT's terms and conditions.</p>	<p>The NSC would be a public sector body, although would not be part of the Civil Service, meaning its staff would not be Civil Servants. This would give the NSC freedom to set its remuneration conditions more competitively in the context of an increasingly global competitive nuclear skills market. Some non-specialist staff may remain employees of HSE and be seconded to NSC for a fixed period, rather than formally transferred. Staff and unions will be an integral part of any transition process and would be fully consulted.</p>
<b>Location</b>	
<p>ND is principally based at HSE's headquarters in Bootle, with most OCNS staff based at Harwell in Oxfordshire. ND also has a satellite office in London and is in the process of establishing a satellite office in Cheltenham.</p>	<p>NSC would operate from ND's current locations.</p>

CURRENT SITUATION	PROPOSAL
<b>Geographical Extent</b>	
<p>The consultation proposals deal with matters reserved to Westminster in relation to Scotland and Wales (i.e. health and safety including nuclear safety regulation, security and transport regulation and safeguards) and so cover both Scotland and Wales. In Northern Ireland the regulation of health and safety, including nuclear safety, and the regulation of the security of non-nuclear radioactive material transport are the responsibility of the Northern Ireland authorities. There are no nuclear installations in Northern Ireland. The regulatory functions of the proposed new regulator would therefore extend to Great Britain only, with the exception of nuclear security regulation and safeguards which would extend also to Northern Ireland. Nevertheless, the Government recognises that the Devolved Administrations will have an interest in the proposals and in developing appropriate relationships with the proposed new regulator, once established.</p>	<p>The situation would remain the same.</p>

**3.16** There are a number of Ministers, central Government departments and regulators who would have an interest in the activities of the NSC including the Department for Work and Pensions (DWP) which would be the NSC's sponsor department, the Department of Energy and Climate Change (DECC), the Department for Transport (DfT), the Ministry of Defence (MoD), the Scottish Executive, the Welsh Assembly Government, HSE, the Environment Agency, the Scottish Environment Protection Agency and the Department of Environment, Food and Rural Affairs (DEFRA). There is currently, and would continue to be, a natural overlap between some departmental activities and interests and those parties would enter into administrative agreements (e.g. a memorandum of understanding or framework agreement)<sup>20</sup>, which would be made public, to clarify and govern their relationship. The NSC would be expected to liaise and co-operate with these bodies as the ND currently does.

### Out of Scope

**3.17** The Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA) will continue to regulate the environmental aspects of nuclear activities. EA and SEPA nuclear functions are closely integrated with non-nuclear radioactive substances work and also form part of wider environmental regulation which is devolved in relation to Scotland. Additionally, in England and Wales the radioactive substances legislation is being integrated with wider environmental permitting arrangements. The ND, EA and SEPA currently have a close working relationship on nuclear regulation. This is exemplified in the Joint Programme Office that ND and EA established for handling generic design assessment<sup>21</sup> of new nuclear reactors. These arrangements are proving to be efficient and effective and the same approach is being put in place to deal with site specific applications for new nuclear power stations. The nuclear regulators will look at ways of replicating this close working in other areas of their regulatory business.

**3.18** The transfer of DfT regulatory functions to the NSC will not affect the current regulatory functions of the Maritime and Coastguard Agency, Civil Aviation Authority or Office of Rail Regulation.

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<sup>20</sup> Framework agreements and memoranda of understanding are frequently agreed between sponsoring departments and regulators setting out the high level principles which govern their relationship and administrative arrangements to enable them to interact effectively: Memoranda of understanding are also often agreed between regulators dealing with the performance of their regulatory functions where they have overlapping or related responsibilities. Such documents are not generally binding in law on either party but are a useful administrative document to assist officials to handle issues as they arise.

<sup>21</sup> Generic Design Assessment (GDA) is a pre-licensing process undertaken by the ND and EA to improve clarity and certainty in the regulatory process for a fleet of reactors of the same design. GDA does not consider site specific issues. For more information on GDA go to <http://www.hse.gov.uk/newreactors/index.htm>.

## Anticipated Benefits of Key Aspects of the Restructuring

- 3.19** The Government is satisfied that the existing regulators are widely respected for their high technical competence and professionalism<sup>22</sup>. The proposals for reform therefore seek to build on the existing regulatory strengths, whilst establishing a modern organisation that is empowered to meet the challenges of the changing nuclear environment; creating a world-class regulator that is widely acclaimed for its excellence in this new environment.
- 3.20** The proposals would effect two key changes to nuclear regulation:
- **the creation of a new sector-specific independent regulator (the NSC), with a pre-dominantly non-executive board, which reports to: (i) Ministers in respect of its regulatory functions; and (ii) Ministers and the HSE in respect of strategies and business planning; and**
  - **the transfer of the statutory responsibilities for the exercise of transport, security and safeguards<sup>23</sup> functions (described above) from the Secretaries of State for Transport and Energy and Climate Change to the NSC.**
- 3.21** These reforms are designed to lead to improvements in the transparency, accountability and consistency of regulatory activities that would be discharged by the NSC, (as illustrated in below) satisfying the principal legal tests set out in section 2 of the LRRRA (the other legal tests set out in the LRRRA are discussed in Chapter 4). The Legislative and Regulatory Reform Act (2006) specifically allows for the creation of a new regulatory body to which functions are transferred and in creating this power<sup>24</sup>.
- 3.22** By delivering these improvements, the proposals seek to enhance the confidence of all stakeholders, both duty holders and those with wider interests. The reforms would be expected to offer clear and direct benefits to industry and workers as well as society as a whole, which would benefit from efficient and continued robust and effective regulation of nuclear hazards.

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<sup>22</sup> For example the International Atomic Energy Agency review in 2006 of the UK regulatory regime noted that the Nuclear Directorate is “a long-established and well-regarded nuclear regulatory agency...”, page 11 <http://www.hse.gov.uk/nuclear/regulatoryreview/irrsreducedscope.pdf>

<sup>23</sup> The Secretary of State is responsible for the safeguards and security functions in the relevant legislative provisions, however the functions are carried out by the HSE (through the OCNS and UKSO) on behalf of the Secretary of State under an agreement made pursuant to section 13 of HSWA.

<sup>24</sup> Section 2(4)(c) and 2(5)(a) of the LRRRA.

## Creation of a New Sector-Specific Independent Regulator with an Independent Board

- 3.23** The reforms would create a more focused nuclear regulator with the autonomy and flexibility to address changes in the nuclear industry and society more generally, raising the profile of nuclear regulation. The regulator's focus would be narrowed from a wide health and safety remit, to a sector-specific focus (radioactive and nuclear regulation). The objective is that both duty holders and the wider public should see improvements in the accountability of the regulator as well as greater clarity and transparency as to which regulator is responsible and how decisions are arrived at.
- 3.24** Establishing the position of the Chief Inspector in legislation and the restriction preventing the NSC board taking specific regulatory decisions would enhance the independence and transparency of the regulatory decision-making process by ensuring that practice reflects legislation more closely than at present. The Chief Inspector has always played the pivotal role in nuclear regulation and enshrining the position in statute emphasises the importance of an authoritative head and seeks to reassure the public that regulatory decisions remain of paramount importance.
- 3.25** A key new feature of the NSC is the predominantly non-executive board (which is in accordance with widely-accepted principles of good governance<sup>25</sup>). This dedicated board would be directly accountable for the delivery of transparent regulation although it would be prevented from taking specific operational decisions, (which would in practice be the responsibility of the Chief Inspector). However the board would have a crucial role to play in providing the strong, dynamic, strategic leadership, drive and direction needed to deliver a forward-thinking world-class regulator.
- 3.26** The board of the NSC would be responsible for developing its own business plans and strategies (subject to HSE and Ministerial approval), as well as its own business management systems and processes. These would be designed specifically to ensure the efficiency, effectiveness and consistency of nuclear regulation across all of the NSC's activities. The board would also play a vital role in ensuring the independence of the regulator against political pressure or undue influence.
- 3.27** In developing strategy and high level plans the board would be able to ensure that the NSC's strategic direction takes appropriate account of wider societal circumstances. It is implicit in the nuclear licensing regime, for example, that society will be able to benefit from nuclear power (in terms of energy supply and combating climate change) so long as the

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<sup>25</sup> e.g. The Combined Code on Corporate Governance: [http://www.frc.org.uk/documents/pagemanager/frc/Combined\\_Code\\_June\\_2008/Combined%20Code%20Web%20optimized%20June%202008\(2\).pdf](http://www.frc.org.uk/documents/pagemanager/frc/Combined_Code_June_2008/Combined%20Code%20Web%20optimized%20June%202008(2).pdf)

highest standards of protection are maintained for workers and the public who may be affected. Public consultation and stakeholder engagement on draft strategies would improve transparency and would also help to inform the board of stakeholder and public concerns about the development and operation of the regulatory regime. The Chief Inspector, as a member of the board, will be able to feed back the results of operational experience and the regulatory viewpoint. The board will take the overall resourcing decisions, based on agreed strategic priorities which will in turn assist duty holders to prioritise their own safety management strategies.

- 3.28** By delivering strong leadership the board would contribute towards a positive culture in the NSC helping to create an attractive organisation to work in with a strong public-service ethos.
- 3.29** As an autonomous body in the public sector (but outside the Civil Service) the NSC will have greater financial and organisational flexibility to meet its business needs on a sustainable basis. Being a small body with the financial freedoms described in the table in Section 3.15, the NSC would have the flexibility to plan for, and quickly adapt to, changes in the nuclear industry. It would be able to spend its income and deploy its resources in accordance with its own dedicated business plans, facilitating the delivery of more timely regulatory decisions, whilst ensuring that safety and security was not compromised. This financial freedom would also include the ability to set its remuneration conditions more competitively for its staff in a sustainable way, helping to boost recruitment and retention of inspectors in a globally-competitive market, where nuclear skills are increasingly scarce.
- 3.30** The NSC would continue, as the ND currently does, to recover most of its costs from duty holders, so any increased costs from the body's additional freedoms will be borne by duty holders rather than the public purse. The proposed financial governance arrangements have been designed to afford the NSC the flexibility referred to above, whilst reassuring duty holders that there will be appropriate checks on their expenditure. The proposed auditing process for the NSC's accounts is transparent and the financial responsibilities of the board (particularly the member appointed with financial responsibilities) would enable duty holders and the wider public to hold it fully to account. The board would exercise oversight of the charging process and remuneration conditions of staff and so combined with the public scrutiny (set out in the table in section 3.15) should ensure that the NSC's expenditure is justified and represents value for money.
- 3.31** Although the NSC would be autonomous of HSE in its operations, it would be required to agree its long-term strategies and annual business plans with HSE. This would help to maintain consistency in the approach to regulation of general health and safety as well as benefit from HSE's experience in the regulation of a range of high-hazard industries. This

would offer both organisations the opportunity to share expertise and promote regulatory excellence.

**(Qu. A.1) Do you agree with the proposal to create a new sector-specific independent nuclear regulator which reports to Ministers and HSE? Please explain your answer.**

**(Qu. A.2) Do you agree with the governance and accountability arrangements set out above? Please explain your answer.**

### Transfer of the Safety, Security, Safeguards and Transport Functions

- 3.32** Strong synergies exist between the ND and DfT, with both regulating many of the same major duty holders and utilising similarly qualified and experienced staff. Furthermore, whilst OCNS is responsible for the security of civil nuclear material, including for the transit of sensitive nuclear material, the Transport Security and Contingencies Directorate (TRANSEC) within DfT is responsible for the security of other radioactive materials during transit.
- 3.33** Bringing together DfT's and OCNS' functions in relation to the secure transport of radioactive and nuclear materials would allow for more integrated and efficient regulatory activities and should improve the timeliness and consistency of decision-making. For the first time, the transport of sensitive nuclear materials and the transport of radioactive materials (including nuclear ores and depleted uranium) would be carried out by a single body under one integrated set of strategies and business plans, with the ultimate responsibility for regulatory decisions being vested in one person, the Chief Inspector. This would enable senior management to ensure that regulatory staff operate under the same organisational culture, and work towards the same strategy and targets. It would enable common training and development programmes across the new regulatory body. Although the nuclear security and safeguards functions are already carried out by the ND, the legal transfer to the NSC will enable it to accelerate the integration of processes.
- 3.34** The transfer to the NSC of DfT's functions would also reduce the number of regulatory interfaces for major duty holders. Most nuclear site licensees currently have to deal with three main regulators: (i) the HSE's ND for nuclear safety, security and safeguards functions, but with conventional health and safety regulation delivered by other parts of HSE; (ii) DfT; and (iii) the EA / SEPA. Following the creation of the NSC and its assimilation of the transport functions, nuclear site licensees would generally only have to deal with two main regulators. However MoD would continue to have its nuclear sites regulated by other parts of HSE as well as the NSC, for example in relation to the safety of

explosives. On many defence sites, nuclear activities are confined to a relatively small part of the site.

- 3.35** DfT would continue to regulate all other categories of Dangerous Goods and, with appropriate advice from the NSC, would retain responsibility for issues common to all categories. It is also proposed that the NSC and DfT jointly provide a mechanism for dealing with queries by transport operators and shippers dealing with dangerous goods, ensuring that a “one stop shop” approach is maintained.
- 3.36** These proposals will give increased certainty to nuclear industry duty holders, as well as help to minimise the time duty holders spend dealing with different administrative processes for complying with regulations, as the NSC will be able to standardise practices across their functions.
- 3.37** Currently the transport functions are carried out by DfT, a central Government department. The reforms proposed would mean that these functions would be discharged at arm’s length from central Government, in line with the International Atomic Energy Agency’s Safety Requirements<sup>26</sup> and commonly-accepted good regulatory practice which requires that regulators are independent and at arm’s length from central Government. This independence from central Government is intended to help win and retain the confidence of duty holders and the wider public as well as improve the transparency of decision-making.
- 3.38** The combined pool of inspectors from DfT and ND would be expected to enjoy better career opportunities, thereby improving retention rates. There are common highly-specialised skills utilised by the existing DfT nuclear transport inspectors and ND nuclear inspectors (e.g. structural integrity, criticality, heat transfer and fuel behaviour), which would facilitate staff movements across the regulatory areas, ensuring a more effective deployment of resources in a competitive recruitment market.
- 3.39** The NSC (acting on behalf of the UK Government) and with a single-issue portfolio (encompassing nuclear and radiological safety and security both on sites and in transit, as well as safeguards) would have greater authority and a stronger voice in nuclear matters internationally, particularly in negotiations with the EU.
- 3.40** The transfer of the security and safeguards functions in 2007 was undertaken to reduce regulatory interfaces for business and deliver consistent and co-ordinated regulation. The functions were transferred by two agreements made under section 13 of Health and Safety at Work etc Act (1974) rather than within legislation, leaving scope for

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<sup>26</sup> Legal and Governmental Infrastructure for Nuclear Regulation, Radioactive Waste and Transport Safety: [http://www-pub.iaea.org/mtcd/publications/pdf/pub1093\\_scr.pdf](http://www-pub.iaea.org/mtcd/publications/pdf/pub1093_scr.pdf)

improvements to be made to the transparency of these arrangements. The proposed transfer of the security and safeguards functions in law would build on the changes made in 2007 by ensuring that the allocation of responsibilities is more transparent than at present and minimise the use of these supplementary agreements.

**(Qu. A.3) Do you agree with the transfer of DfT's regulatory functions in relation to the transport of radioactive materials? Please explain your answer.**

**(Qu. A.4) Are there any other relevant matters that the Government should consider in developing and implementing this proposal? If so, please provide details.**

## Crown

- 3.41** This proposal would bind the Crown only to the extent that those provisions of the legislation being amended by the proposal already bind the Crown. A list of the regulatory functions that will be transferred is set out in Annex E.

## Who Would be Affected by the Proposals and How?

- 3.42** Duty holders would be regulated by the NSC (i.e. licensing decisions and enforcement actions would be taken by the NSC rather than HSE and the Secretary of State for Transport). There are a relatively small number of mainly large companies in the nuclear sector (currently 17 companies hold 38 nuclear site licences). There are a much larger number of companies (around 2500) involved in the transport of radioactive materials; some of these are likely to be small enterprises.
- 3.43** The NSC would be a public sector body, although would not be part of the Civil Service, meaning its staff would not be civil servants. Some non-specialist staff may remain employees of HSE and be seconded to NSC for a fixed period, rather than formally transferred. Staff and unions will be an integral part of any transition process and would be fully consulted.
- 3.44** Regulatory partners of the existing regulators (such as the EA and SEPA) and other partners (such as the vendors of new nuclear reactor designs) will have to deal with the NSC rather than DfT and the HSE. There are several memoranda of understanding (MOUs) between the HSE and these regulatory partners that would need to be re-worked. Some of the regulatory partners may need to agree new MOUs with the NSC and also with the HSE.

**3.45** Any individual or group interested in nuclear matters or nuclear regulation could potentially be interested in this proposal. One of the objectives of these proposals is to improve the transparency of nuclear regulation as well as the visibility and accountability of the nuclear regulator, which it is expected would improve stakeholder confidence in the regulatory system.

# Chapter 4: Legal Analysis Against Requirements of the Legislative and Regulatory Reform Act 2006 (LRRRA)

## What can be Delivered by Legislative Reform Order (LRO)?

### Section 2 of the LRRRA Legislative and Regulatory Reform Act 2006 (LRRRA)

- 4.1** Under section 2 of the LRRRA, a Minister can make an LRO for the purpose of securing that regulatory activities are carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.
- 4.2** The proposals for reform, set out in this document, aim to create a sector-specific regulator that is more accountable and to make improvements so that the regulatory processes should be more transparent with improved consistency across the different functions. Chapter 3 (paragraphs 3.19 – 3.40) explains the anticipated benefits of the proposals and how they meet the requirements of section 2 of the LRRRA in more detail.
- 4.3** The LRRRA specifically allows for the creation of a new regulatory body to which functions are transferred and in creating this power<sup>27</sup>.

### Preconditions

- 4.4** Ministers and Parliamentary Scrutiny Committees must be satisfied that among other things, the LRO proposals satisfy the preconditions set out in section 3 of the LRRRA. The Government considers that these preconditions are met and this Chapter sets out the reasoning. The questions below ask for views on this.

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<sup>27</sup> Section 2(4)(c) and 2(5)(a) of the LRRRA.

## Non-legislative Solutions

- 4.5** An LRO may not be made if there are non-legislative solutions which will satisfactorily achieve the objective which the LRO is intended to secure. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
- 4.6** The Government considered two non-legislative alternatives to the proposals set out in this consultation document. These were not considered to adequately achieve the policy objectives.
- 4.7** The first was the creation of a company to carry out the regulatory functions. Although a company regulator would have been a company limited by guarantee (rather than a plc or ordinary company limited by shares) Government had concerns that company status was not consistent with its vision for nuclear regulation. Overall the Government does not consider that the establishment of a company is the most appropriate mechanism for securing a robust, independent and internationally respected regulatory body.
- 4.8** The second was to create an agency of the HSE, with its own board. This would have been far less transparent than the arrangements proposed in Chapter 3 and would have created a very complex structure of accountability. Given that an agency would not have had separate legal personality from the HSE, this option would also not have afforded the new body the necessary operational and financial flexibility. Additionally an agency board would not have a statutory basis and it would therefore be difficult for this model to strengthen non-executive governance in such a sensitive and high-profile area. As an independent focused, small body, the NSC would be better equipped to do so.
- 4.9** Neither of these options would allow the transfer of the transport functions to the new regulator (which requires legislation). They also would not have enabled the Government to transfer the OCNS/UKSO functions in legislative form (rather than relying on the less transparent agreements made under section 13 of HSWA).
- 4.10** Only a new statutory regulator (such as the proposed NSC) with its own powers, responsibilities and resources would be able to secure the full benefits sought from restructuring (set out in paragraphs 3.19 – 3.40 of Chapter 3), including being able to deal with the challenges of change in the nuclear industry. Rather than being a managerial unit of the HSE or DfT, the NSC would have its own clear identity, with a well defined role covering all aspects of nuclear regulation (except environmental aspects), with the added benefit of raising the profile of nuclear regulation.

**4.11** The NSC and its board cannot be expected to deliver the benefits (set out in paragraphs 3.19 – 3.40 of Chapter 3) if it is not established as an independent corporate body, recognised in law. Establishing the body and the board in legislation underlines the Government's commitment to the effective discharge of the regulatory functions and gives the organisation a solid legal foundation from which to operate.

**(Qu. B.1) Are there any alternative, non-legislative means that would satisfactorily remedy the difficulties that the proposals in this consultation document intend to address, without the use of a legislative reform order? If so, please provide details.**

## Proportionality

**4.12** The effect of a provision made by an LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making an LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.

**4.13** The use of secondary legislation such as an LRO (rather than primary legislation) to accomplish this structural change is considered proportionate and reasonable. The legislative reform order process is specifically designed to enable regulators to carry out their regulatory activities in a way which is accountable, transparent and consistent and the proposal aims to meet these objectives. The LRRRA specifically allows for the creation of a new regulatory body to which functions are transferred by an LRO<sup>28</sup>.

**4.14** The creation of a new regulator to carry out the regulatory functions is considered to be a proportionate means of achieving the aims referred to. The proposals do not involve the conferral of sweeping powers in relation to persons or property but consist of certain changes to the organisational arrangements of nuclear regulation. The proposals are considered to be proportionate and in the Government's view the anticipated benefits outweigh any potential disadvantages. Any organisational and change-management programme is at risk of causing disruption, for example through any upset caused to staff and/or duty holders. This could have the knock-on effect of diverting attention away from the regulatory duties. However, this risk can be mitigated through careful planning by ND and HSE and proactive engagement with staff and trade unions to minimise disruption internally and to duty holders as well. For example some non-specialist

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<sup>28</sup> Section 2(4)(c) and 2(5)(a) of the LRRRA.

staff may remain employees of HSE and be seconded to NSC for a fixed period, rather than formally transferred.

**(Qu. B.2) Are the proposals put forward in this consultation document proportionate to the policy objectives? Please explain your answer.**

## Fair Balance

- 4.15** Before making an LRO, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the LRO. It is possible to make an LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.
- 4.16** The proposals in the LRO are considered to strike a fair balance between the public interest and the interest of any person who might be adversely affected by them. Most of the costs associated with ND's current activities are recovered from duty holders (through the charging mechanisms in section 24A of the NIA) and this includes a corporate overhead charge. Most costs arising out of the creation of the NSC would be recovered as part of this corporate overhead. The partial Impact Assessment (Annex D) indicates that one off start-up costs would be in the region of £4.6m with initial increased running costs of between £1.5m and £3.5m.
- 4.17** In the Government's view, the anticipated benefits (set out in Chapter 3) are in the public interest.

**(Qu. B.3) Do the proposals put forward in this consultation document taken as a whole provide a fair balance between the public interest and any person adversely affected by them? Please explain your answer.**

## Necessary Protection

- 4.18** A Minister may not make an LRO if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.
- 4.19** The regulatory functions will be transferred to the NSC unaltered (i.e. the requirements and standards with which duty holders must comply will not be changed). The position of the Chief Inspector would be

provided for in statute thereby providing the continuation of a recognised authoritative head of nuclear regulation. The restructuring will only make changes to organisational aspects of how the NSC operates (i.e. the governance and accountability processes for nuclear regulation). Therefore it is not considered that any necessary protections would be removed.

**(Qu B.4) Do the proposals put forward in this consultation document remove any necessary protections? If so, please provide details.**

## Rights and Freedoms

**4.20** An LRO cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people by using an LRO.

**4.21** Given that the regulatory principles will remain unchanged, it is not considered that the changes proposed would prevent anyone from exercising an existing right or freedom. (See paragraph 4.14 for impact on staff).

**(Qu. B.5) Do the proposals put forward in this consultation document prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise? If so, please provide details.**

## Constitutional Significance

**4.22** A Minister may not make an LRO if he considers that the provision made by the LRO is of constitutional significance. These proposals are not considered to be of constitutional significance.

**(Qu. B.6) Do you consider the provisions of the proposals to be constitutionally significant? If so, please provide details.**

## Other Considerations

- 4.23** It should be noted that even where the preconditions of section 3 of the LRRRA are met, an LRO cannot:
- remove burdens which fall solely on Ministers or the Government departments, except where the burden affects the Minister or the Government department in the exercise of regulatory functions;
  - confer or transfer any function of legislating on anyone other than a Minister; persons that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
  - impose, abolish or vary taxation;
  - create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
  - provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
  - amend or repeal any provision of Part 1 of the LRRRA;
  - amend or repeal any provision of the Human Rights Act 1998;
  - remove burdens arising solely from common law.
- 4.24** It is not considered that any of the restrictions set out in paragraph 4.23 apply to the proposals.
- 4.25** In addition, Ministers have undertaken not to deliver highly controversial reforms by an LRO.
- 4.26** Although recognising that for some, the principle of using nuclear power is controversial, Government does not believe that the proposals contained in this consultation document are controversial. This consultation is not about whether it is appropriate to have nuclear power facilities, rather it is about ensuring that existing and potential nuclear facilities can continue to be robustly, effectively and efficiently regulated. The proposals are designed to enable the regulators to deliver regulation in the changing nuclear environment and the standards of regulation would not be altered by the proposals (see paragraph 4.19). In Government's view the proposals set out would offer clear benefits to a wide spectrum of stakeholders.

## Chapter 5: Possible Parliamentary Procedure

- 5.1** The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution procedure is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The affirmative procedure provides an intermediate level of scrutiny. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.
- 5.2** **Negative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made.
- 5.3** **Affirmative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- 5.4** **Super-Affirmative Resolution Procedure** – This is a two-stage procedure during which there is opportunity for the draft LRO to be revised by the Minister and requires the approval of both Houses of Parliament.
- 5.5** The super-affirmative allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.
- 5.6** If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, he must lay a statement. After 15 days, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.
- 5.7** If the Minister wishes to make material changes to the draft LRO he must lay the revised draft LRO and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 25 days, the Minister may only make the LRO if it is approved by a resolution of each House of Parliament.

**5.8** Under all three procedures, the Parliamentary Scrutiny Committees have the power to recommend that the Minister does not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

**5.9** Ministers are satisfied that the affirmative procedure is appropriate in this case. The proposals are not considered to be controversial<sup>29</sup> and the scrutiny which that procedure affords is appropriate. The proposals consist of structural changes to the nuclear regulator, which will not change the requirements and standards with which duty holders must comply.

**(Qu. B.7) On the basis of the information provided on each of the LRO procedures do you agree with our view that the affirmative procedure should apply to the scrutiny of this proposal? If not, please state your reasons.**

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<sup>29</sup> See paragraph 4.26 for explanation as to why the proposals are not considered to be controversial.

# Annex A: Response Form for the Consultation Document on the Restructuring of the Nuclear Directorate

You may respond to this consultation by email or by post.

<b>Respondent Details</b>	<b>Please return by 22 September 2009 to:</b>
Name:	Thomas Wood Department of Energy and Climate Change 3 Whitehall Place London SW1A 2HD
Organisation:	You can also submit this form by email:  ndrestructuring@decc.gsi. gov.uk
Address:	
Town/City:	
County/ Postcode:	
Telephone:	
E-mail:	
Fax:	

Tick this box if you are requesting non-disclosure of your response.

No.	Question
<b>Part A: Questions relating to the Proposals</b>	
<b>(A.1)</b>	Do you agree with the proposal to create a new sector-specific independent nuclear regulator which reports to Ministers and HSE? Please explain your answer.  <b>Response</b>
<b>(A.2)</b>	Do you agree with the governance and accountability arrangements set out in Chapter 3 of this consultation document? Please explain your answer.  <b>Response</b>
<b>(A.3)</b>	Do you agree with the transfer of DfT's regulatory functions in relation to the transport of radioactive materials? Please explain your answer.  <b>Response</b>
<b>(A.4)</b>	Are there any other relevant matters that the Government should consider? If so, please provide details.  <b>Response</b>

No.	Question
<p><b>Part B: Questions relating to the legislative process and the pre-conditions of the Legislative and Regulatory Reform Act</b></p>	
<p><b>(B.1)</b></p> <p><b>Response</b></p>	<p>Are there any alternative non-legislative means that would satisfactorily remedy the difficulties that the proposals in this consultation document intend to address, without the use of a legislative reform order? If so, please provide details.</p>
<p><b>(B.2)</b></p> <p><b>Response</b></p>	<p>Are the proposals put forward in this consultation document proportionate to the policy objectives? Please explain your answer.</p>
<p><b>(B.3)</b></p> <p><b>Response</b></p>	<p>Do the proposals put forward in this consultation document taken as a whole provide a fair balance between the public interest and any person adversely affected by them? Please explain your answer.</p>
<p><b>(B.4)</b></p> <p><b>Response</b></p>	<p>Do the proposals put forward in this consultation document remove any necessary protections? If so, please provide details.</p>

No.	Question
<b>(B.5)</b>	<p>Do the proposals put forward in this consultation document prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise? If so, please provide details.</p> <p><b>Response</b></p>
<b>(B.6)</b>	<p>Do you consider the provisions of the proposals to be constitutionally significant? If so, please provide details.</p> <p><b>Response</b></p>
<b>(B.7)</b>	<p>On the basis of the information provided on each of the LRO procedures in Chapter 5 do you agree with our view that the affirmative procedure should apply to the scrutiny of this proposal? If not, please state your reasons.</p> <p><b>Response</b></p>
<b>Part C: Questions arising from the partial Impact Assessment</b>	
<b>(C.1)</b>	<p>Do you consider that the partial Impact Assessment set out in Annex D provides an accurate assessment of the likely impact, costs and benefits of the proposals?</p> <p><b>Response</b></p>

No.	Question
<b>(C.2)</b>	<p>The Government estimates that creating the NSC would result in a maximum increase in fees payable by duty holders of 12-16% in the first year and between 3 and 7% per annum thereafter. The Government would welcome your view on whether or not the estimated increase is justified by the potential benefits of setting up the new body.</p> <p><b>Response</b></p>
<b>(C.3)</b>	<p>Please provide any further information that is relevant to the partial Impact Assessment?</p>

Please select the category below which best describes who you are responding on behalf of.

	Business representative organisation/trade body
	Central Government
	Charity or social enterprise
	Individual
	Large business ( over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe):

Thank you for taking the time to let us have your views. The Government does not intend to acknowledge receipt of individual responses unless you tick the box.

# Annex B:

## Legislative Reform Orders – Parliamentary Consideration

### Introduction

1. Chapter 4 sets out our analysis of the proposals against the legal tests contained in the Legislative and Regulatory Reform Act 2006 (LRRRA). Chapter 5 explains the different potential parliamentary procedures. This Annex sets out more detail on the parliamentary stages.
2. These reform proposals will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the LRRRA. LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on the reform proposals in relation to the Health and Safety at Work Act as measures that might be carried forward by an LRO.

### Legislative Reform Proposals

3. This consultation document has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.
4. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 of the Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:
  - i) Explain under which power or powers in the LRRRA the provisions contained in the order are being made;
  - ii) Introduce and give reasons for the provisions in the Order;

- iii) Explain why the Minister considers that:
- There is no non-legislative solution which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
  - The effect of the provisions are proportionate to the policy objective;
  - The provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
  - The provisions do not remove any necessary protection;
  - The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
  - The provisions in the proposal are not constitutionally significant; and
  - Where the proposals will restate an enactment, it makes the law more accessible or more easily understood.
- iv) Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;
- v) Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and
- vi) Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

5. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under the negative and affirmative resolution procedures and 60 days under the super-affirmative resolution procedure. Copies of the proposals and the Minister's explanatory document, as laid before Parliament, will be available either from the Government department concerned (in this case DWP and DECC) or by visiting the Better Regulation Executive's website at: <http://www.berr.gov.uk/whatwedo/bre>

## Parliamentary Scrutiny

6. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.
7. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:
  - (a) appear to make an inappropriate use of delegated legislation;
  - (b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
  - (c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
  - (d) secure a policy objective which could not be satisfactorily secured by non-legislative means;
  - (e) have an effect which is proportionate to the policy objective;
  - (f) strike a fair balance between the public interest and the interests of any person adversely affected by it;
  - (g) do not remove any necessary protection;
  - (h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
  - (i) are not of constitutional significance;
  - (j) make the law more accessible or more easily understood (in the case of provisions restating enactments);
  - (k) have been the subject of, and take appropriate account of, adequate consultation;
  - (l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation; and

- (m) appear to be incompatible with any obligation resulting from membership of the European Union.
8. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.
  9. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.
  10. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at
    - Regulatory Reform Committee in the Commons<sup>30</sup>; and
    - Delegated Powers and Regulatory Reform Committee<sup>31</sup> in the Lords.
  11. Under the negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.
  12. Under the affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.
  13. Under the super-affirmative procedure, each of the Scrutiny Committees is given 60 days to scrutinise the LRO consecutively with one another. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

<sup>30</sup> [http://www.parliament.uk/parliamentary\\_committees/regulatory\\_reform\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm)

<sup>31</sup> [http://www.parliament.uk/parliamentary\\_committees/dpr.cfm](http://www.parliament.uk/parliamentary_committees/dpr.cfm)

## How to Make Your Views Known

14. Responding to this consultation document is the first and main opportunity to make your views known to the relevant departments (DWP and DECC) as part of the consultation process. Views should be sent to the person named in paragraph 1.25 of this consultation document. When the Minister lays proposals before Parliament interested parties are welcome to put their views before either or both of the Scrutiny Committees.
15. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.
16. Submissions to the Committees (as distinct from responses to this consultation) should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 7 above.
17. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and  
Regulatory Reform Committee  
House of Lords  
London  
SW1A 0PW

Tel: 020 7219 3103  
Fax: 020 7219 2571  
mailto: DPDC@parliament.uk

Regulatory Reform Committee  
House of Commons  
7 Millbank  
London  
SW1P 3JA

Tel: 020 7219 2830/2833/2837  
Fax: 020 7219 2509  
mailto: regrefcom@parliament.uk

## Non-disclosure of Consultation Responses

18. Section 14(3) of the LRRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.
19. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

## Information about Third Parties

20. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.
21. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

# Annex C:

## Code of Practice on Consultation: the Seven Consultation Criteria

The 7 criteria which the Government seeks to follow throughout this consultation process are:

**Criterion 1 When to consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

**Criterion 2 Duration of consultation exercises**

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

**Criterion 3 Clarity of scope and impact**

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

**Criterion 4 Accessibility of consultation exercises**

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

**Criterion 5 The burden of consultation**

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

**Criterion 6 Responsiveness of consultation exercises**

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

**Criterion 7 Capacity to consult**

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The code of practice can be accessed at:  
[www.berr.gov.uk/files/file47158.pdf](http://www.berr.gov.uk/files/file47158.pdf)

# Annex D: Partial Impact Assessment

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>DECC/DWP/HSE</b>	<b>Title:</b> <b>Impact Assessment of Proposed Legislative Reform Order to Restructure the Nuclear Directorate of HSE</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 3	<b>Date:</b> 1 June 2009
<b>Related Publications:</b>		

### Available to view or download at:

[http://decc.gov.uk/en/content/cms/consultations/hse\\_restruct/hse\\_restruct.aspx](http://decc.gov.uk/en/content/cms/consultations/hse_restruct/hse_restruct.aspx)

**Contact for enquiries:** [ndrestructuring@decc.gsi.gov.uk](mailto:ndrestructuring@decc.gsi.gov.uk)

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

The UK's nuclear industry is undergoing significant change that is creating major challenges for the nuclear regulators, particularly the Health and Safety Executive's (HSE) Nuclear Directorate (ND), including difficulties in recruiting and retaining specialist staff. The Government therefore proposes to restructure the ND using legislation to improve its ability to meet these challenges. A legislative reform order (LRO) under the Legislative and Regulatory Reform Act 2006 is proposed for this purpose.

### What are the policy objectives and the intended effects?

The proposed LRO would establish a new nuclear statutory corporation (NSC) to carry out the present functions of the ND, plus certain transport functions. While retaining a link to HSE, the NSC would be responsible in its own right for regulating nuclear safety and security. It would have the autonomy and organisational and financial flexibility needed to ensure that it is fully able and fully staffed to meet the changing circumstances of the nuclear industry. There would be no change to nuclear safety or security requirements, but an improvement in the way the requirements are enforced.

### What policy options have been considered? Please justify any preferred option.

There are two options, either to restructure the ND or to do nothing. To do nothing means that the challenges to the ND would remain and better regulation benefits would not be realised. In particular regulatory delays to both current and future nuclear industry operations could occur because of operational and financial constraints in ND. HSE is already implementing reforms to the extent that is possible without legislation. Only legislative change can achieve the objectives in full.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Three years after implementation, i.e. in 2013.

### Ministerial Sign-off For (parliamentary stage) Impact Assessments:

***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:

## Summary: Analysis & Evidence

**Policy Option:**

**Description:** LRO to restructure ND

<b>COSTS</b>	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'  Costs to nuclear licensees and other duty holders through recovering start-up costs and increased running costs of the NSC
	One-off (Transition)	Yrs	
	£ 4.6m	1	
	Average Annual Cost (excluding one-off)		
	£ 1.5 - 3.5m		Total Cost (PV) £ 11.4 - 20.4m
Other key non-monetised costs by 'main affected groups' Potential indemnity costs for the NSC			

<b>BENEFITS</b>	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'  It is impossible to give a meaningful estimate of the benefits as a whole, but these are expected to greatly exceed the costs. Delays in restarting reactors can cost licensees £0.5m a day
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Improvements in the speed of regulatory decision-making and greater transparency in decision-making, leading to efficiency savings and greater public confidence in the regulator			

Key Assumptions/Sensitivities/Risks

Assumed appraisal period of 5 years

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		Great Britain			
On what date will the policy be implemented?		2010			
Which organisation(s) will enforce the policy?		new NSC			
What is the total annual cost of enforcement for these organisations?		£ N/A			
Does enforcement comply with Hampton principles?		Yes			
Will implementation go beyond minimum EU requirements?		N/A			
What is the value of the proposed offsetting measure per year?		£ 0			
What is the value of changes in greenhouse gas emissions?		£ 0			
Will the proposal have a significant impact on competition?					
Annual cost (£-£) per organisation (excluding one-off)		Micro 0	Small 0	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of £	Decrease of £	Net Impact	£ 0	

Key:  Annual costs and benefits: Constant Prices  (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Background & rationale for intervention

1 The UK's nuclear industry has undergone and continues to undergo significant change. From being largely state owned and operated in the 1950's and 1960's, today many facilities are owned and/or operated by private sector contractors and consortia. Many of today's nuclear facilities will reach the end of their generating lifespan within the next 10 to 15 years and greater attention by operators and by the regulators is necessary to ensure their continued safe operation, decommissioning or clean-up. Increasingly stringent international expectations and standards have brought greater domestic and international interest both to the safe design and operation of the facilities themselves and to the organisations that regulate them. There have been societal changes with increased public interest in safety and the environment, and demands for greater accountability and transparency of public bodies. The Government also places increased demands on regulators to regulate consistently, effectively and efficiently. Such considerations of regulatory consistency and efficiency led, in 2007, to the transfer of the operations of the Office for Civil Nuclear Security (OCNS) and the UK Safeguards Office (UKSO) from the former Department of Trade and Industry (DTI) to HSE's Nuclear Directorate (ND).

2 Between the 1980s and the early 21<sup>st</sup> century there was an international decline in interest in nuclear power. This led to reductions in specialist nuclear training courses, fewer graduates with nuclear expertise and a gradual increase in the average age of the UK's nuclear engineers and scientists, and therefore nuclear inspectors. This, along with the increasingly competitive global skills market, has hindered implementation of the ND's identified business improvement initiatives. To attempt to address this, in 2007 and again in 2008/9, the Government sanctioned a significant increase in salaries for the ND's Nuclear Installations Inspectorate (NII) inspectors, but even this was not entirely successful in attracting the necessary staff into the NII.

3 Increased concern about climate change and energy security has led the UK, along with many other countries, to identify nuclear power as a form of reliable, low-carbon electricity. Following a public consultation, the Government published the Nuclear White Paper in January 2008 and set out its view that *“it is in the public interest that new nuclear power stations should have a role to play in this country’s future energy mix alongside other low-carbon sources ...”*. The Government believes that nuclear power can contribute to the UK’s objectives on climate change and energy security as well as provide potential benefits to the UK through the creation of a supply chain and create demand for specialist skills (e.g. in manufacturing and construction). Sustaining an effective and efficient regulatory process is key to achieving this.

4 The Government commissioned Dr Tim Stone to review the UK’s nuclear regulatory regime and explore ways of enhancing further its transparency and efficiency, without diminishing its effectiveness, when it published the Nuclear White Paper in January 2008. This was to ensure the regime is better able to handle the challenges of new nuclear power stations, alongside those created by ageing existing facilities and the large decommissioning programme. The review focused on the ND as this is where the challenges and resource constraints would be most clearly manifested.

5 The review recommended some changes to the organisational structure and governance aspects of the UK’s nuclear regulatory arrangements. These reflect emerging views across the Government and the nuclear industry. Dr Stone identified a number of areas for action and made some recommendations, which would help to pre-empt any difficulties arising from the changes to the nuclear industry and to resolve any problems that may develop. These included:

- The creation of a governing body for the regulator; and
- Ensuring the regulator is structured to give it the financial and organisational flexibility needed to meet its business needs on a sustainable basis.

6 Having considered Dr Stone’s recommendations and with the full support of the existing regulators, the Government has decided to propose a number of reforms to reinvigorate the nuclear regulatory structure. The objective is to ensure that the regulators are better able to adapt to current and future challenges.

7 The key proposal is the establishment of a new sector-specific nuclear regulatory body that would be autonomous, but remain within the auspices of the HSE. A legislative reform order (LRO) under the Legislative and Regulatory Reform Act 2006 is proposed for this purpose.

## Policy Objectives

8 The proposed LRO would establish a new nuclear statutory corporation (NSC), i.e. a body with its own legal personality, to carry out the present functions of the ND, plus certain functions relating to the transport of radioactive material to be transferred from the Department for Transport (DfT). While retaining a link to HSE, the NSC would be responsible in its own right for regulating nuclear safety and security. It would have greater autonomy and organisational and financial flexibility to ensure that it is fully able and fully staffed to continue to regulate to ND's and DfT's current high standards in the changing circumstances of the nuclear industry. There would be no change to nuclear safety or security requirements, but an improvement in the way the requirements are enforced.

9 The proposed restructuring would involve institutional, operational and managerial changes designed to deliver better regulation of the nuclear industry, particularly in relation to transparency and accountability. The changes would also help to boost recruitment and retention of inspectors in a globally competitive market where nuclear skills are scarce.

## Options

10 There are only two options in practice, either to restructure the ND or to do nothing. To do nothing means that the longer term challenges to the ND would remain and the better regulation benefits of restructuring would not be realised. In particular regulatory delays to both current and future nuclear industry operations could occur because of operational and financial constraints in ND, including a potential lack of specialist staff to process the necessary permissions. HSE is already implementing reforms to the extent that is possible without legislation. Only legislative change can achieve the objectives in full. This assessment therefore does not consider other options.

11 The preferred option would establish a new nuclear statutory corporation (NSC), i.e. a body with its own legal personality, to carry out the present functions of the ND plus certain functions presently carried out by DfT. It would have statutory responsibility (transferred from HSE) for regulating nuclear safety and security and for regulating general health and safety at nuclear sites, as well as for nuclear safeguards functions. It would also have statutory responsibility (transferred from DfT) for regulating the transport of radioactive material. The NSC would report to Ministers on its functions and to both HSE and Ministers on its strategy, plans and targets. The NSC would have full powers to carry out its responsibilities and financial freedom to set budgets and spending plans in line with its approved strategy and business plans, to recover its costs from industry and to maintain its own accounts. It would also have freedom to recruit, employ and determine terms and conditions for staff, including inspectors.

12 New governance arrangements would include establishing an independent board for the NSC. The majority of board members, including the Chair, would be non-executives, appointed to provide excellence in corporate governance and to drive institutional reform. The Chair would be appointed by Ministers; other non-executive board members would be appointed by HSE, with Ministers' consent. Executives would include a Chief Inspector, appointed by the NSC's board with the consent of Ministers. Links with the HSE board would be maintained by appointing the NSC Chair to the HSE board and appointing one non-executive member from the HSE board to the NSC board.

13 The NSC would be required to prepare a strategy for carrying out its functions, for public consultation prior to approval by Ministers and HSE. It would also prepare business plans and targets for approval by Ministers and HSE.

14 Better regulation objectives would be met by:

- Establishing a discrete regulator for nuclear matters, with clear statutory responsibilities in its own name as opposed to being a part of HSE plus a small unit in DfT, while maintaining the benefits of links with the wider experience and resources of HSE;
- Significantly improved governance and accountability arrangements, particularly through a new Chair and board recruited from outside the regulator to provide strong leadership in delivering statutory functions and cultural change;
- Greater flexibility in responding to evolving challenges through having full control over the NSC's financial and employment arrangements. By boosting recruitment and retention of staff this would enable the NSC to deliver its statutory responsibilities efficiently and effectively; and
- Greater operational transparency through publishing (and consulting publicly on) specific nuclear regulatory strategies and through publishing detailed business plans, targets and reports. This would benefit both existing stakeholders and those new to the sector.

15 Creating the NSC might appear inconsistent with Hampton principles in increasing the number of regulatory bodies. However, in practice the NSC would carry out functions presently carried out by two discrete parts of HSE (i.e. in relation to nuclear and non-nuclear regulation on nuclear sites) plus a part of DfT. Thus for some duty holders there would be a reduction of regulatory interfaces; for others there would be no change. Continuing NSC links with HSE would ensure that the policies and practices of the two bodies do not diverge unnecessarily and that economies of scale are maintained where appropriate. Taken with the better regulation benefits described above, the proposal as a whole is consistent with Hampton principles.

## Key Groups Affected

16 The key groups that would be affected by the establishment of the NSC are:

- the existing staff of the ND and of DfT who would be transferred to work for the NSC (i.e. about 384 full time equivalents in ND by March 2010 plus about 19 from DfT); and
- businesses operating in the nuclear industry that would be regulated by the NSC.

17 There are currently 38 licensed nuclear sites in Great Britain that would be subject to regulation by the NSC. These businesses include operating and decommissioning nuclear power reactors, nuclear fuel enrichment, manufacture and reprocessing plants, radioisotope manufacturing, defence nuclear facilities and a number of legacy nuclear facilities with major Government-funded decommissioning and clean-up programmes. The sites are operated by 17 separate operating companies. In addition, 30 businesses currently transport significant quantities of radioactive material and some 2500 businesses transport small packages of radioactive material, mainly in the medical and industrial radiography sectors.

## Cost Benefit Analysis

18 The proposed LRO would make no change to current nuclear safety, security or transport requirements and would not lead to new or different activities, though it would lead to improvement in the way the current legal requirements are enforced. There would be additional costs to the nuclear regulator arising from start-up and increased running costs of the NSC compared to the present costs of the ND plus DfT. In turn, the main costs to businesses in the nuclear industry would arise from recovering these increased costs.

### *Costs to regulators*

19 Establishing the new NSC would incur one-off start-up costs of around £[4.6m]. This is a broad estimate at this stage based upon scoping and planning work undertaken in March 2009 in anticipation of the transition to the NSC. The estimate comprises internal staff costs (£1m), costs for the use of external consultants (£2.3m) and potential costs of upgrading existing systems (£1m). It also includes a provisional estimate of £0.3m to set up new pensions arrangements, though at this stage it is not clear that this would be necessary nor, if it is, on what scale.

20 Running costs would also increase. The NSC would have its own board, would need its own premises and would have to provide for its own support functions (e.g. HR, finance, IT, legal) currently provided centrally within HSE or DfT. While some of these functions may be transferred from or continue to be shared with HSE, it is likely that there would be an overall increase in overhead costs through some duplication of functions. The NSC would also need to generate a rate of return on assets at 3.5%. At this stage there are significant uncertainties, but current estimates of the likely running costs of the SC in its first year (provisionally 2010-11) are as follows:

• indicative 2010/11 income	£51.3m (includes HSE overheads charged to ND)
• non-chargeable effort	£1.2m
• additional direct support	£0.3m (i.e. HR, finance etc)
• additional estate costs	£0.4m (Cheltenham, London)
• rate of return on assets	£0.5m
• additional cost of NSC board	£0.2m
<b>SC total</b>	<b>£53.9m</b>

21 These costs exclude:

- any capital charges from set-up (which are not expected to be significant);
- any potential indemnity costs, if not covered by the Crown (this remains to be clarified, but such costs could be significant); and
- additional running costs associated with any new pensions arrangements (which are expected to be comparable to present costs, once established).

22 Allowing for uncertainties in these figures and the possibility of greater than expected growth, this assessment therefore assumes a running cost for the NSC in 2010/11 of between £[54 – 56m] in 2009/10 prices. The current indicative budget allocation for ND for 2010/11 is £52.5m (i.e. indicative income of £51.3m plus £1.2m non-chargeable effort). Thus the **additional** running cost of the NSC would be between £[1.5 – 3.5m] for the first year.

23 This increase in running costs would continue for subsequent years. Discounted over 5 years this would have a total net present value of between £[6.8 – 15.8m]. The NSC would have responsibilities to prepare and consult on its strategy and to prepare annual business plans and periodic reports, but the costs associated with these activities are unlikely to be significantly greater than at present within ND. Further increases could occur if the NSC subsequently determines that to continue to meet its statutory responsibilities requires an increase in the currently projected numbers of operational staff, particularly inspectors, or a change to their terms and conditions, including remuneration, as the NSC would have greater financial freedom to make such changes. Decisions on these matters would be for the NSC, once it is established, and therefore impractical to forecast.

### *Costs to the nuclear industry*

24 The ND currently recovers about 97% of its costs from businesses in the nuclear industry (i.e. nuclear licensees and other duty holders). This proportion is expected to continue and the intention would be to increase it, though the scope to do so is obviously limited. However, the absolute costs would still rise because of the need to recover the increased costs of establishing and running the NSC, as described above. The costs of the DfT functions to be transferred are not currently recovered, but some or all of these costs may be recovered in future.

25 If all increased regulatory costs are recovered there would be a one-off cost to the nuclear industry of around £[4.6m] plus additional costs of between £[1.5 – 3.5m] in the first year and each subsequent year. This would equate to a maximum increase in the fees currently payable by duty holders of between 12 – 16% in the first year and between 3 – 7% per annum thereafter. Further additional costs could be incurred in future to cover changes to the terms of conditions of SC staff, but only where necessary to enable the SC to carry out its regulatory responsibilities. The NSC would be expected to keep costs to a minimum and would be subject to increased scrutiny through external auditing and publication of its audited accounts in Parliament. Any future proposal to extend the scope of what is currently recoverable would require new regulations and a further Impact Assessment. It is unlikely that there would be any additional costs to the industry as a result of increased inspections or other regulatory interventions.

### *Impact on small firms*

26 The nuclear industry is characterised by larger firms, particularly as nuclear site licensees, but does contain some small firms, particularly as specialist contractors. Some site operating organisations are relatively small and, if they were self-contained, might be regarded as small or medium-sized businesses. However, these businesses are all part of much larger organisations or consortia. Some transporters of small packages of radioactive material are small firms.

27 The proposed LRO would not impose any additional regulatory requirements on small firms. Increased costs to the nuclear industry would largely be met by the larger firms as licensees and other duty holders. Any increased costs that are passed on to small businesses should not affect their ability to enter or remain in the industry.

### *Benefits*

28 No cost savings are expected from establishing the NSC, either for the regulator or for the nuclear industry. There would be benefits, both for the regulator and for the nuclear industry (as well as for society more widely) in improved nuclear regulatory outcomes, better regulator responsiveness to industry needs and through efficiency savings. These benefits are expected to include –

- Improved regulatory outcomes from speedier regulatory decision-making, leading to time and efficiency savings;
- Establishing a discrete regulator for nuclear matters, with clear statutory responsibilities in its own name, while maintaining the benefits of links with the wider experience and resources of HSE. This should lead to greater efficiencies with associated savings;
- Significantly improved governance and accountability arrangements, particularly through a new Chair and board recruited from outside the regulator to provide strong leadership in delivering statutory functions and cultural change;
- Greater flexibility in responding to evolving challenges through the NSC having full control over its financial and employment arrangements. By boosting recruitment and retention of staff this would enable the NSC to deliver its statutory responsibilities efficiently and effectively. Greater control over budgets should lead to more efficient spending outcomes. In both areas this should lead to efficiency savings;
- Greater transparency in the decision-making process, for example through publishing (and consulting publicly on) specific nuclear regulatory strategies (more focused than at present) and through publishing detailed business plans, targets and reports. This would benefit both existing stakeholders and those new to the sector and lead to savings through more efficient dealings with stakeholders; and
- Greater public confidence in the regulator and the system of regulation, as a result of the improvements described above.

29 It is not possible to give a meaningful estimate of the benefits as a whole, though further data should enable some quantification of likely efficiency savings. For example, delays in granting timely permissions for starting a reactor after shutdowns can cost a licensee £0.5m a day in lost revenue, as well as reducing the amount of low-carbon electricity that can be generated. There is therefore significant scope for savings where such delays result from a lack of sufficient regulatory resources of the right calibre. Overall benefits are expected to greatly exceed the costs.

### *Summary of costs and benefits*

30 Overall costs to the regulator would be around £[6.1 – 8.1m] in the first year (i.e. £[4.6m] one off start-up costs plus £[1.5 – 3.5m] increased running costs) and £[1.5 – 3.5m] in subsequent years (running costs). Discounted over 5 years the total net present value of increased running costs would be between £[6.8 – 15.8m]. Additional increases in running costs are possible in future years, depending on circumstances. All these costs are assumed to be passed on to the nuclear industry in the form of increased fees and charges.

31 It is not possible to give a meaningful estimate of the benefits as a whole. However, there is significant scope for savings where operational delays result from a lack of sufficient regulatory resources of the right calibre. Overall benefits are expected to greatly exceed the costs.

### *Competition assessment*

32 The proposed LRO would impose no additional regulatory requirements and therefore should not significantly affect competition in the nuclear industry. The additional costs arising from restructuring would be recovered from the industry, but are expected to be small in comparison with normal capital and operating costs. These costs, therefore, should have no impact on the ability of businesses to enter or remain in the industry. Indeed greater transparency within the regulatory system should assist prospective new entrants.

## **Administrative Burdens Baseline**

33 The LRO would place no new information requirements on the nuclear industry. While creation of the NSC should lead to improved interactions between the regulators and duty holders, it is unlikely that it would remove any existing requirements either. It would therefore have a neutral impact on the administrative burdens baseline.

## **Monitoring and Evaluation**

34 The impact of the new NSC would be evaluated three years after implementation, i.e. in 2013.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	Yes
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

## Annexes

### **Competition Assessment**

See evidence base.

### **Small Firms Impact Test**

See evidence base.

### **Legal Aid**

Not applicable – the proposals do not create new criminal sanctions or civil penalties.

### **Sustainable Development**

The proposals have no implications for sustainable development.

### **Carbon Assessment**

The proposals have no significant impact on emissions of greenhouse gases.

### **Environmental Impact**

The proposals would not:

- Be vulnerable to the predicted effects of climate change;
- Impact significantly on air quality;
- Involve a material change to the appearance of the landscape or townscape;
- Change either the degree of water pollution or the levels of abstraction of water or exposure to flood risk;
- Disturb or enhance habitat or wildlife;
- Affect the number of people exposed to noise or the levels to which they are exposed.

### **Health Impact Assessment**

The proposals would have no significant impact on human health by virtue of their effects on the following wider determinants of health: income; environment; transport; housing; education; employment; agriculture; or social cohesion.

The proposals would have no significant impact on any of the following lifestyle related variables: physical activity; diet; smoking, drugs, or alcohol use; sexual behaviour; accidents and stress at home or work.

The proposals would not impact on any of the variables that influence the probability of an individual becoming more or less healthy.

The proposals would not result in a significant demand on any of the following health and social care services: primary care; community services; hospital care; need for medicines; accident or emergency attendances; social services; a health protection and preparedness response; likely contacts with health and social service provision.

### **Race Equality Impact Assessment**

The consequences of the proposals would not differ according to people's racial group, for example because they have particular needs, experiences or priorities.

There is no reason to believe that people could be affected differently by the proposals according to their racial group, for example in terms of access to a service, or the ability to take advantage of proposed opportunities.

There is no evidence that any part of the proposals could discriminate unlawfully, directly or indirectly, against people from some racial groups; or that people from some racial groups may have different expectations of the proposals.

The proposals are unlikely to affect relations between certain racial groups, for example because they are seen as favouring a particular group or denying opportunities to another. The proposals are also unlikely to damage relations between any particular racial group (or groups) and HSE.

The proposals are not relevant to the race equality duty.

### **Disability Equality Impact Assessment**

The proposals have no impact on disability equality

### **Gender Equality Impact Assessment**

The proposals would not affect men and women differently, or have any impact positive or negative on life chances or on gender stereotyping.

### **Human Rights**

The proposals would not engage with anyone's Convention rights

### **Rural Proofing**

The proposals would have no significant differential impact in rural areas.

# Annex E:

## List of Regulatory Functions that will be Transferred and How

### Transfer of Nuclear Safety Functions to the NSC

The LRO would amend legislation setting out functions relating specifically to regulating nuclear safety to transfer those functions to the NSC. This legislation would include:

- Sections 1, 3-6, 22, 24A of and Schedule 2 to the Nuclear Installations Act 1965 (which contain requirements for the licensing of nuclear sites and related matters)
- The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (which require consents for certain nuclear decommissioning projects)

The LRO would amend legislation setting out health and safety requirements for all places of work, including nuclear sites, to transfer the function of enforcing this legislation on nuclear sites to the NSC. Related functions, such as granting exemptions, would also be transferred to the NSC. This legislation would include:

- The Health and Safety at Work etc. Act 1974 (which contains general requirements relating to protecting the health and safety of people at work and others, such as the public, who may be affected by work activities)
- Regulations made under the 1974 Act, including the Ionising Radiations Regulations 1999, the Radiation (Emergency Preparedness and Public Information) Regulations 2001, the Management of Health and Safety at Work regulations 1999 and the Construction (Design and Management) Regulations 2007. These regulations contain requirements relating to the control of specific workplace hazards, or to the control of such hazards in general.

The LRO would amend legislation setting out certain other safety-related requirements, to transfer the function of enforcing this legislation on nuclear sites to the NSC. This legislation would include fire safety legislation and the Working Time Regulations 1998.

## Transfer of the Nuclear Security Functions to the NSC

**(Certain of these functions may continue to be exercisable concurrently by the Secretary of State)**

Provision	Function
<b><i>Nuclear Industries Security Regulations 2003 (SI 2003/403)</i></b>	
Regulations 5 and 6	Approval of security plans.
Regulation 7	Notifications.
Regulation 8	Receipt of notices, approval of temporary security plans and notifications.
Regulation 9	Approval of personnel.
Regulation 10	Receipt of reports.
Regulation 11	Giving directions.
Regulation 13 – 15	Approval of carriers.
Regulation 16	Approval of transport security statements.
Regulation 17	Receipt of notifications and approval of persons.
Regulation 18	Receipt of reports.
Regulation 19	Approval of transport plans.
Regulation 20	Receipt of notices and approval of transports of category III nuclear material.
Regulation 21	Giving directions.
Regulation 22	Giving directions, approval of persons and receipt of reports in relation to sensitive nuclear information.
<b><i>Health and Safety at Work etc Act 1974 (c.37)</i></b>	
Such functions under that Act as are conferred on the Secretary of State by virtue of regulation 23 of the Nuclear Industries Security Regulations 2003.	
<b><i>Health and Safety at Work (Northern Ireland) Order 1978 (No. 1039 (NI 9))</i></b>	
Such functions under that Order as are conferred on the Secretary of State by virtue of regulation 24 of the Nuclear Industries Security Regulations 2003.	

***Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004 (SI 2004/1818)***

The Secretary of State's functions under regulations 4 and 5 (which principally relate to authorisation of disclosures).

***Nuclear Industries (Fees) Regulations 2005 (SI 2005/1654)***

The Secretary of State's functions under Regulations 3 and 4 (which principally relate to fees for nuclear industries security).

***Import of Goods (Control) Order 1954 (SI 1954/23)***

The grant of licences for the importation of nuclear material listed in Entries Numbers 11 and 12 of the Schedule to the Open General Import Licence dated 4 December 1987, and the modification and revocation of such licences.

***Energy Act 2004 (c.20)***

Schedule 13,  
Paragraphs 2(1)  
(a),(b),(d),(e),(f),(g),(h)  
and (3)

Functions principally relating to giving directions to the Civil Nuclear Police Authority and undertaking consultation.

Section 63(3)

Functions relating to the charging and receiving of money.

***Nuclear Installations Act 1965 (C.57)***

Sections (2)(1), (1A) and  
(1D)

Functions related to the granting, amendment and revocation of permits.

## Transfer of the Nuclear Safeguard Functions to the NSC

Provision	Functions to the extent necessary to ensure compliance with the UK's international safeguards obligations
<b><i>Nuclear Safeguards Act 2000 (c.5)</i></b>	
Section 1	The power to authorise persons to exercise powers under this Act (contained within the definition of "authorised officer" in this section).
Section 2	Receiving Additional Protocol Information and issuing notices requiring information.
Section 4	Possessing information and (where authorised by a Justice of the Peace) the power to enter premises to acquire this information.
Section 5	The power to grant certificates in relation to Agency inspectors.
<b><i>Nuclear Safeguards (Notifications) Regulations 2004 (SI 2004/1255)</i></b>	
Regulations 4 & 6	The requirement on persons to notify of their status.
Regulation 5	The power to relieve persons from the obligation to notify.
<b><i>Atomic Energy Act 1946 (c.80)</i></b>	
Section 4	The power to acquire information.
Section 5	The power to authorise entry and inspection.
Section 11	The power to consent to the disclosure of information and authorise persons to receive such information.
Section 13	The power to grant authorisation to disclose information.
<b><i>Nuclear Safeguards and Electricity (Finance) Act 1978 (c.25)</i></b>	
Section 2(8)	The power to grant certificates regarding designation of IAEA Inspectors.

## Transfer of the Transport Functions to the NSC

Provision	Functions to the extent necessary to regulate the safety and security of the transport of radioactive material
<b><i>The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009</i></b>	
Regulation 12	The power to authorise carriage contrary to prohibitions in certain circumstances.
Regulation 25	This regulation sets out who the competent authority in GB is.
Regulation 26	The GB competent authority is to perform those functions identified in ADR, RID etc as being functions of a competent authority. <sup>7</sup>
Regulation 27	The GB competent authority has the power to charge a fee where it is performing a function of a competent authority.
Regulation 29	The GB competent authority can appoint persons to carry out approvals of equipment on its behalf.
Regulation 32	Enforcement.
Schedule 2	Regulation 24 applies Schedule 2 in respect of radiological emergencies. Schedule 2 requires the approval of the competent authority in respect of the manner in which information is disseminated following an emergency and imposes a duty on the carrier to consult with the competent authority regarding the information and a duty to notify/report to the competent authority following an occurrence. Further, the competent authority has power to require documents and certain actions in relation to emergency arrangements.



Department of Energy and Climate Change. [www.decc.gov.uk](http://www.decc.gov.uk)

Department for Work and Pensions. [www.dwp.gov.uk](http://www.dwp.gov.uk)

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