EXPLANATORY MEMORANDUM TO

THE INFRASTRUCTURE PLANNING (RADIOACTIVE WASTE GEOLOGICAL DISPOSAL FACILITIES) ORDER 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order will bring certain development relating to geological disposal facilities for radioactive waste, and the deep borehole investigations necessary to determine the suitability of potential sites, within the nationally significant infrastructure project (NSIP) regime in the Planning Act 2008. Where development falls within the NSIP regime, developers are required to apply for development consent from the Secretary of State under the Planning Act 2008.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Development relating to a radioactive waste geological disposal facility is not provided for in the existing provisions of the Planning Act 2008. A hazardous waste facility, details of which are set out in section 30 of the Planning Act 2008, would share several characteristics with a radioactive waste geological disposal facility. However, the definition of hazardous waste in section 30 makes reference to secondary legislation, which in turn makes reference to European Union legislation, which does not cover radioactive waste. A new type of NSIP for radioactive waste geological disposal facilities is therefore required.

4.2 The power in section 14(3) to add a new type of NSIP is subject to the limitations in sections 14(6) and (7), namely that the new NSIP must be for the carrying out of works in one or more specified fields, and in one or more of the areas specified. This Order is made for a new type of NSIP in the field of waste and applies only in respect of England and waters adjacent to England up to the seaward limits of the territorial sea.

4.3 This Order is subject to the affirmative resolution procedure in accordance with section 232(6) of the Planning Act 2008.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Energy and Climate Change, Baroness Verma, has made the following statement regarding Human Rights:

In my view the provisions of the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 As a pioneer of nuclear technology, the UK has accumulated a legacy of higher activity radioactive waste and material. More will arise as existing nuclear facilities reach the end of their lifetime and are decommissioned and cleaned up, and through the operation and decommissioning of any new nuclear power stations.

7.2 In 2001, the UK Government and devolved administrations initiated the Managing Radioactive Waste Safely (MRWS) programme, with the aim of finding a practical long-term solution for the UK's higher activity radioactive waste. Following the examination of a wide range of options, the independent Committee on Radioactive Waste Management (CoRWM) recommended in 2006 that geological disposal, coupled with safe and secure interim storage, was the best available option for managing the UK's existing higher activity radioactive waste. A Geological Disposal Facility (GDF) is a highly-engineered facility capable of isolating radioactive waste within multiple protective barriers, deep underground, such that no harmful quantities of radioactivity ever reach the surface. It will provide a permanent solution for both the UK's existing higher activity radioactive waste and anticipated waste from the nuclear new build programme.

7.3 CoRWM stated that the aim should be to progress disposal as soon as practicable, consistent with developing and maintaining public confidence. In October 2006, the UK Government and the devolved administrations published a response, accepting these recommendations.

7.4 Public involvement in the GDF programme since CoRWM's report has included the 2007 consultation *Managing Radioactive Waste Safely: A framework for implementing geological disposal* (which covered the technical programme, aspects of design and delivery of a GDF, and the process and criteria to be used to decide the siting of a GDF), the 2007 consultation *The Future of Nuclear Power* (which set out the Government's belief that it was both technically possible and desirable to dispose of both new and legacy higher activity waste in the same GDF, and that this should be explored through the MRWS siting process) and the national MRWS siting process that was set out in the 2008 *Managing Radioactive Waste Safely* White Paper.

7.5 With regards to planning, the 2008 *Managing Radioactive Waste Safely* White Paper stated that the Government was inclined to look towards applying the development consent process that had at that time been introduced in the November 2007 Planning Bill

(and which would become the Planning Act 2008), as a GDF was likely to be regarded as a nationally significant infrastructure project, but no final decisions were taken. The process for consenting 'nationally significant infrastructure projects' (NSIPs) for energy, transport, water and waste that was eventually established by the Planning Act 2008 (and the amendments which were subsequently introduced by the Localism Act 2011) involves objective examination by the Planning Inspectorate and a final decision taken by the Secretary of State. It was introduced to streamline the decision-making process for nationally significant infrastructure projects, making it fairer and faster for both communities and developers.

7.6 The MRWS siting process, which ran from 2008 to 2013, was based on the willingness of local communities to participate in the process. By February 2013, there were no longer any communities actively involved in this siting process (and none had reached a stage requiring any planning decisions to be taken). A 2013 consultation *Review of the Siting Process for a Geological Disposal Facility* followed, details of which (specific to the issue of the approach to planning) are outlined below.

7.7 Informed by this consultation, the 2014 *Implementing Geological Disposal* White Paper set out the UK Government's framework for managing higher activity radioactive waste in the long term through geological disposal. The chapter on national land-use planning set out the UK Government's view that a GDF is infrastructure of national significance and that the approach to land-use planning should reflect this (see https://www.gov.uk/government/publications/implementing-geological-disposal). It stated the UK Government's intention to bring GDFs in England within the definition of NSIPs. It also set out the UK Government's intention to bring the deep boreholes that must precede the development of a GDF (in order to characterise and assess potential sites) within the definition of NSIPs in their own right.

7.8 The Planning Act 2008 places specific requirements on the developer to consult local communities, local authorities, statutory bodies, and other interested parties before any application for development consent is made. This development consent process is consistent with, and will be in addition to, the approach to identifying a site for a GDF. As set out in the 2014 *Implementing Geological Disposal* White Paper, the UK Government continues to favour an approach to siting a GDF based on local communities' willingness to participate in the process, and the final decision to site a GDF in a community will not be taken until there has been a test of public opinion that demonstrates community support.

7.9 The permanency of the solution for long-term management of higher activity radioactive waste is denoted in the draft Order where the main purpose of a GDF is expected to be the *final* disposal of radioactive waste. The Order also reflects the fact that whilst the part of the facility where the waste is to be disposed of is expected to be constructed at a depth of at least 200m beneath the surface of the ground or seabed, and the boreholes necessary to assess the suitability of the site expected to be drilled to a depth of at least 150m, it will be difficult to properly and accurately characterise the geological conditions at such depths before extensive underground investigations have

been carried out. Accordingly, the Order provides a level of flexibility around the precise depth limits, something which will be necessary in circumstances where developers intend to achieve those depths but are prevented from doing so. In such a circumstance it would, however, still be the case that the natural environment which surrounds the facility is expected to act, in combination with any engineered measures, to inhibit the transit of radionuclides from the part of the facility where radioactive waste is to be disposed of to the surface. If this could not be demonstrated to be the case, the independent regulators would not authorise the facility to operate.

7.10 Land-use planning is a devolved matter, as is radioactive waste management, and this approach to land-use planning for GDFs applies only in England and the territorial waters adjacent to England. Should circumstances arise requiring planning decisions elsewhere in the UK, these would need to proceed through the relevant planning process for that jurisdiction.

8. Consultation outcome

8.1 The proposed approach to land-use planning for a GDF in England was set out in the *Review of the Siting Process for a Geological Disposal Facility* consultation, which ran for 12 weeks from September to December 2013. These proposals included the preliminary view that GDFs, and associated intrusive borehole investigations for the purposes of site characterisation, should be brought within the definition of NSIPs in the Planning Act 2008.

8.2 There were 719 responses to the consultation, with a minority disagreeing with the proposed approach. Key concerns were that county councils might be excluded from having a participative role in the process and that there could be a conflict of interest if the Secretary of State responsible for delivering a GDF was also responsible for making the final decision on whether to grant development consent. The UK Government took on board feedback received through the consultation on the importance of building on local support through a revised siting process, but felt that the national infrastructure planning process includes clear provisions for the involvement of local authorities and a decision-making process that respects the differing roles played by the Secretary of State as both policy maker and 'quasi-judicial decision-maker'. See: https://www.gov.uk/government/consultations/geological-disposal-facility-siting-process-review (in particular, pages 14-16 of the Government response).

9. Guidance

9.1 The UK Government will be producing a GDF National Policy Statement (NPS) following the making of this Order. This NPS will guide developers, the Planning Inspectorate and the Secretary of State when considering applications for development consent for the types of infrastructure described in this Order. The NPS will be informed by an Appraisal of Sustainability, as required by the Planning Act 2008, which will be prepared in such a way as to satisfy all of the relevant environmental assessments.

10. Impact

10.1 An Impact Assessment has not been produced for this Order as there is no impact on business, charities or voluntary bodies. The implementation of geological disposal is a public sector infrastructure project.

10.2 There is no impact on the public sector. Government has been inclined to look towards the NSIP regime for the development of a GDF since 2008. This Order will apply this planning route.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The UK Government will be producing a GDF National Policy Statement following the making of this Order, which will be accompanied by a post-adoption statement and monitoring strategy. The NPS will be subject to review by the Secretary of State to ensure that it remains appropriate.

13. Contact

13.1 Conor Ritchie at the Department of Energy and Climate Change (Tel: 0300 068 6555 or Email: conor.ritchie@decc.gsi.gov.uk) will answer any queries regarding the instrument.