EXPLANATORY MEMORANDUM TO

THE NUCLEAR DECOMMISSIONING AND WASTE HANDLING (DESIGNATED TECHNICAL MATTERS) ORDER 2010

2010 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 The purpose of this Order is to specify certain matters, in addition to those provided in the Energy Act 2008 ("the Act"), for which a person who submits a Funded Decommissioning Programme (FDP) must make financial provision in the FDP. Under the Act any person who intends to install a nuclear power station must submit a FDP to the Secretary of State for approval and this programme must set out the likely costs of decommissioning and cleaning up a site, and the financing arrangements made by that person for meeting those costs.

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

3.1 None.

4. Legislative Context

4.1 Chapter 1 of Part 3 of the Energy Act 2008 deals with decommissioning and clean-up of nuclear sites and the requirement for nuclear operators who apply for a nuclear site licence to submit a FDP to the Secretary of State for approval. Section 47 of the Act makes it a criminal offence to use a site by virtue of the nuclear site licence without an approved FDP in place and section 57 makes it a criminal offence for an operator or any other person with obligations under a FDP to fail to comply with such an obligation.

4.2 Section 45(7) of the Act provides details of what a FDP must contain. This includes details of the steps to be taken in relation to the technical matters (matters concerned with dealing with nuclear waste during the operation of the station; decommissioning and clean up of the site; and steps in preparation for decommissioning); cost estimates for certain of those technical matters (known as "designated technical matters") and the financing arrangements for those designated technical matters.

4.3 Section 45(6) provides that in addition to decommissioning and clean up of a site, the designated technical matters are those technical matters specified by the Secretary of State by order. Under section 46(6)(a) the Secretary of State can specify as designated technical matters activities in relation to the treatment, storage, transportation and disposal of hazardous material during the operation of a nuclear installation on the site (Section 45(5)(a)) or the steps undertaken to prepare for decommissioning and clean-up of the site (Section 45(5)(c).

4.4 The Order specifies designated technical matters, in addition to those already stated in section 45(6)(b). The Order will be complemented by the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2010, which will be laid once this Order comes into force. These Regulations will set out certain processes regarding FDPs. They will include provisions about the fees payable by operators in relation to FDPs; allow the Secretary of State to rely on verification of certain information by independent third parties; allow certain modifications to be made to the FDP without seeking the approval of the Secretary of State; and will require the operator to provide reports on an annual and five yearly basis.

5. Territorial Extent and Application

5.1 This Order applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 The Secretary of State for Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010 are compatible with the Convention rights.

7. Policy background

7.1 The Order is being made to specify designated technical matters additional to those already in section 45(6)(b) of the Act, for which nuclear operators must provide detailed cost estimates and financial security. The Act only contains one category of designated technical matters, namely the decommissioning of a relevant nuclear installation and cleaning up the site, and provides that the Secretary of State specify by Order any other matters which are to be designated technical matters. The Order specifies that the construction and maintenance of interim stores used for storage of intermediate level waste and spent fuel; and the steps preparatory to the decommissioning of the nuclear installation and clean up of the site, are designated technical matters.

7.2 The Act together with the Order makes clear the matters for which nuclear operators must provide estimates of costs, as part of the FDP. Nuclear operators must set aside funds as part of the FDP to meet the costs of the designated technical matters to which the Act and the Order refer, in order that the burden of funding those matters should not fall on the state.

8. Consultation outcome

8.1 From March 2010 until June 2010 we ran a consultation on the matters to be specified as designated technical matters in the Order. The consultation was for a 12 week period and was open to members of the public, the nuclear industry, non-governmental organisations and any other organisation or body with an interest in the costs of nuclear decommissioning and the financing of those costs. .

8.2 Following the consultation the Government is not proposing any substantive changes to the draft on which the consultation took place. As a result of comments received in the consultation the Government is however, slightly changing the definition of interim stores to be absolutely clear that these relate to stores for intermediate level waste and spent fuel constructed during the operation of a nuclear installation on the site. The Government has also improved the drafting in a number of respects from the consultation draft.

9. Guidance

9.1 DECC is not issuing specific guidance in relation to this Order.

9.2 The Department will, however, be issuing statutory guidance in accordance with section 54 of the Act on the operation of the FDP regime as a whole. This guidance will be in relation to the contents of an FDP and the factors which will be considered when making a decision on whether to approve a FDP or make a modification to it. It will provide guidance in relation to the designated technical matters, including those specified in the Order, to assist operators in understanding the provision that needs to be made in relation to them in the FDP. The guidance will not be prescriptive but will instead set out key principles which the Secretary of State will expect to see satisfied in the FDP prepared by an operator. The guidance will give information about the way in which operators may satisfy those principles.

10. Impact

10.1 The impact on charities or voluntary bodies is likely to be none as projects will be taken forward by commercial operators. The impact on business is that all nuclear operators required to submit an FDP under the Act are affected by this Order.

10.2 The impact on the public sector is negligible as DECC will be the regulatory authority and will accommodate this area of work within the overall FDP approval process.

10.3 A Regulatory Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 This legislation can potentially apply to small business. However, in practice it is not likely to, as operators of nuclear sites will most likely be very large companies with the extensive resources, in terms of finances and employees; both of which are needed to operate nuclear installations.

12. Monitoring & review

12.1 Operation of the Order in the context of the wider policy will be subject to ongoing internal review through the process of approving/considering operators' FDPs and may be amended accordingly.

13. Contact

13.1 Ailsha Dilmohamed at Department of Energy and Climate Change, Tel: 0300 068 5838 or email: Ailsha.Dilmohamed@decc.gsi.gov.uk can answer any queries regarding the instrument.