**EXPLANATORY MEMORANDUM TO**

**THE ENERGY ACT 2004 (DESIGNATION OF PUBLICLY OWNED COMPANIES) (REVOCATION) ORDER 2014**

**2014 No. 1391**

**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 instrument revokes the Energy Act 2004 (Designation of Publicly Owned Companies) Order 2007 (S.I. 2007/3479) ("the 2007 Order"). The designation of British Nuclear Fuels plc (registered number 5027024) by the 2007 Order enabled its property, rights or liabilities to be transferred by a nuclear transfer scheme made under Chapter 2 of Part 1 of the Energy Act 2004 (c. 20). All transfers that are to be made by a nuclear transfer scheme have now been completed and the 2007 Order is no longer necessary.

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

3.1 None.

## 4. Legislative Context

4.1 Part 1 of the Energy Act 2004 provided for the establishment of the Nuclear Decommissioning Authority ("the NDA") which was responsible for ensuring the decommissioning and clean-up of Britain's civil public sector nuclear legacy. Chapter 2 of that Part enabled the Secretary of State to make nuclear transfer schemes both to facilitate the restructuring of British Nuclear Fuels Limited ("BNFL") and to enable the NDA, where appropriate, to improve arrangements for the management of the nuclear sites for which the NDA was given responsibility.

4.2 Section 39 of the Energy Act made provision for the transfer of certain publicly owned assets by nuclear transfer scheme. This included provision for transfers to be made from a company designated by an order made by the Secretary of State. A company could be designated by order if it was a publicly owned company to which securities, property, rights or liabilities of BNFL, or of a wholly-owned subsidiary of BNFL, had been transferred at a time when both the company making the transfer and the designated company were publicly owned.

## 5. Territorial Extent and Application

5.1 This instrument applies to Great Britain and Northern Ireland.

## 6. European Convention on Human Rights

6.1 As the instrument is only required to be laid before Parliament, is subject to no other procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- What is being done and why

7.1 This instrument is made as a result of the government's Red Tape Challenge Programme which sought the views of businesses and the public on the removal and reform of areas of regulation. DECC holds primary responsibility for the 'Red Tape Challenge Energy Theme' under which these revocations are being delivered.

7.2 Under the Atomic Energy Authority Act 1971, part of the undertaking of the United Kingdom Atomic Energy Authority was transferred to BNFL. BNFL was itself restructured prior to the changes to the nuclear industry provided for in Part 1 of the Energy Act 2004. British Nuclear Fuels plc (the company designated by the Order to be revoked) was formed on 1 April 2005 as the new holding company for the BNFL group of companies and this was renamed as British Nuclear Group, later to become Sellafield Limited. By May 2009, all of the group's assets that were to be transferred by nuclear transfer scheme had been transferred and there were no remaining operational activities or businesses. The group continues to exist only as a legal entity to meet pension liabilities and any obligations arising from disposal programmes.

- Consolidation

7.3 None.

## 8. Consultation outcome

8.1 As part of the Red Tape Challenge, every few weeks regulation affecting a specific sector or industry (as well as that of general regulation that cuts across sectors) is published by the Cabinet Office online (at this web address: http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/) for the public and stakeholders to suggest how they can be 'scrapped' or 'improved'. The department also ran an internal challenge process to identify measures which could be removed or reformed, which identified the order being revoked.

8.2 No specific consultation concerning the order being revoked was undertaken. However, the department has worked closely with the NDA and Shareholder Executive, as well as internal and external legal teams, who share a policy interest in this legislation and they support the conclusion to revoke the 2007 Order.

## 9. Guidance

9.1 No guidance has been produced concerning this instrument.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 No monitoring is required.

## 13. Contact

Stephen Allen at the Department of Energy and Climate Change Tel: 0300 068 6101 or email: stephen.j.allen@decc.gsi.gov.uk can answer any queries regarding the instrument.