EXPLANATORY MEMORANDUM TO

THE JUSTIFICATION DECISION (GENERATION OF ELECTRICITY BY THE EPR NUCLEAR REACTOR) REGULATIONS 2010
2010 No. 2844

AND

THE JUSTIFICATION DECISION (GENERATION OF ELECTRICITY BY THE AP1000 NUCLEAR REACTOR) REGULATIONS 2010
2010 No. 2845

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These instruments make positive regulatory justification decisions in respect of the generation of electricity by the nuclear reactors known as the EPR and the AP1000. Regulatory justification requires a decision about whether the social, economic and other benefits of a practice outweigh the health detriments and must be completed before any new practice giving rise to ionising radiation can be undertaken. These Regulations do not, themselves, allow for deployment of these nuclear reactors, but are an early step in the process of building the EPR and AP1000 nuclear reactors in the UK.

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

3.1 None.

4. Legislative Context

4.1 Council Directive 96/29/Euratom (OJ No L159, 29.6.96, p 1) laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation requires Member States to carry out a practice called “Justification”. This requires that before a new practice involving ionising radiation is first adopted or approved Member States must make a decision on whether the health detriments are Justified by the social, economic and other benefits. This requirement is implemented in respect of the whole of the UK by the Justification of Practices Involving Ionising Radiation Regulations 2004 (SI 2004 No. 1769) (“the 2004 Regulations”).

4.2 Regulation 14(1) of the 2004 Regulations requires that any positive justification decision should itself be made through Regulations. The Regulations which are the subject of this explanatory memorandum are being made to fulfil this requirement and make positive decisions that two types of nuclear reactor (the EPR and AP1000) are justified. No transposition note is attached as although the requirement to make these decisions originates in the Directive, the 2004 Regulations transpose the substantive requirements and it is those Regulations that require decisions to be made through these Regulations.

4.3 In accordance with the regulation 12 of the 2004 Regulations the Secretary of State has previously determined that the EPR and AP1000 reactors are "new practices".[1]

4.4 This is the first time these powers have been exercised.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The devolved administrations have been consulted at regular stages throughout the consideration of the justification application and decision-making process.

6. European Convention on Human Rights

The Secretary of State for Energy and Climate Change, Chris Huhne MP, has made the following statement regarding Human Rights:

In my view the provisions of The Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010 and The Justification Decision (Generation of Electricity by the AP1000 Nuclear Reactor) Regulations 2010 are compatible with the Convention rights.

7. Policy background

7.1 In June 2008 the Nuclear Industry Association submitted an application to the Secretary of State asking him to justify the generation of electricity from certain types of nuclear reactor. The Secretary of State subsequently determined that 4 types of nuclear reactor are new classes or types of practice, within the meaning of the 2004 Regulations and therefore required justification.[2]

7.2 Following several consultations (detailed further below) the Secretary of State has concluded that the generation of electricity by the EPR and AP1000 nuclear

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1 A copy of these determinations can be found at http://www.decc.gov.uk/assets/decc/What%20we%20do/UK%20energy%20supply/Energy%20mix/Nuclear/whitepaper08/actions/regjust/1_20091106131726_e_@@_justificationpracticesdetermination.pdf

2 See footnote 1.

reactors is justified (he has not yet considered the other types of reactor). Alongside these Regulations he is also publishing documents considering the benefits and detriments of these reactors and setting out in detail why he considers that they are justified.

7.3 These Regulations include specific exceptions making it clear that although the practices are justified, the justification decisions do not extend to the use of mixed oxide fuel in the reactors or the reprocessing of spent fuel. This is because as part of the consideration of the practices the Secretary of State has not looked at particular issues arising from the creation, use and disposal of mixed oxide fuel or the radiological processes or consequences associated with reprocessing.

8. Consultation outcome

8.1 The instruments follow three full public consultations. The Government consulted in May 2007 on a proposed process for the justification of new nuclear reactors, alongside a public consultation on the "in principle" new nuclear decision which led to the White Paper on Nuclear Power. It consulted for 14 weeks, starting in December 2008 on the application from the Nuclear Industry Association referred to in paragraph 7.1. Finally, it consulted for 15 weeks, starting in November 2009 on proposed decisions that the nuclear reactors EPR and AP1000 should be justified. In addition to the written consultation process, the Government hosted a one-day discussion event in January 2010 on the draft Justification decision documents, which was open to all who wished to attend.

8.2 Those consulted included industry, environmental groups, regulators and other Government bodies, local campaign groups and individual members of the public. The Government has not been presented with any evidence in response to any of the consultations which has caused it to question that the two reactors should be justified, that is, that their benefits outweigh any health detriment they might cause.

8.3 Documents setting out in detail why the Secretary of State considers that these reactor types are justified are published on the Department's website at http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/new/reg_just/reg_just.aspx and these set out the positions of respondents on each of the issues. Copies have been deposited in the Libraries of both Houses.

9. Guidance

9.1 Guidance was published by Defra (updated in May 2008) on the application of the 2004 Regulations. This sets out the Regulatory Justification regime and also provides guidance on the effect of a positive decision, such as those set out in these Regulations. It is not intended that any guidance relating specifically to the Regulations which are the subject of this explanatory memorandum will be published.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that the decisions will allow further development of the process of deploying EPR and AP1000 nuclear reactors in the UK, but do not of themselves allow for their deployment.

10.2 There is no impact on the public sector.

10.3 As no regulatory impact on the private or voluntary sector from implementing these regulations is foreseen, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business. However, in practice no small business will be responsible for constructing or operating a nuclear power station.

11.2 No action is therefore necessary to minimise the impact of the requirements on or otherwise assist firms employing up to 20 people.

12. Monitoring & review

12.1 The decisions are among the actions necessary to allow new nuclear power stations to come into operation by 2017. Progress towards this objective is regularly reviewed by Government and industry.

13. Contact

Owen Jenkins at the Department of Energy and Climate Change Tel: 0300 068 5869 or email: owen.jenkins@decc.gsi.gov.uk can answer any queries regarding the instrument.