EXPLANATORY MEMORANDUM TO

THE NUCLEAR INSTALLATIONS (PRESCRIBED CONDITIONS AND EXCEPTED MATTER) REGULATIONS 2025

2025 No. 1171

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Lord Vallance, Minister of State at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Tonima Saha, Deputy Director for Nuclear Decommissioning, at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Adam Draude at the Department for Energy Security and Net Zero can be contacted by email at the following address with any queries regarding the instrument: LLWExclusion@energysecurity.gov.uk. Alternatively, the Department can be contacted by telephone: 07917 512 672.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument prescribes two additional conditions that must be satisfied for a site on which nuclear matter is disposed of to qualify as an excluded disposal site under the Nuclear Installations Act 1965 ("the Act"). If a site is excluded, the operator of that site is no longer subject to the nuclear third party liability regime established by the Act. The regime channels liability exclusively and strictly to a responsible operator in the event of a nuclear incident, caps their liability, and requires them to have Secretary of State-approved financial arrangements in place to ensure they can meet any claims up to that cap. The instrument also ensures that the nuclear third party liability regime responsibilities of an operator who sends nuclear matter to an excluded disposal site end at the point of disposal.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdictions(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The United Kingdom is a signatory to the Organisation for Economic Co-operation and Development (OECD) Nuclear Energy Agency's Paris Convention on Third Party Liability in the Field of Nuclear Energy,[1] which requires States Parties to channel liability for damage arising from a nuclear incident exclusively and strictly to the operator of the nuclear installation responsible for that damage. In exchange for having claims channelled to them, the potential liability of an operator in the event of an incident is capped. States Parties are also required to ensure operators have adequate financial arrangements in place so that, in the event of an incident, they can meet claims up to that cap. This is known as the nuclear third party liability regime.

5.2 In 2016 the OECD Nuclear Energy Agency's Steering Committee published a Decision and Recommendation (the 'OECD Decision') permitting States Parties to exclude sites for the disposal of low-level radioactive waste from the nuclear third party liability regime, provided certain conditions were met.[2] The OECD Decision notes the limited risk posed by such sites.

5.3 The Energy Act 2023 amended the Act to partly implement the OECD Decision. Once the amendments are commenced, the Act will permit operators of disposals sites to apply for excluded disposal site status and exclude their site from the nuclear third party liability regime. Two of the conditions that must be met - the permit condition and site history condition – are set out in the Act. Regulation 2 of these Regulations prescribes two further conditions - the dose condition and the criticality condition - completing the implementation of the OECD decision.

5.4 The nuclear third party liability regime makes operators of sites licensed under section 1 of the Act responsible for nuclear matter they transport from their site. One of the events that can bring that responsibility to an end is the nuclear matter's arrival at a "relevant disposal site". Regulation 3 ensures that the nuclear third party liability regime responsibilities of an operator who sends nuclear matter to an excluded disposal site still end at the point of disposal, even though excluded disposal sites are outside of the definition of relevant disposal site in the Act.

What was the previous policy, how is this different?

5.5 Four waste disposal facilities currently hold environmental permits to dispose of very low level, and some low level, radioactive waste. If any of that waste were of nuclear origin, they would become subject to the nuclear third party liability regime and need to have expensive insurance cover. At present only half of permitted sites (i.e. 2 out of 4) accept nuclear waste. This has reduced the disposal capacity available for nuclear waste in the UK. By providing a route to exempt low risk sites from the nuclear third party liability regime, this instrument (in conjunction with the amendments to the Act made by the Energy Act 2023) will reduce costs for current low level waste disposal sites and encourage those holding permits to re-enter the

[1] Nuclear Energy Agency (NEA) - Paris Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention or PC) (https://www.oecd-nea.org/jcms/pl_20196/paris-convention-on-third-party-liability-in-the-field-of-nuclear-energy-paris-convention-or-pc)

[2] Nuclear Energy Agency (NEA) - Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste (https://www.oecd-nea.org/jcms/pl_19768/decision-and-recommendation-concerning-the-application-of-the-paris-convention-on-third-party-liability-in-the-field-of-nuclear-energy-to-nuclear-installations-for-the-disposal-of-certain-types-of-low-level-radioactive-waste)

market, thus diversifying the market and increasing capacity for low level waste disposal in the UK.

5.6 In the event of an incident on an excluded disposal site, claims may be able to be brought in tort.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument prescribes two additional conditions that must be satisfied for a site on which nuclear matter is disposed of to qualify as an excluded disposal site for the purposes of the Nuclear Installations Act 1965 ("the Act"). In addition, the instrument amends the Nuclear Installations (Excepted Matter) Regulations 2017 to make nuclear matter on an excluded disposal site "excepted matter" for the purposes of the Act. Excepted matter falls outside of the nuclear third party liability regime, ensuring that responsibility under the regime does not remain with the operators who sent waste to the site.

Why was this approach taken to change the law?

6.2 The Regulations are necessary to complete implementation of the OECD Decision. The Act establishes the permit and site history conditions, which ensure the radioactivity concentration limits in the OECD Decision cannot lawfully be exceeded on a site. The dose and criticality conditions in the instrument ensure the dose and criticality criteria in the OECD Decision will also be met. Regarding regulation 3, an amendment to the Nuclear Installations (Excepted Matter) Regulations 2017 was considered the clearest and most efficient approach to implementation.

7. Consultation

Summary of consultation outcome and methodology

7.1 In May 2018, the Government consulted on proposals to amend legislation regarding the regulatory framework of nuclear sites in the final stages of decommissioning and clean-up and to introduce flexibility, reduce cost and enhance environmental benefits in nuclear waste management[3]. These proposals included implementation of the OECD Decision.

7.2 Over 40 of 50 consultation responses were favourable to the Government proposals. In its response to the consultation in October 2018, the Government committed to implementing its proposals.[4]

7.3 In addition, in developing this instrument and associated guidance, the Department has engaged with the devolved administrations, the Nuclear Decommissioning Authority, the Office for Nuclear Regulation, environmental regulators, the Health and Safety Executive and affected disposal site operators.

8. Applicable Guidance

8.1 Guidance that explains how disposal sites can apply for exemption from nuclear third party liability cover will be available from 11 November on the GOV.UK website.

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[3] https://assets.publishing.service.gov.uk/media/5af16fdae5274a699ab2bf9d/Regulation-of-nuclear-sites-in_the_final-stages-of-decommissioning-and-cleanup-consultation.pdf

[4] https://assets.publishing.service.gov.uk/media/5bc8b0fa40f0b61c8bef4fe8/government-response-framework-for-nuclear-decomissioning.pdf

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the potential impacts of implementing the OECD Decision were considered and detailed in the Impact Assessment that accompanied the Energy Act 2023.[5] The number of businesses affected by this instrument and the associated amendments to the Act (made by the Energy Act 2023) is very small (see below). The impact of these Regulations falls below the *de minimis* threshold of the Better Regulation Framework.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies. The impact on business is expected to be positive. The owners of the two existing sites which are currently subject to the nuclear third party liability regime could save approximately £100,000 in insurance premiums if they successfully applied for excluded disposal site status. Two additional permitted sites, if they successfully applied for excluded disposal site status and began accepting appropriate nuclear matter for disposal, could benefit from additional revenue The cost of applications for exclusion will be negligible, as no application fee will be charged and associated guidance encourages applicants to use documents produced as part of other regulatory processes to evidence that the requisite tests are met. There is no ongoing cost of compliance.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the affected organisations are in the private sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is direct engagement with the very small number of businesses likely to benefit from the introduction of this instrument and the associated amendments to the Act (made by the Energy Act 2023).

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Vallance has made the following statement: "A review clause in these regulations would be disproportionate to the economic impact on the nuclear waste disposal sector. This is because the impact is expected to be less than +/- £10m."

[5] https://www.legislation.gov.uk/ukpga/2023/52/pdfs/ukpgaod_20230052_en.pdf (page 797)

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").