Delegated Powers Memorandum

Contents

Summary- Nuclear Energy (Financing) Bill

Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Nuclear Energy (Financing) Bill ("the Bill"). The Bill was introduced in the House of Commons on 26 October 2021. This memorandum identifies the provisions of the Bill that confer delegated powers. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected. Provisions are described below in the order in which they appear in the Bill.

Purpose and effect of the Bill

2. This policy relates to the creation of a new funding model for nuclear projects, as well as tackling other obstacles to private investment in the nuclear sector. The UK is committed to the legally-binding target of Net Zero greenhouse gas emissions by 2050 and, earlier this year, we enshrined our new target to reduce emissions by 78% by 2035. A key part of this will be to secure the transition to a clean electricity system that is reliable and affordable for energy consumers. This will require a substantial deployment of renewable technologies, complemented by technologies which can provide energy to consumers when the wind is not blowing, or the sun does not shine.

3. Large scale nuclear power plants are the only proven technology we have available today to provide continuous, reliable and low carbon electricity. However, our existing nuclear fleet will be almost completely retired by 2030, and the Government's analysis in the Energy White Paper shows that we are likely to need nuclear generation beyond the new plant being constructed at Hinkley Point C. To meet the challenge of decarbonising the power sector consistent with our Net Zero target, we are working to bring at least one new large-scale project to final investment decision in this Parliament, subject to value for money and all relevant approvals, whilst rapidly exploring the development of new nuclear technologies beyond conventional large-scale plants. These goals were set out in the 2020 Energy White Paper.

4. This legislation supports the Government's commitment to build a clean, resilient and affordable energy system in the following ways:

    a. **Regulated Asset Base (RAB) model:** The cost of capital to build new nuclear plants is the main driver of project cost, given the length of time and risk involved in construction. To address this, we are introducing a RAB model as an option to fund future nuclear projects. The Government consulted on the use of a RAB model for nuclear projects in July 2019, and its response in December 2020 confirmed the Government's position that a RAB model remains credible for funding new build.

    Under the RAB model introduced by this legislation, a company receives payments from consumers in relation to the construction and operation of new infrastructure.

    The legislation will enable the Secretary of State to designate a company to benefit from a RAB model with respect to its proposed nuclear project, provided that it satisfies certain criteria. This will empower the Secretary of State to insert new conditions into the company's electricity generation licence (and make modifications to the licence terms). Among other things, these will permit the company to receive a regulated revenue in respect of the design, construction,

commissioning and operation of the nuclear project. The legislation will support this by ensuring that the Authority, as the economic regulator, has the information and powers that it needs to regulate a nuclear project benefitting from the RAB model.

Alongside this, the legislation will provide the Secretary of State with powers to make regulations to give effect to a RAB revenue stream. This will allow consumer payments to be made to the company through a levy on licensed electricity suppliers. The legislation will include a power for the Secretary of State to designate a revenue collection counterparty and direct it to offer to enter into a revenue collection contract with a designated nuclear company. The provisions are based on the revenue stream legislation already in place for contracts for difference (CfD) under the Energy Act 2013. The revenue regulations will, as far as possible, replicate the relevant aspects of regulations governing the CfD revenue mechanics. These regulations include:

- The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014
- The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015
- The Contracts for Difference (Allocation) Regulations 2014
- The Contracts for Difference (Standard Terms) Regulations 2014

b. Special Administration Regime: The RAB model requires suppliers to pay a levy to any relevant licensee nuclear company, from the start of construction through to its end of life, thus reducing the project's cost of capital. It is expected that suppliers will pass these costs onto consumers. To protect the interests of consumers, the legislation will introduce a Special Administration Regime ("SAR") for companies who hold an electricity generation licence which has been modified to contain RAB conditions and are a party to a revenue collection contract.

In the very unlikely event of a company's insolvency, the Secretary of State or the Authority, with the permission of the Secretary of State, would be able to apply to the courts for the appointment of a nuclear administrator whose objective would be to secure that electricity generation commences, or continues until it is no longer necessary for the order to remain in force. The administrator will need to ensure that the operator continues to comply with all its regulatory and legal requirements, in a manner which ensures compliance with safety, security and environmental provisions related to the power plant and the site on which it is located.

Implementing a SAR for relevant licensee nuclear companies is intended to reduce the risks of consumers being deprived of the intended benefits from funding the building of a nuclear power plant using a RAB model, should a company be unable to pay its debts. It also reduces the risk of requiring a replacement source of electricity generation should the company be wound up, which would further increase the cost of electricity to consumers.

c. **Funded Decommissioning Programme:** All nuclear power stations have a finite life, beyond which it is not safe or economically feasible for them to continue to operate. After this period, the power station must be decommissioned. Prospective operators of nuclear power stations are obliged to submit a Funded

Decommissioning Programme (FDP). The FDP must set out the site operator's costed plans for dealing with its future liabilities in relation to decommissioning, waste management and disposal, and how the operator will make financial provision to meet those liabilities. The programme must be approved by the Secretary of State before construction on the power station can start. The policy was legislated for in the 2008 Energy Act.

Sections 46 and 48 of the Energy Act 2008 give the Secretary of State the power to unilaterally modify an FDP, both at the time of its original approval and at any point thereafter. This includes the power to make modifications to an FDP to impose obligations on bodies corporate which are "associated" with the site operator (as defined under section 67).

We believe that the original intention of this was to provide the Secretary of State with the ability to impose FDP obligations on entities who would be expected to have a substantial degree of influence over the operator's normal activities, most notably the operator's group companies and substantial equity investors.

However, it is possible that the legislation could potentially be interpreted in such a way that other participants in the financing for a new nuclear project, such as security trustees and secured creditors, could be at risk of falling within the scope of the definition of bodies corporate 'associated' with the site operator due to the action they take, or are entitled to take, with regard to the enforcement of security. Neither of these types of entities would have a substantial degree of control over the operator's normal activities. Given the potentially large costs that could be imposed through this power, their potential inclusion within the scope of Section 67 has made it much less likely that bodies of this type will become involved in the financing of new nuclear projects. The Bill therefore clarifies that the activities of secured creditors and security trustees will not be classed as being 'associated' with a site operator simply by virtue of rights, powers or shares that they hold in connection with the management and enforcement of security interests relating to the project. This will facilitate the ability of projects to raise senior debt.

Our view that this was the original intent of the legislation is supported by the policy background, and the debates around it. The 2008 Act was passed following the Government's decision that nuclear power stations should have a role to play in the UK's future energy mix. A key priority was to ensure that energy companies remained responsible for the full costs of decommissioning and that in doing so the risk of recourse to public funds was remote.

During the Second Reading of the then Energy Bill on 22nd January 2008, the Secretary of State for Business, Enterprise and Regulatory Reform, John Hutton, stated "The Bill will also ensure that, in a number of situations, including insolvency, the Government will have the power to seek additional funding from parent and other associated companies". This is further supported by comments made by the Minister of Energy, Malcom Wicks, in the Committee stage in the House of Commons on 4th March 2008. Minister Wicks stated in defence of a 20 per cent threshold that "The clause is also designed to ensure that prudent provision is made for the decommissioning and waste liabilities where there is no single parent. For example, a consortium might come forward with a structure in which three or more bodies each have significant influence over the operator, but none holds 50 per cent. or more of the shares. Those so-called parents would all be beyond the Secretary of State's reach if the threshold were set at 50 per cent.".

In the same way, the Explanatory Notes to the 2008 Act use a "parent company" as an example of bodies corporate "associated" with the operator. We consider that this serves to illustrate that the underlying purpose of the legislation was to allow the Secretary of State's powers to modify an FDP to be exercised to impose decommissioning obligations on those entities with an important degree of control over the operator's business, particularly members of the operator's corporate group.

5. To support its policy objectives, the legislation includes a number of delegated powers. The majority of these powers are well precedented in similar legislation. For the RAB revenue stream, this includes provisions to implement the CfD regime (Energy Act 2013) and for the application of a RAB model we have considered precedent legislation for water infrastructure projects (The Water Industry (Specified Infrastructure Projects "SIP") Regulations 2013). For the relevant licensee nuclear company administration order ("RLNC administration order"), special administration regimes and the powers used to implement them are well precedented and exist for network companies in the Energy Act 2004, supply companies in the Energy Act 2011 and smart communication device companies in the Smart Meters Act 2018.

6. The key functions of the delegated powers are:

    a. To allow the Secretary of State to designate a nuclear company to benefit from the RAB model, subject to the satisfaction of certain criteria.
    b. To enable the Secretary of State to publish a statement setting out the procedure the Secretary of State expects to follow when determining whether to designate a nuclear company and how the Secretary of State expects to determine that the criteria for designation are met.
    c. To empower the Secretary of State to extend the expiry period of a designation notice in relation to a nuclear company.
    d. To allow the Secretary of State to incorporate new conditions, and make amendments to the terms, of a nuclear Company's electricity generation licence whilst a designation is in effect, so as to implement a RAB model for that company.
    e. To enable the Secretary of State the power to modify the standard conditions of generation licences, transmission licences, distribution licences and supplier licences, and industry codes, for consequential, incidental or supplementary purposes.
    f. To empower the Secretary of State to request information from nuclear companies in relation to the exercise of their functions under Part 1 of the Bill.
    g. To empower the Authority to request information from, and provide information to, certain bodies.
    h. To empower the Secretary of State to modify certain conditions of a relevant licensee nuclear company's electricity generation licence when the total expenditure during the construction phase is likely to exceed the cap on such expenditure included in the licence.
    i. To enable the Secretary of State to make regulations in relation to revenue collection contracts. The legislation provides further powers setting out what these regulations may cover.
    j. To empower the Secretary of State to designate a Counterparty for revenue collection contracts.
    k. To allow the Secretary of State to direct a revenue collection counterparty to offer to contract with a nuclear company for which a designation is in effect.

l. To allow the Secretary of State to make a transfer scheme, by which a revenue collection counterparty's responsibilities are transferred to another body in the event of, for example, financial difficulty or poor performance.
m. To allow the Secretary of State to make changes to the conditions of transmission and distribution licences, and associated industry codes, to ensure the revenue stream functions into the future.
n. To enable the Secretary of State to modify the licence conditions and terms of a nuclear licensee nuclear company during an administration period to facilitate the objective of the administration.
o. To enable the Secretary of State to create rules under section 411 of the Insolvency Act 1986 by regulation
p. To enable the Secretary of State to make modifications to the special administration regime under relevant provisions of the Enterprise Act 2002 to ensure it continues to function effectively (a Henry VIII power).
q. To enable the Secretary of state to make further modifications to insolvency legislation to allow the RLNC administration order to be effective as insolvency law develops (a Henry VIII power).
r. To allow the Secretary of State to approve, reject or modify an Energy Transfer Scheme linked to the insolvency of the relevant licensee nuclear company.

7. The powers are drawn as narrowly as possible, and we have clearly demonstrated the intentions of the Ministers when using them.

8. The divisions of these powers between the different sections of the Bill are:

Part 1- Nuclear Energy Generation Projects: Regulated Asset Base Model

9. This legislation introduces several powers to support the functioning of the RAB. These powers are exercised by direction or notice:

a. The Bill will grant the Secretary of State the power to designate an eligible company to benefit from a nuclear RAB model. The designation will enable the Secretary of State to modify the designated company's generation licence to incorporate RAB conditions (and make modifications to the licence terms) while the designation notice is in force. The power can only be exercised where specified criteria laid out in primary legislation have been satisfied. These criteria are:
    i. the Secretary of State is of the opinion that the development of the relevant nuclear project is sufficiently advanced to justify the designation of the company in relation to the project, and
    ii. the Secretary of State is of the opinion that designating the company in relation to the project is likely to result in value for money.

    The Secretary of State will also need to prepare draft reasons for the designation, consult with relevant persons, and then make any modifications to draft reasons in light of consultation before issuing these as final reasons for designation alongside the designation notice. The persons to consult are:
    i. the company that the Secretary of State proposes to designate;
    ii. Ofgem;
    iii. Office for Nuclear Regulation;
    iv. (if any part of a proposed project is in England) Environment Agency;
    v. (if any part of a proposed project is in Wales) Welsh Ministers and Natural Resources Wales;
    vi. (if any part of a proposed project is in Scotland) Scottish Ministers and the Scottish Environment Protection Agency;

vii. any other persons the Secretary of State considers appropriate.

A designation will cease to have effect on the expiry date specified in the legislation (which is 5 years, although this can be extended by the Secretary of State). It will also cease to have effect if the nuclear company enters into a revenue collection contract with a revenue collection counterparty before the expiry date. The Secretary of State may also revoke a designation by notice and a designation may lapse in accordance with any relevant conditions attached to it.

In some respects, this follows the approach adopted in The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 ("The Water Industry Regulations 2013"), which set the framework for a RAB model used to fund the Thames Tideway Tunnel.

b. The Bill will also allow the Secretary of State to modify the designated nuclear company's electricity generation licence to include RAB conditions, and make modifications to the licence terms. The Secretary of State will also have the power to modify standard conditions of generation, transmission, distribution and supply licences, as long as this is for purposes that are consequential, incidental or supplementary to establishing a RAB model for the designated nuclear company. The Secretary of State is bound by requirements to consult the same consultees as listed above before making such modifications.

Part 2- Revenue Stream

10. A number of powers are required to implement the revenue stream. The majority of these are at least initially subject to affirmative procedures, whilst the remainder are by direction or notice following introduced regulations. These powers are necessary to enable payment to be made to a relevant licensee nuclear company under its RAB licence conditions. Many of these powers are based on the existing CfD regime. The powers will allow the Secretary of State:
    a. to make regulations in relation to revenue collection contracts. The legislation describes what these regulations will, non-exclusively, cover. This includes the duties of the revenue collection counterparty, the payments it can make and receive, and the way information is shared and received by the various participants in the revenue stream.
    b. to designate a Counterparty for revenue collections contracts, enabling it to take on the role described in regulations.
    c. to direct a revenue collection counterparty to offer to contract with a nuclear company that has been designated by the Secretary of State.
    d. to create transfer schemes by which the revenue collection counterparty's rights, liabilities and responsibilities are transferred to another body. This could be necessary if the revenue collection counterparty was suffering from financial difficulty or poor performance.
    e. to make changes to the conditions of transmission and distribution licences, and associated industry codes, to ensure the revenue stream functions into the future.

11. The regulations that these powers enable will be detailed and technical, with their intent set out in the primary legislation. They are well precedented in the legislation governing the Contracts for Difference regime (Energy Act 2013).

Part 3-Special Administration Regime

12. The legislation introduces several powers which are required for the functioning of the SAR to ensure it continues to operate in a manner which achieves the policy intent. Two of

these are Henry VIII powers, one of which is subject to the negative resolution procedure. The powers will allow the Secretary of State to:

a. make changes to primary legislation to ensure the SAR remains aligned with the policy intent and wider insolvency law. This is done through two Henry VIII powers.
b. approve, reject or modify the terms of an Energy Transfer Scheme.
c. create insolvency rules under section 411 of the Insolvency Act 1986 for the SAR.
d. modify electricity licence conditions for the purpose of facilitating a RLNC.

13. Whilst these clauses include two Henry VIII powers, they are both proportionate and necessary to achieve the policy aim, with a clear intent signalled. The use of powers in this way are precedented in several SARs, including those contained in the Energy Act 2004, Energy Act 2011 and the Smart Meters Act 2018.

Persons and bodies within the DPM

14. This memo refers to a number of persons and bodies. These are:

a. The "Authority": is the Gas and Electricity Markets Authority, Ofgem's governing body. Under a nuclear RAB, they will be responsible for regulating the project company under its modified licence and calculating the allowed revenue the company can receive in respect of the design, construction, commissioning, operation and decommissioning of the nuclear project in question.
b. The "revenue collection counterparty": this will be a body designated by the Secretary of State who will be responsible for collecting charges from suppliers and paying them to a designated nuclear company (and managing payment flows in the opposite direction where necessary). We envisage this role would fall to the Low Carbon Contracts Company ("LCCC"), although the legislation would allow for the Secretary of State to replace the revenue collection counterparty if needed.
c. A "nuclear company" means a company that holds an electricity generation licence in respect of a nuclear energy generation project.
d. A "designated nuclear company" means a company that has at that time been designated by the Secretary of State.
e. A "relevant licensee nuclear company" means a nuclear company whose generation licence has modifications made by the Secretary of State, and who is a party to a regulated asset base revenue collection contract.
f. A "Relevant nuclear project" means the nuclear energy generation project in respect of which the company holds an electricity generation licence.
g. The "Secretary of State": This refers to the Secretary of State for BEIS.

Part 1 - Nuclear Energy Generation Projects: Regulated Asset Base Model

Clause 2, subsections (1-4); Clause 3, subsections (1-6); Clause 4, subsections (1-5); Clause 5, subsections (1-5) and Clause 11, subsections 1-5 of Part 1: Designation of nuclear company

This provides the Secretary of State with the power to designate a nuclear company, subject to the satisfaction of specified criteria, to benefit from a RAB. This will enable the Secretary of State to modify the designated nuclear company's generation licence to incorporate RAB conditions and make modifications to the licence terms.

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary Procedure: None

Context and Purpose

15. The overarching purpose of clause 2 is to provide a process for the identification by the Secretary of State of nuclear companies suitable for receiving the benefit of a RAB model, and to determine when those companies are no longer suitable. A 'nuclear company' is defined in clause 1(2).

16. The exercising of the power in clause 2(1) triggers the Secretary of State's modification power (further detailed in Clause 6) which is required to include RAB conditions in the generation licence of the designated nuclear company (and make modifications to the licence terms). A 'designated' nuclear company is defined in clause 1(3). Clause 4 clarifies that a designation will cease to have effect either after 5 years or, if earlier, at the point when the nuclear company enters into a revenue collection contract with a revenue collection counterparty. Clause 5 details that a designation may also cease in the event of revocation or lapse in accordance with conditions attached to the designation notice.

17. The Secretary of State retains the option to extend the five-year designation notice expiry date, subject to the designation notice remaining valid. There is no limit on the number of times the Secretary of State can extend a designation notice. This is to provide for the event that negotiations between Government and the designated nuclear company continue beyond the 5 year expiry date. If the Secretary of State wishes to extend the designation notice, clause 4(4) determines that they must consult the same named persons as they did when designating the company.

18. The key effect of this will be to enable the Secretary of State to apply a nuclear RAB model to a nuclear company as long as its designation is in effect, through modifications to its electricity generation licence. The Secretary of State is able to exercise the power to designate more than one nuclear company at any given time. This is so that the model could be used for multiple nuclear projects.

19. Clause 3(1) further empowers the Secretary of State to publish a statement which will provide guidance on the factors that the Secretary of State will take into account when determining if the criteria for designation have been met, and the procedure that they intend to follow. The purpose of this is to provide transparency and build confidence in the decision-making process that the Secretary of State will undertake when designating a

nuclear company.

20. Clause 3(2)(a) requires the Secretary of State, prior to issuing a designation notice, to prepare draft reasons for the designation and clause 3(2)(b) requires consultation on the draft reasons with persons listed in clause 3(3), subject to the removal of any commercially prejudicial information or anything that would be contrary to the interests of national security. The designation notice must then include the publication of final reasons which will incorporate any changes to the draft reasons that appear to the Secretary of State to be necessary or appropriate in view of the responses to the consultation (clause 3(5)(b)). The Secretary of State will be required to publish the designation notice, subject to the removal of any commercially prejudicial information or anything that would be contrary to the interests of national security, to the persons listed in clause 3(3) (see clause 3(6)).

21. Clause 5(1) provides that, should the Secretary of State consider that one or more of the designation criteria are no longer satisfied, they will have the power to revoke a designation notice. In addition, clause 5(3) details that if a condition to which the designation was subject is no longer met by the designated company, the Secretary of State may give notice to the nuclear company that their designation may lapse. The revocation of a designation notice will require the Secretary of State to follow the same process as the designation itself by preparing draft reasons and consult on those reasons with the persons listed in clause 3(3). The purpose of this power is to provide a clear and consistent process that the Secretary of State must follow if a situation arises whereby the project proves unsuitable to take a final investment decision, for example where a capital raise exercise has proved unsuccessful, or negotiations have broken down between parties. This avoids a scenario where negotiations continue up until the designation notice expires, despite one or more of the designation criteria no longer being met. Should the Secretary of State give notice to a nuclear company that their designation notice will lapse or be revoked, the designation will cease to have effect at the end of the day on which the notice is given.

Justification for the power

22. Clause 2 and 3 are necessary to provide a transparent and consistent framework for the Secretary of State to identify and designate those nuclear companies who could benefit from a RAB. The designation of a nuclear company will trigger the Secretary of State's power to modify the electricity generation licence of the designated nuclear company.

23. This power is appropriate as it allows the Secretary of State to undertake a thorough assessment of the suitability of a company and project against clear criteria before exercising their modification powers. This also ensures that, if circumstances change and the designated nuclear company no longer meets the criteria for or the conditions of designation, they are able to revoke the designation notice and not make any licence modifications.

24. The Department recognises that designating a nuclear company is a significant decision. This is because a designated nuclear company could be provided with the right to a substantial revenue stream throughout the construction, commissioning and operations phases of a nuclear power station, funded by consumers through their electricity bills. This is why the process and basis for designating a nuclear company are clearly established in Clause 2 and 3.

25. To ensure that these powers are used correctly, the Secretary of State must undertake a thorough assessment of the suitability of the project. This means the Secretary of State must be satisfied that certain criterion are met before they can issue a designation notice. This includes ensuring the Secretary of State being of the opinion that the designation is likely to deliver value for money and that the development of the project in question is sufficiently advanced to justify designation.

26. To inform decision making, Clause 11(1) provides the Secretary of State, by notice, the power to request from the nuclear company information which they reasonably require in connection with the carrying out of their functions under Part 1 of the Bill, which includes to determine whether the conditions mentioned in Clause 2(3) are met. This ensures the Secretary of State is able to accumulate the evidence and information required to be able to fully assess whether the criteria for designation have been met by the prospective company.

27. To provide additional clarity on how this power will be exercised, clause 3(1) requires the Secretary of State to publish a statement setting out the procedure that they expect to follow in determining whether to exercise the designation power, and how they expect to determine whether a company meets the designation criteria. This will give confidence in the decision-making process that the Secretary of State will take in determining a company and support transparency and openness in the use of the power.

28. Alongside this, clause 3(2) provides that, prior to exercising the power to designate a nuclear company, the Secretary of State must prepare draft reasons for the designation and must consult a number of persons on both the designation and the draft reasons. This includes the company who the Secretary of State proposes to designate, the Authority, the Office for Nuclear Regulation, the Environment Agency where any part of a project site is in England, and Welsh and Scottish environmental bodies and Ministers if any part of the proposed project site is in Wales or Scotland, as well as any other person the Secretary of State considers appropriate. This provides an opportunity for those directly affected by the designation, or who have particular expertise relevant to the designation, to provide their views on the matter.

29. Following the consultation, the Secretary of State must incorporate any changes to the draft reasons that appear to be necessary or appropriate in view of the responses to the consultation. The Secretary of State must then publish final reasons and the designation notice, with material excluded where necessary for the purposes of commercial confidentiality or national security and can attach conditions to the published designation notice.

30. To ensure that these powers are focussed on their intended purpose, the designation notice period of effect runs from the date of designation and would continue until designation either (i) expired or (ii) was revoked.

31. As for revocation, the power in clause 2 and its associated framework are, in a number of respects, based on an approach previously used in The Water Industry Regulations 2013, which set out the process for identifying appropriate infrastructure providers for the purposes of the regime. Under these Regulations, the Secretary of State, or Ofwat, is able to "specify" an infrastructure project if they are of the opinion that the project is of a size or complexity that threatens the incumbent undertaker's ability to provide services for its

customers; and specifying the infrastructure project is likely to result in better value for money than would be the case if the infrastructure project were not specified.

32. Under the Water Industry Regulations, once a specified infrastructure project has been put out to tender, the Secretary of State or Ofwat have the power to "designate" by notice as an "infrastructure provider" a company which appears to be wholly or partly responsible for the specified infrastructure project.

33. Designation allows Ofwat, following consultation, to grant a project licence to the designated infrastructure provider with the undertaking of the specified infrastructure project. For the Thames Tideway Tunnel, this framework for specification and designation was appropriate as the project was part of a regional network and was too big for the existing company to carry out. A tender was therefore needed for a newly formed infrastructure provider.

34. This two-step process is not required for the selection of nuclear projects to benefit from a RAB as such projects will usually have an associated nuclear development company, the primary purpose of which is to develop, construct, own and operate the proposed nuclear power station. Nuclear developers are therefore generally well placed to carry out their associated projects and it is unnecessary to perform a tendering exercise to identify a new, alternative infrastructure provider. Our power therefore only requires a one-step "designation" process.

Justification for the procedure

35. This power is exercised by notice. Prior to exercising this power, the Secretary of State is required to undertake a thorough assessment of the suitability of a project. This will include assessing whether the project is sufficiently advanced to justify its designation, as well as if it is likely to result in value for money.

36. It is appropriate that the power to designate a nuclear company sits with the Secretary of State as it is the Government who have committed to the development of more nuclear generation capacity. The Secretary of State will be leading on negotiations with prospective nuclear companies, and these will be subject to a robust cross-Government approvals process and close working with the Authority in an advisory capacity. Given that the designation itself would likely form part of the process of negotiation and subsequent capital raise for a prospective RAB project, we do not think it appropriate that it is subject to Parliamentary procedure. Instead, we think the legislation provides the appropriate degree of transparency and scrutiny for the Secretary of State when exercising this power.

37. To support scrutiny of these assessments, the Secretary of State must publish a statement setting out the procedure which they expect to follow in making the assessments relevant to their exercising of the power to designate a company and making clear how they expect to determine whether the criteria relating to development and value for money have been satisfied. The Secretary of State will also be required to prepare a document describing their reasons for the designation, prior to exercising their powers. The Secretary of State may exclude material where necessary for the purposes of commercial confidentiality or national security.

38. To further aid transparency and ensuring relevant parties have opportunity to opine on the appropriateness of the designation of prospective companies, the Secretary of State must consult the persons named in Clause 3(3) on the designation, including on their reasons for the designation.

Clause 6, ***subsections 1-10, Part 1: Licence Modifications: designated nuclear companies***

This power gives the Secretary of State the ability to modify the designated nuclear company's electricity generation licence to include RAB conditions and make modifications to its licence terms. This power runs for as long as a designation notice is in effect.

This power of modification may only be exercised for the purpose of facilitating investment in the design, construction, commissioning, and operation of nuclear energy generation projects. The Secretary of State may also, for purposes that are consequential, incidental or supplementary to making a modification to the conditions or terms of a designated nuclear company's electricity generation licence, modify the standard conditions incorporated in licences under section 6(1)(a) to (d) of the Electricity Act 1989 and a document maintained in accordance with the conditions of licences pursuant to that section.

Power conferred on: Secretary of State

Power exercised by: Licence / code modification document

Parliamentary procedure: None

Context and Purpose

39. The fundamental elements of the RAB regulatory regime will be set out in the electricity generation licence of a relevant licensee nuclear company. However, a standard electricity generation licence does not include the special conditions which are required to make provision for a RAB. This is because the conditions and terms of the RAB licence will be bespoke for each project and will have been negotiated between the Secretary of State and the relevant nuclear company.

40. The Secretary of State currently has no general power to modify the standard conditions of electricity licences or the conditions of an individual company's licence, or the licence terms. It is therefore necessary that the legislation provide a power for the Secretary of State to modify, add and remove conditions from the licence, and to amend the licence terms, to reflect the outcome of negotiations on a project. Such negotiations would be on a project-by-project basis.

41. The power of modification is only exercisable by the Secretary of State if a designation notice is in effect for that company. If the designation notice expires, is revoked, or has lapsed in accordance with a condition attached to designation, then the Secretary of State's power of modification in respect of that company's licence will end.

42. There is no limitation on the number of times the Secretary of State can modify the electricity generation licence of a nuclear company from the point of designation until the designation ceases to have effect (for whatever reason). This is to reflect ongoing market engagement and negotiations between Government and the designated nuclear company.

43. In line with the designation power in clause 2, the Secretary of State is required to consult named parties as to their proposed modification. Clause 8(1) requires the Secretary of State to consult with the relevant designated company, the Authority, the Office for Nuclear Regulation, the Environment Agency where any part of a project is in England, and any other such persons that the Secretary of State considers appropriate. Where any part of a proposed project site is in its respective country, the Secretary of State must also consult Natural Resources Wales, the Scottish Environment Protection Agency, and Scottish and Welsh Ministers. The Secretary of State is also required to publish details of any

modifications made as soon as reasonably practicable after they are made, with material excluded where necessary for the purposes of commercial confidentiality or national security.

Justification for the power

44. Given the above, we are unable to provide a comprehensive list of the modifications that the Secretary of State would make to a designated nuclear company's licence as it would pre-empt a negotiated outcome between the Government and a designated nuclear company. However, clause 6(5) provides that modifications may include, for example:
    a. provision about the revenue that the company is entitled to receive in respect of its activities (referred to in this Part as the company's "allowed revenue").
    b. provision about how the company's allowed revenue is to be calculated.
    c. provision about the amounts that the company is entitled to receive, or is required to pay, under any revenue collection contract to which it is a party.
    d. provision about activities that the company must, may or may not carry on.
    e. provision about the management of the nuclear company's activities, including the manner in which they are carried out.
    f. provision conferring functions on the Authority, including provision enabling or requiring the nuclear company to refer for determination, decision or approval by the Authority matters specified, or of a description specified, in the licence.
    g. provision for the nuclear company to refer to the CMA a decision of the Authority falling within section 10(3) (decisions relating to allowed revenue).
    h. provision for the amendment of the licence for the purpose of implementing a determination or decision of the Authority or the CMA.
    i. provision requiring the nuclear company to comply with any direction or instruction, or to have regard to any guidance, given by the Authority in relation to matters specified, or of a description specified in the licence.
    j. provision requiring the nuclear company to co-operate with the Authority and to provide such information and assistance to the Authority as the Authority may require for the purposes of carrying out any of its functions.
    k. provision about the payment by the nuclear company, to the Authority or to the CMA, of such amounts as may be determined by or in accordance with the licence.
    l. provision about relevant licensee nuclear company administration orders, including provision about the raising of funds for the purpose of meeting the expenses of such an order.
    m. provision about the disclosure or publication of information by the nuclear company.

45. Whenever exercising the licence modification powers, the Secretary of State must have regard to:
    a. those duties which the Secretary of State must have regard to under sections 1 and 4(1)(b) of the Climate Change Act 2008, this includes 'net zero' by 2050 and that the net UK carbon account for a budgetary period does not exceed the carbon budget.
    b. the need to protect the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems. This includes their interests relating to security of supply of electricity and the cost of electricity.
    c. Costs, expenditure, or liabilities of any description that the nuclear company may reasonably be expected to incur in carrying out its activities.
    d. the need to secure that the nuclear company is able to finance its activities.

e. the need to secure that the nuclear company has appropriate incentives in relation to the carrying out of its activities.
f. such other matters as the Secretary of State considers appropriate.

46. To ensure that this power is focussed for their intended purpose, the Secretary of State may only exercise this power for the purposes of facilitating investment in the design, construction, commissioning, and operation of nuclear energy generation projects.

47. Subsection (7) allows the Secretary of State to modify the standard conditions of licences under section 6(1) of the Electricity Act 1989, including generation licences, transmission licences, distribution licences, and supplier licences. This also includes modification of a document maintained in accordance with the conditions of the licences detailed under section 6(1) of the Electricity Act, as listed above. The power can only be used to support the modification of the designated nuclear company's conditions. Where the Secretary of State has made modifications under this power, the Authority would be required to mirror them in the standard conditions incorporated into electricity licences granted after that time.

48. The purpose of this power is to allow the Secretary of State to make modifications to wider licences needed to establish the RAB regulatory regime for a designated nuclear company and ensure it can operate effectively. The modification power may be needed to modify industry codes through a modification to transmission licences if, for example, industry codes are amended by the national system operator to determine who will be constrained in a curtailment event. Such modifications are likely to flow through the Connection and Use of System Code (CUSC). As all licensees are signed up to the CUSC to permit connection to and usage of the national electricity transmission system, it is possible that such amendments to the CUSC would require subsequent amendments to all licences subject to section 6(1)(a) to (d) of the Electricity Act 1989.

Justification for the procedure

49. We do not intend for any parliamentary procedure to apply to these measures. This is because, in practice, the RAB conditions (and term amendments) to be incorporated into a designated company's licence will have been the subject of extensive and direct commercial negotiations between the Government and the designated company. The primary legislation gives a clear indication of how the Secretary of State will exercise the power to modify the designated nuclear company's licence, and the scrutiny that this will be subject to.

50. Making this power subject to parliamentary procedure would increase the risk of being able to take final investment decisions on a project using a RAB, given that prospective investors would be unlikely to seriously engage with a designated nuclear company until the outcome of the procedure is known. It is our view that putting the licence modification to Parliamentary procedure could undermine the Secretary of State's role in negotiating the best value terms for consumers and taxpayers under the RAB model.

Clause 7, Part 1: Licence Modifications: relevant licensee nuclear companies

This gives the Secretary of State the power to modify licence conditions of a nuclear company after it has entered into its period of regulation under a RAB (i.e. after its licence has been modified under section 6(1) and it has entered into a revenue collection contract). This power may only be used in order to make adjustments to the calculation of a relevant licensee nuclear company's allowed revenue, in circumstances where the Secretary of State considers that the total expenditure expected to be required to complete construction is likely to exceed any limitation on such expenditure set out in its licence.

Power conferred on: Secretary of State

Power exercised by: Licence Modification

Parliamentary Procedure: None

Context and Purpose

51. Once a nuclear company has had its licence modified and has entered a revenue collection contract, its designation by the Secretary of State falls away and it will be regulated by the Authority. This clause gives a separate power to Secretary of State to modify the conditions of a relevant licensee nuclear company up to the end of the construction phase, but only in the circumstances where the Secretary of State considers that the expenditure expected to be required to finish construction is likely to exceed the total amount allowed under its current licence conditions. Clause 1(4) defines a relevant licensee nuclear company for the purposes of this act. This power can only be used to adjust the calculation of a relevant licensee nuclear company's allowed revenue and will last only until the completion of construction of the licensee's respective project (as defined in section 7(5)).

Justification for the Power

52. It is expected that the RAB conditions to be incorporated into a designated nuclear company's electricity generation licence will include a "Financing Cap". This will be set at a level at which the likelihood of construction costs going above is very remote. If spending beyond the Financing Cap was required to finish building the project, the Nuclear RAB licensee's investors would not be obliged to finance the additional capital requirements and there would be a risk that the capital expenditure could fall to taxpayers or, if the project was discontinued, then consumers would likely have significant sunk costs. Clause 7(1) is therefore required to ensure that the Secretary of State can, subject to consultation and consideration of relevant matters, make the requisite modification to the licence to ensure construction may continue.

53. Clause 11(1) provides that the Secretary of State may, by notice, request any information from a nuclear company that the Secretary of State may reasonably require in connection with exercising this power. This information must be provided to the Secretary of State within a reasonable time and in a format specified by the Secretary of State. To ensure that this power is used correctly, the nuclear company will not be required to provide any information which is protected by legal professional privilege or, when applicable, in Scotland, confidentiality of communication. The purpose of the power in clause 11(1) is to ensure that the Secretary of State has the requisite information in a format and at an appropriate time which will allow robust scrutiny of the application and so that an informed decision can be made.

54. To ensure transparency of decision making and consistency with the Secretary of State's powers of modification under clause 6, the Secretary of State must publish a statement which sets out the procedure to be followed when determining whether to exercise the power. Prior to exercising this power, the Secretary of State will have an obligation to have regard to the same matters as set out in clause 6(4). Given that the Authority are responsible for regulating the nuclear RAB licensee during the construction phase, and in view of its central role in the protection of electricity consumers, the Secretary of State will consult the Authority (among other listed consultees) before exercising the power.

55. Clause 7(4) determines that this power cannot be exercised in relation to a relevant licensee nuclear company at any point once construction has been completed. Clause 7(5) provides that this is determined once a nuclear energy generation project is capable of commercial operations.

56. To ensure that relevant and expert parties are able to give their views prior to a modification, the Secretary of State will be required to consult the persons listed in clause 8(1), which include, for example, the relevant nuclear RAB licensee, the Office for Nuclear Regulation and such other persons as the Secretary of State considers appropriate.

Justification for the Procedure

57. We do not consider that any Parliamentary procedure should apply to this measure. This is because in practise this decision will need to be made quickly by the Secretary of State to ensure that construction of the project may continue and will require a balancing of factors beyond the duties and functions of the Authority including consumer and taxpayer interests, decarbonisation objectives and security of energy supply.

58. We consider that sufficient scrutiny will be provided through the requirement to consult affected parties, including the Authority, prior to exercising the power.

Clause 12, subsection 1 – 8. Part 1: Provision of information to or by the Authority

This clause gives the Authority the power to request information from named persons which is considered necessary by the Authority in connection with the exercise of their functions related to the regulation of a relevant Licensee nuclear company.

Power conferred on: the Authority

Power exercised by: Notice

Parliamentary Procedure: None

Context and Purpose

59. As the current electricity regulator for Great Britain, the Authority will be responsible for the regulation of the relevant licensee nuclear company in accordance with the bespoke terms and conditions of its modified electricity generation licence. The Authority will be required to do this in line with their existing statutory duties as set out in the 1989 Electricity Act and its regulatory guidance.

60. In order to ensure that the Authority can effectively perform its role as the economic regulator for nuclear RAB projects, it is important that the Authority will be able to work closely with, and receive information from relevant regulators, such as the Office for Nuclear Regulation (ONR) and the Environment Agency (EA). Clause 12(3) provides the Authority with the power to, by notice, request information from the persons within clause 12(2) for the purposes of exercising its functions as the economic regulator for the relevant licensee nuclear company. This list includes any other person with regulatory functions, intend to capture any future regulators that the Authority may need to exchange information with for functioning of the regime.

61. The purpose of this is to ensure that the Authority is able to carry out its role effectively and efficiently as the economic regulator. For example, there may be occasions when the Authority is required to test the veracity of a relevant licensee's claims if they seek to log costs onto the RAB for safety or environmental reasons. In such a circumstance, it is important that the Authority is able to receive the required information from the relevant regulator.

Justification for the Power

62. In order to ensure that the Authority can perform its role as the economic regulator of nuclear RAB projects effectively, it will need to be able to exchange information with other regulators. Clause 12(1) provides the Authority with the power to provide information to those persons who it considers necessary in connection with the exercise of its functions as the economic regulator. To ensure that the information sharing gateways are applicable only to those relevant persons, clause 12(2) details those persons whom 12(1) applies to.

63. Clause 12(3) provides the Authority with the power to unilaterally request information from those persons detailed in clause 12(2). This power has been narrowed to ensure that it may only be exercised where the Authority considers this necessary in connection with exercising its functions as the economic regulator. Clause 12(4) ensures that this information is provided to the Authority in such a form and manner as is specified in the notice. This is to ensure that the information received can be used effectively by the Authority and does not provide any barrier to it exercising its functions as the economic

regulator.

64. It is justified that any costs reasonably incurred by those persons in clause 12(2) in the application of 12(3) are reimbursed by the Authority. Clause 12(5) provides those persons in 12(3) the power to recover the costs. These costs will then be passed through by the Authority onto the RAB and logged accordingly.

Justification for the Procedure

65. It is justified that there is no parliamentary procedure for the information sharing provisions between the Regulators. The purpose of this power is to ensure efficient information sharing. We consider that any Parliamentary procedure would be an unnecessary burden which could delay, for example, vital safety information being shared between the regulators. Any parliamentary procedure would also impeach on the independence of all persons named in clause 12(2).

Part 2 - Revenue Stream

Clause 15, subsection 1, Part 2: Regulations about revenue collection contracts

The Secretary of State may, by regulations, make provision about revenue collection contracts.

Power conferred on: Secretary of State

Power exercised by: regulations made by SI

Parliamentary Procedure: Revenue regulations making provision falling within any of sections 16 to 22 will be subject to the affirmative procedure. The first revenue regulations making provision falling within clause 23 & 24 will be in accordance with affirmative procedure, and any further regulations made as relate to those provisions, would be made by negative procedure.

66. This clause sets out the overarching power for the Secretary of State to make regulations in relation to revenue collection contracts. There are a number of provisions which set out the matters which regulations made under the overarching power in section 15(1) may cover, which are set out in more detail within clauses (16to 24) of this Part. These are outlined below:
    a. provision about the duties of the revenue collection counterparty, the controls and directions that the Secretary of State can issue to the revenue collection counterparty, as well as provision about the period of time for which, and the circumstances in which, a person who has ceased to be a revenue collection counterparty is to continue to be treated as such for the purposes of the regulations (Clauses 17 & 16(10) respectively).
    b. provision about the Secretary of State's power to direct a revenue collection counterparty to offer to contract with a designated nuclear company (Clause 18(2&3)).
    c. provision for electricity suppliers to pay a revenue collection counterparty for the purpose of enabling the counterparty to make payments under revenue collection contracts (Clause 19).
    d. provision about the amounts that must be paid by a revenue collection counterparty to electricity suppliers (Clause 20).
    e. provision about apportioning sums received by a revenue collection counterparty from electricity suppliers or received by the counterparty under a revenue collection contract where it is unable to fully meet its liabilities under a revenue collection contract (Clause 21).
    f. provision about requirements under revenue regulations to be enforceable by the Authority (Clause 22).
    g. provision about the provision and publication of information and advice (Clause 23).
    h. provision about conferring functions on the Authority for the purpose of offering advice to, or making determinations on behalf of, a party to a revenue collection contract (Clause 24).

<u>Context and Purpose</u>

67. A revenue collection counterparty may be directed by the Secretary of State, under Clause 18(1) to offer to enter into a revenue collection contract with a designated nuclear company. This would occur after the Secretary of State has exercised their relevant powers to first designate the nuclear company, and then to modify the terms and conditions of

that company's licence. Once a designated nuclear company enters into a revenue collection contract, it is referred to as a relevant licensee nuclear company. The revenue collection contract would have effect until the point at which these RAB conditions and terms expire or are revoked under the terms of the licence. It could also cease to have effect if the relevant licensee nuclear company breached its conditions or terms of its licence.

68. A revenue collection contract will require the revenue collection counterparty to collect payments from GB electricity suppliers and to then pass these through to the relevant licensee nuclear company. This will allow it to receive its allowed revenue. In operation, the amount collected from suppliers will be a 'top up' between the relevant licensee nuclear company's forecasted market revenues and its allowed revenue, as agreed with the Authority. The legislation will enable payments to flow in the opposite direction if necessary and this will be reflected in the Revenue Collection Contract.

69. The 'allowed revenue' is an amount regulated by the Authority in accordance with the nuclear company's licence conditions, which represents the necessary costs it incurs while performing its functions to design, build, commission, and operate a nuclear power plant.

70. The overarching power in clause 15 enables the Secretary of State to make regulations relating to revenue collection contracts. The purpose of these regulations will be to ensure that there is a stable funding flow to the relevant licensee nuclear company so that it can recover the appropriate amount of its allowed revenue from GB electricity suppliers in a consistent and stable fashion over any given regulatory period set by the Authority.

71. This power is based on Section 6 of the Energy Act 2013 which established the Contracts for Difference regime. The power at Section 6 allows the Secretary of State to make regulations about Contract for Difference (as defined in Section 6 (1)) between a counterparty and an eligible generator for the purpose of encouraging low carbon electricity generation. The power in this clause has been adapted from this model.

72. Clause 17, Duties of a revenue collection counterparty, sets out the manner in which the Secretary of State has the ability to exert control over the activities of the revenue collection counterparty, given that its role is of critical importance to the effectiveness of the revenue collection contract.

73. This clause also provides that the revenue collection counterparty must comply with any direction given by the Secretary of State (Clause 17(1)(a)), as covered below.

74. We have set out the provisions that the Secretary of State would likely make under the revenue regulations from clause 17(1)(b). These may include obligations under clause 17(2)(b):
    a. Requiring the revenue collection counterparty to enter into arrangements or to offer to contract for purposes connected to a revenue collection contract.
    b. Specifying things that a revenue collection counterparty may or must do, or things that a revenue collection counterparty may not do.
    c. Conferring on the Secretary of State further powers to direct a revenue collection counterparty to do, or not to do alongside requirements in regulations.

75. Additionally, clause 17(2)(b) and (c) includes provisions which require consultation with, or the consent of, the Secretary of State in relation to variation, enforcement, settlement or

compromise of claims in relation to conduct of legal proceedings and/or any other exercise of rights under, the revenue collection contract.

76. Under the Contracts for Difference scheme, the main duties of the designated CfD counterparty are covered by the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 and the provisions of the contracts themselves. The counterparty's contractual obligation is to make payments to each company that is party to a CfD. We will use these regulations as precedent for this provision. Whilst a revenue collection counterparty will collect payment against sums determined by the Authority (which is not the case with Contracts for Difference), it will still need functions set in regulations to collect those sums using a similar process for billing, collection and settlement. As such, we will be seeking to adapt regulations 3 to 6 and 8 to 34 of the Contracts for Difference (Electricity Supplier Obligations) Regulation 2014, for purposes of revenue collection contracts.

77. The Bill will give the power for the Secretary of State to direct a revenue collection counterparty to offer to enter into contract with a designated nuclear company. Under Clause 18(2-3), regulations may make provision about the circumstances and terms of the direction to a revenue collection counterparty.

78. This power will allow the Secretary of State to issue regulations specifying when directions to offer contracts may or must be made, and what terms may or must be set out in the contracts. The regulations will describe the process and obligations the Secretary of State must adhere to when making the direction to offer a contact. For example, provision is likely to require the direction to be in writing and specify the day on which the revenue collection counterparty must comply with a direction.

79. In exercising the power to direct the revenue collection counterparty, the Secretary of State will need to include the terms upon which the revenue collection counterparty must offer to contract with the designated nuclear company. If these provisions are not made there would be nothing governing the revenue collection contract, given that revenue regulations will not establish an allocation framework or standard term contracts (as is included in the CfD regime).

80. Under the CfD regime there is an allocation framework, set out in sections 13 to 16 of the Energy Act 2013, and detailed in the Contracts for Difference (Allocation) Regulations 2014. Any CfDs that are awarded, as per the allocation process, are required to include standard terms, save for certain exceptions and minor amendments. Under the powers set out in section 11 of the Energy Act 2013, the Secretary of State was given the power to issue standard contract terms and conditions applicable to CFDs. These standard contract terms are detailed in The Contracts for Difference (Standard Terms) Regulations 2014.

81. The reason for adopting a different approach for revenue collection contracts, such as there being no allocation framework and non-standardised terms, is because this model is nuclear specific and a different risk proposition to the existing CfD regime. For example, the nuclear RAB model contains a regulatory element which the CfD model does not. The terms of a revenue collection contract will always be determined through bilateral negotiations and will run for the lifetime of a nuclear project (circa. 60 years).

82. Under Clause 19(1), the Secretary of State is required to make regulations placing obligations on electricity suppliers to make payments to the revenue collection counterparty. As above, the revenue collection counterparty's key liability under the revenue collection contract will be to ensure that payments are made to the relevant licensee nuclear company, with such amounts to be calculated by the Authority.

83. Revenue regulations will include provisions setting out how the revenue collection counterparty must calculate the amounts to be collected from electricity suppliers as their contribution to the relevant licensee nuclear company's allowed revenue. The revenue collection counterparty would need to issue notices to electricity suppliers requiring the payment of such amounts, and the provisions will also cover the enforcement and settlement of disputes relating to any notices requiring payment.

84. Revenue regulations for this purpose would seek to replicate (with appropriate amendments) the provisions set out in the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014, as we have determined this approach would likely be positively received by investors. The revenue regulations will set out the detail and mechanics of payments between the revenue collection counterparty and electricity suppliers, using regulations 3 to 6 and 8 to 16 of the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 as precedent. Revenue regulations will also allow for the revenue collection counterparty to hold sums in reserve, post collateral and to cover losses through a mutualisation process (using regulations 17 to 22 as precedent).

85. Clause 20(1) provides that revenue regulations may make provision about the amounts that must be paid by the revenue collection counterparty to electricity suppliers should it be identified that amounts are owed.

86. A payment from the relevant licensee nuclear company to suppliers may arise where the licensee's forecast market revenue is greater than its allowed revenue. Since the relevant licensee nuclear company is only entitled to the allowed revenue, it would be expected to pay back the difference to the revenue collection counterparty, as calculated by the Authority, for onward payment to suppliers. Likewise, if following a reconciliation process by the revenue collection counterparty it is determined that the revenue collection counterparty collected too much from a supplier, these would be returned to affected suppliers. As under the CfD scheme, supplier payments will be collected based on their expected electricity supply and then reconciled corresponding to actual supply.

87. Clause 21(1) provides for revenue regulations to be made relating to the apportionment of sums for the revenue collection contract, in circumstances where the payments made from suppliers are insufficient to meet the revenue collection counterparty's obligations in full. It is our intention that these provisions would look broadly similar to the provisions set out in regulation 33 of the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014.

88. The revenue collection counterparty will operate on a pay-when-paid-basis, and so would not be expected to pay any amount to a relevant licensee nuclear company that it has not received from suppliers. These regulations would allow payments to relevant licensees on a pro-rata basis, therefore spreading any shortfall evenly across all revenue collection contracts that are in force at that time, in proportion to what they are owed in the relevant payment period. Regulations would also require the revenue collection counterparty to

later recover amounts to address shortfall in their payments to the relevant licensee nuclear companies.

89. Regulations may also make provisions for the use of sums held by the revenue collection counterparty. For example, if the Secretary of State were to loan an amount to the revenue collection counterparty then, under the terms of the revenue collection contract, the counterparty could be directed to be paid into the Consolidated Fund to repay such loan made by the Secretary of State.

90. Clause 22(1), Enforcement**,** provides that revenue regulations may provide for obligations set by regulations to be enforceable by the Authority, as if they were relevant requirements on a regulated person under section 25 of Electricity Act 1989. This makes use of the powers already available to the Authority under this section of the Electricity Act 1989, allowing them to issue orders to secure compliance with relevant requirements, or to impose financial penalties where relevant requirements have been breached.

91. Clause 23(1), Information and Advice, sets out that revenue regulation may include provision for the provision and publication of information, and the giving of advice, essential for the functioning of the RAB model.

92. For a revenue collection contract to function effectively, information flows will be required between the revenue collection counterparty, the Authority and the national system operator. Regulations will require such persons such to provide advice and information to the Secretary of State to monitor revenue arrangements. The Secretary of State will also need to obtain information from the relevant licensee nuclear company and special administrator if, for example, the relevant licensee nuclear company enters into special administration.

93. Information and advice interfaces are needed so that the Authority can inform the revenue collection counterparty what payments to, or from, the relevant licensee nuclear company are required. The Authority also requires evidence confirming the payments have been made, allowing them to make any adjustments to the allowed revenue which the relevant licensee nuclear company is entitled to for the next period.

94. The relevant licensee nuclear company may need to pay various charges to the national system operator for the ability to provide electricity to the grid. It is also possible that a relevant licensee nuclear company could receive other revenue streams from the national system operator. This could include curtailment compensation, which would impact the calculation by the Authority, upon reconciliation of payments made to the relevant licensee nuclear company over the preceding regulatory period, of the allowed revenue that the relevant licensee nuclear company is entitled to during the subsequent regulatory period. As such, it is important to include provision which allows the national system operator to disclose to the Authority any such payments made to the nuclear company.

95. Unlike the previous revenue regulation provisions mentioned under this part, these information and advice provisions relating to the Authority would consist predominantly of new provisions that were not required for the CfD scheme.

96. Additionally, the revenue collection counterparty will require information from electricity suppliers to carry out its billing and settlement function. Regulations may also make

provision to protect against the disclosure of confidential or sensitive information, and for the enforcement of any of requirements imposed on electricity suppliers and other persons subject to information sharing obligations.

97. As a statutory body, the Authority only has the functions that have been expressly or implicitly conferred on it by legislation. Therefore, under Clause 24, regulations will enable the Authority to offer advice to, or make determinations on behalf of, parties to a revenue collection contract. This power will be used where the Authority may need to give advice and information to the revenue collection counterparty. For example, the Authority will need to advise on whether certain electricity supplied may be excluded from the payment obligation.

98. This power has been used in the context of CfDs, as provided for by regulation 5 of the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015, which provides for the Authority to give advice and information to the LCCC for the purposes of determining whether electricity supplied is "green excluded electricity".

Justification for the power

99. The Department judges that it is appropriate that these powers be delegated to the Secretary of State, as the detailed technical and administrative nature of the provisions makes it inappropriate for them to be included in primary legislation. These regulations underpin the effective operation of a revenue collection contract and are essential to the credibility of the model with nuclear companies and their investors. Without the power for the Secretary of State to set out these requirements in regulations, it is unlikely that the RAB model could be successfully used to raise the levels of finance required to build new nuclear plants.

100. To ensure this power is used effectively, before making regulations under this power, the Secretary of State must consult electricity suppliers, every nuclear company that has been designated under Clause 2, every nuclear company that is a relevant licensee nuclear company, Scottish and Welsh Ministers, the Authority, the national system operator, and other such persons that the Secretary of State considers appropriate. This provides an opportunity for both those directly affected by these regulations and those with special expertise to express their views on their design.

101. As set out above, the regulations will be closely modelled on the existing regulations governing the revenue flows for the CfD regime. This recognises the benefits of familiarity of a revenue collection framework for both investors and GB energy suppliers. Revenue collection contracts will however be drafted on a bespoke basis, given they will have been extensively negotiated between a relevant licensee nuclear company and the Government, as set out above.

102. Thus, any requirement that they be on standard terms (as with the CfD scheme) would be inappropriate. Instead, we will seek to stipulate in regulations, via the delegated power in Clause 18(2)(b), that certain essential terms should be included in any negotiated revenue collection contract, which will give some assurance to Parliament as to how these contracts will function. This will likely use regulation 3 of the Contracts for Difference (Standard Terms) Regulations 2014 as a basis, recognising that the responsibility for calculating the total amount to be recovered in any period will fall to the Authority rather than the revenue collection counterparty.

103. The proper functioning of the revenue collection counterparty is fundamental to the stability of the RAB model. It will be responsible for managing large amounts of funds from electricity suppliers to meet its payment obligations under the revenue collection contract. It is therefore important for the Secretary of State to exercise a degree of control over how it operates, which is done through clause 17(1). This will prevent the revenue collection counterparty from carrying out functions which are not related to or required for fulfilling its liabilities or duties under the revenue collection contracts. The provisions will also ensure that appropriate hypothecation of funding received from electricity suppliers to meet payments in the event of multiple revenue collection contracts are in place.

104. It is vital that the regulations in Clause 19(1) allow for the revenue collection counterparty to meet its payment obligations under the revenue collection contract. It is also important that it does so in a way that minimises the burden on electricity suppliers. To achieve this balance, regulations will ensure that, whilst there is a firm requirement on suppliers to make payments to a revenue collection counterparty, the process for calculating their payment obligation is clear and familiar. There will be regular reconciliations carried out to ensure suppliers are not overcharged. We will be seeking to replicate clauses 8, 9, 15, 16 of The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 in this regard.

105. In addition, regulations will make provisions to account for supplier default or insolvency to safeguard payments to the relevant licensee nuclear company through holding sums in reserve, provision of collateral, and a mutualisation process and we will be seeking to replicate clauses 10, 11, 19, 20 of The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 in that regard.

106. Clause 20(1) is needed to minimise the risk that the relevant licensee nuclear company receives greater payments from electricity suppliers than it is entitled to, and to allow for payment to be returned to suppliers in this circumstance. Following reconciliation, regulations would also enable payment to be made to suppliers where they have overpaid against their market share.

107. The provisions set out in Clause 21(1), are necessary to address cases where exceptional circumstances, such as a substantial supplier default which cannot be met through existing robust credit enhancement features, may mean that the revenue collection counterparty is unable to meet its payment obligations under its revenue collection contracts. It is important to have clear provisions in place governing this apportionment since it would involve the interests of multiple nuclear companies who need to have certainty over how their claim to payment would be treated in this scenario.

108. Additionally, it is important for regulations, under the power conferred by clause 19(2), to make provision about how the running costs of the revenue collection counterparty will be met. As with CfDs (regulation 23 of The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014) we expect this to be covered by suppliers through an operational costs levy which we will consult on and lay in Parliament under the affirmative parliamentary process for the regulations.

109. Should this power not be taken, there would not be sufficient protection in place to ensure that a revenue collection counterparty could meet its payment obligations under the revenue collection contract, and it is unlikely that investors would feel that the structure was reliable enough to warrant investment into nuclear RAB projects.

110. Alongside this, it is also necessary to include powers to allow for information sharing as set out in clause 23. This is because revenue collection contracts require input from various persons to function effectively. The absence of these information sharing provisions could result in disruption to cashflow, miscalculation of payments, confusion on which party has authority to direct the revenue collection counterparty and others on payments, which could reduce investor confidence in nuclear RAB projects.

111. As a result of the complexity and technical nature of the provisions covering information and advice, we believe that it would be most appropriately dealt with in secondary legislation. However, to demonstrate the intentions for the secondary legislation, we have listed the types of information that the regulations will cover on the face of the Bill;

a) for the Secretary of State to require a revenue collection counterparty, the Authority or the national system operator to provide information or advice to the Secretary of State or any other person specified in the regulations;
b) for the Secretary of State to require a relevant licensee nuclear company that is a party to a revenue collection contract, or a special administrator (within the meaning in Part 3) to provide information to the Secretary of State or any other person specified in the regulations;
c) for a revenue collection counterparty to require information to be provided to it by electricity suppliers;
d) for the national system operator to require information to be provided to it by a relevant licensee nuclear company;
e) for the Authority to require information to be provided to it by a revenue collection counterparty or the national system operator;
f) for the sharing of information (otherwise than by virtue of paragraph (e)) between the Authority, a revenue collection counterparty and the national system operator
g) for the classification and protection of confidential or sensitive information;
h) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (g).

112. In addition, given the long duration of RAB projects, it is important that the Authority can give advice and information to the revenue collection counterparty under clause 24. This is likely to arise, for example, in relation to instances where a determination would need to be made on whether a supplier's electricity could be exempted from the RAB payment obligation. The regulations will also provide a means by which the Authority's role can be amended over the lifetime of a revenue collection contract. As the electricity market evolves, and experience of being the regulator for these contracts grows over the long life of a RAB licence, it will be necessary to have provisions allowing the provisions for advice by the Authority to be updated.

113. Furthermore, the Department considers it appropriate that provision relating to the Authority's powers of enforcement, under Clause 22(1) should be contained in secondary legislation. This is because it will relate to the enforcement of obligations which are themselves contained in this secondary legislation, but which may not be appropriate to treat as "relevant requirements" (as defined in section 25 of the Electricity Act 1989) in every case. If we do not include this provision this could lead to uncertainty around the

circumstances under which the Authority can enforce these revenue regulations in the case of persistent non-compliance.

Justification for the procedure

114. Under clause 15(7), revenue regulations that make provision falling within any of sections 16 to 22, and the first revenue regulations that make provision falling within clause 23 or 24, would be made by the affirmative procedure. All other regulations would follow the negative procedure.

115. These regulations will require compulsory payments to be made by suppliers and relevant licensee nuclear companies. It will also govern the way in which the revenue collection counterparty carries out its role (including, inter alia, effective management of funds to ensure that the revenue collection counterparty can meet its obligations under the revenue collection contract, as well as ensuring that suppliers, and potentially consumers, efficiently receive return of overpayments) and will govern its interactions with other persons such as the Authority and electricity suppliers. It is therefore appropriate for the regulations to be subject to a greater level of parliamentary scrutiny. As such, the Department considers that the Affirmative procedure would be appropriate for this provision.

116. The first set of regulations made in accordance with Clause 23 and Clause 24 will be subject to the affirmative procedure. It is important that these are scrutinised and agreed upon by Parliament as part of the broader package of revenue regulations. Thereafter, it is our view that any regulations made under these subsections will tend to be administrative in nature, as opposed to altering the fundamentals of the scheme, so it would be appropriate for those regulations to be made in accordance with the negative procedure.

Clause 16, subsection 1, Part 2: Designation of a revenue collection counterparty

This sets out the power for the Secretary of State, by notice, to designate an eligible person to be a revenue collection counterparty for revenue collection contracts.

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary Procedure: N/A

Context and Purpose

117. This power will enable the Secretary of State to designate an eligible and consenting person to be the revenue collection counterparty for revenue collection contracts. The revenue collection counterparty will be responsible for collecting payments from electricity suppliers and making payments to the relevant licensee nuclear company, as well as collecting any payments from the licensee and making payments back to electricity suppliers. All of these amounts will be determined by the Authority.

118. The power is based on Section 7 of the Energy Act 2013 in relation to the CfD regime, which gave a power to the Secretary of State to designate a counterparty. In the CfD regime this power was exercised by order made by statutory instrument which did not require any parliamentary procedure. For the designation of the revenue collection counterparty we intend that this power be exercised by the Secretary of State by notice given to the eligible person in question. This power will commence at the point of Royal Assent.

Justification for the power

119. For revenues to flow between suppliers and a relevant licensee nuclear company effectively, it is necessary to have a revenue collection counterparty charged with processing payments. A counterparty needs to be designated to fulfil this function effectively, and to have the requisite powers in place to recover the costs of administering payment.

120. The Department currently intends for this power to be used to designate the Low Carbon Contracts Company ('LCCC') as the revenue collection counterparty. The LCCC is a private company owned wholly by the Secretary of State. The LCCC currently holds the position of the counterparty under CfDs and was established specifically for this purpose. The LCCC has established a track record of performing a similar function to that required under RAB (i.e. channelling revenues between suppliers and the relevant licensee nuclear company). This means that the LCCC has the required skills and capabilities to carry out this function and give investors' confidence in the revenue stream mechanics.

Justification for the procedure

121. Prior to the appointment of the revenue collection counterparty, the Government will conduct various internal assessments relating to their experience, capacity and resource, in order to determine their suitability for this role. The Department will also seek the consent of the counterparty prior to designation, in line with the requirement in clause 16(4). Whilst under the CfD regime the power to designate a CfD counterparty was exercisable by order made by statutory instrument without any parliamentary procedure, we consider

that the more appropriate route for designation in the context of the revenue stream for the nuclear RAB model is for the Secretary of State to give notice to an eligible person (and publish that notice). This decision was made to bring the designation process for the revenue collection counterparty in line with the procedure for project designation under section 2 (1) of the Bill.

122. The revenue collection counterparty will need to have a period of preparation to establish a separate collection and payment system for its RAB obligations, resource, design and develop its settlement and reconciliation systems and establish mechanisms of determination from the Authority. Therefore, to allow it to spend money and broaden resources, this power commences at the point of Royal Assent. This is in line with the Government's commitment to bring at least one large-scale nuclear project to final investment decision in this Parliament, subject to value for money and all relevant approvals.

Clause 17, subsection (1)(a), Part 2: Duties of a revenue collection counterparty

Power for Secretary of State to direct the revenue collection counterparty.

Power conferred on: Secretary of State

Power exercised by: Secretary of State's direction

Parliamentary Procedure: N/A

Context and Purpose

123. This subsection provides that the revenue collection counterparty must comply with any direction given by the Secretary of State in accordance with this Part.

124. As set out above, this power sits alongside but distinct from the delegated power relating to the Secretary of State making regulations under the Part.

Justification for the power

125. This power is required to give the Secretary of State sufficient ability to exert control over the activities of the revenue collection counterparty, given that this role and function is of critical importance to the revenue stream. There is a risk that, if the Secretary of State does not retain this ability, then this could impact the stability of cash flow from GB electricity suppliers to the relevant licensee nuclear company.

126. This power replicates the provision set out in section 8 of the Energy Act 2013 in relation to the CfD regime.

Justification for the procedure

127. It is the Department's view that, given the accompanying regulations made will set out the detailed nature of directions made to the revenue collection counterparty, and that these will be subject to Parliamentary scrutiny through the affirmative procedure, that no procedure for this power is required.

Clause 18, subsection (1), Part 2: Direction to offer to contract

The Secretary of State may direct a revenue collection counterparty to offer to contract with a designated nuclear company specified in the direction and on terms specified in the direction (in accordance with provisions made by the revenue regulations)

Power conferred on: Secretary of State

Power exercised by: Secretary of State's direction

Parliamentary Procedure: N/A

Context and Purpose

128. This allows for the Secretary of State to issue a direction requiring a revenue collection counterparty to offer to enter into a revenue collection contract with a designated nuclear company. This is separate to the delegated power to make regulations governing the direction by Secretary of State.

Justification for the power

129. The power to direct the revenue collection counterparty is linked to the regulations governing how the Secretary of State may make that direction, which will be provided for in the revenue regulations in accordance with Clause 18(2).

130. Without this power there would be no provision allowing the Secretary of State to make a direction that allows for the designated nuclear company to be offered to enter into the negotiated revenue collection contract, and so a specific power is required.

131. This delegated power is replicated from the CfD scheme, namely section 10 of the Energy Act 2013, but as adapted to account for the nature of the revenue collection contract as a bespoke contract rather than based on standard terms.

Justification for the procedure

132. It is the Department's view that, given the accompanying regulations to this power will set out the detailed nature of directions made to the revenue collection counterparty, and that these will be subject to Parliamentary scrutiny through the affirmative procedure, that no procedure for this power is required.

Clause 26, subsection (1), Part 2: Revenue collection counterparties: transfer schemes

The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be a revenue collection counterparty ("the transferor") to a person who is a revenue collection counterparty ("the transferee").

Power conferred on: Secretary of State

Power exercised by: Scheme

Parliamentary Procedure: N/A

Context and Purpose

133. This power enables the Secretary of State to make transfer schemes, allowing for the transfer of designated property, rights or liabilities to a revenue collection counterparty, if a designation of a counterparty under this clause ceases to have effect. For example, the Secretary State may cease a designation in the case of financial difficulty or poor performance, or if the revenue collection counterparty withdraws its consent. Although this event is unlikely, the Department considers these powers necessary to ensure the continuity of revenue collection contracts and payments being made to relevant licensee nuclear companies.

134. Additionally, clause 27 allows the Secretary of State to make modification to a transfer scheme, subject to agreement of the transferor or transferee affected by the modifications. This clause would be expected to be used where necessary for the functionality or efficiency of the transfer scheme.

Justification for the power

135. Should the revenue collection counterparty's responsibilities need to be transferred, the Department would likely need to act promptly to avoid disruption to any revenue collection contracts currently in place. This power will allow the Secretary of State to ensure that at least one counterparty designation has effect at any given time, thus providing continuity of revenue flow. If this were not maintained, it would result in loss of confidence from investors and potential developers in the resilience of revenue collection contracts.

136. It is not possible to know at this stage what property rights and liabilities may need to be transferred to affect the transfer of the functions. In addition, transfer schemes would be technical and bespoke in nature (as it could relate to one or multiple revenue collection contracts). It is therefore appropriate that this is done through a transfer scheme.

Justification for the procedure

137. The power is not subject to any parliamentary procedure. Transfer schemes are technical and often contain information that is commercially sensitive, confidential or personal information. In addition, the negative impact on existing revenue collection contracts if the transfer is delayed, means that it is not appropriate that transfers are made through Parliamentary procedure.

Clause 29, subsection 1, Part 2: Licence Modifications

This power allows the Secretary of State to modify a condition of a particular transmission or distribution licence; the standard conditions incorporated into transmission or distribution licences; and documents maintained in accordance with the conditions of transmission and distribution licences (or agreements giving effect to such documents), such as industry codes.

Power conferred on: Secretary of State

Power exercised by: Licence / code modification document

Parliamentary Procedure: N/A

Context and Purpose

138. This power enables the Secretary of State to amend transmission and distribution licences and documents (and documents maintained in accordance with those licences, such as codes) in order to allow or require services to be provided to the revenue collection counterparty and allowing enforcement activities in those areas that the contract does not cover.

Justification for the power

139. The power to modify industry codes as well as licence conditions is consistent with the approach taken for CfDs under the Energy Act 2013 (see section 26 of the Act).

140. The ability to modify industry codes is likely to facilitate the settlement function of a revenue collection counterparty in calculating what suppliers owe, or are owed, against their payment obligations.

141. This would work in the same way that industry codes facilitate settlement services being provided to the CfD counterparty, as set out in the legislative explanatory provisions for Section 26 of the Energy Act 2013.

142. It is necessary to make such changes over the lifetime of a revenue collection contract to take account of changes to the scheme and ensure that the settlement mechanism remains fit for purpose. For example, the provisions governing the role of the National System Operator and curtailment are set out in the codes. To ensure that the RAB remains fit for purpose, it may be necessary to make modifications to such codes. We are aware of this power having been used in the context of the CFD regime, for example, the current consultation on certain clarificatory and technical drafting changes to the CFD Standard terms and conditions in advance of Allocation Round 4 (AR4) and we are also aware of potential future modifications to the balancing codes dealing with the supplier settlement reconciliation processes for CFDs. The Department considers that this is a justification for retaining the power to modify the codes for the revenue stream.

Justification for the procedure

143. It is the Department's intention that modifications made under this power would facilitate the effective implementation of a negotiated revenue collection contract for a designated company, and are tied closely to the outcome of those negotiations. Whereas under the Energy Act 2013 licence modifications were made to give effect to the allocation of CfDs to generating companies, the modifications we envisage here are largely

administrative in nature and would be made only to facilitate the revenue collection counterparty's calculation of supplier payments and rebates.

144. The Department believes that exercise of the power is subject to the appropriate levels of transparency and consultation in respect of such modifications. We also note that the Authority would be able to make equivalent provision with no requirement for parliamentary scrutiny. For these reasons, we do not consider Parliamentary procedure appropriate for exercise of this power.

145. However, where modifications occur, the Secretary of State must consult the Scottish and Welsh Ministers, electricity suppliers, the Authority, the holder of any licence being modified; and anyone else the Secretary of State considers appropriate. This is particularly important in the case of the holder of the licence being modified as it gives them an opportunity to express their views.

Part 3 - Special Administration Regime (SAR)

Clause 33, Part 3, Application of paragraph 3 of Schedule 21 to the Energy Act 2004

This power allows the Secretary of State to approve, modify or reject an Energy Transfer Scheme.

Power conferred on: Secretary of State and the court

Power exercised by: Transfer scheme

Parliamentary Procedure: None. The Secretary of State must approve a scheme and the court must appoint a time for a scheme to take effect.

Context and Purpose

146. An Energy Transfer Scheme may be used to achieve the objective of a RLNC administration order. A scheme provides for the transfer of property, rights and liabilities of the relevant licensee nuclear company to a new company or companies, which will take on all or part of the business of the relevant licensee nuclear company as a going concern. The power will be used where a relevant licensee nuclear company's assets are transferred to one or more companies, who will carry on the activities required and permitted by the Licence after the transfer of the relevant licensee nuclear company's assets as a going concern. The purpose of this power is to give the Secretary of State the power, once they have consulted with:
    a) the Authority;
    b) the Office for Nuclear Regulation (ONR);
    c) the Environment Agency where any part of the relevant site is in England
    d) where any part of the site for the relevant nuclear project is in Wales, the Welsh Ministers and Natural Resources Wales;
    e) where any part of the site for the relevant nuclear project is in Scotland, the Scottish Ministers and the Scottish Environment Protection Agency;
    f) such other persons as the Secretary of the State considers appropriate.

147. The power to modify a scheme before approving it may only be made if the relevant licensee nuclear company and the new relevant licensee nuclear company have consented to those modifications.

Justification for the power

148. In certain instances, the nuclear administrator may transfer to another company, or companies, as a going concern, as much of a relevant licensee nuclear company's assets as are necessary to ensure that the company's activities may be carried on. In some instances, the entirety of a company's assets may be transferred to one company, whereas in others it may be separated into several going concerns. This will be achieved through an energy transfer scheme. Such a transfer, or transfers, and the Secretary of State's power to modify those transfer(s) may be necessary to achieve the objective of the RLNC administration order.

149. We consider that the Secretary of State should have a power to modify the scheme when approving it. The Secretary of State must have regard to the public interest and the interests of third parties (if any) in deciding whether to modify an energy transfer scheme

before approving it.

150. Prior to making any modification to an Energy Transfer Scheme, the Secretary of State must first consider whether any modification is appropriate. Both the relevant licensee nuclear company and the transferee must also agree to the modification. The Secretary of State must then consult the Authority and the Office for Nuclear Regulation. The old relevant licensee nuclear company and the new relevant licensee nuclear company will owe a duty to provide the Secretary of State with all information and other assistance that may be reasonably required for the Secretary of State to modify an energy transfer scheme.

Justification for the procedure

151. Whilst the Secretary of State must approve an energy transfer scheme, such a scheme cannot come into effect until such time as is appointed by the court. We consider that this affords an appropriate level of scrutiny of any proposed transfer scheme. This would be consistent with the procedure for the energy transfer schemes in relation to the SARs in the Energy Act 2004, Energy Act 2011 and Smart Meters Act 2018.

152. We are proposing to follow the same procedure that applies for those existing SARs.

Clause 34, Part 3: Application of section 159(3) of the Energy Act 2004

This power extends the ability of the Secretary of State to make company insolvency rules.

> *Power conferred on: Lord Chancellor with the concurrence of the Secretary of State (in relation to England and Wales) and the Secretary of State (in relation to Scotland)*
>
> *Power exercisable by: Statutory instrument*
>
> *Parliamentary procedure: Negative procedure*

Context and Purpose

153. Section 159(3) of the Energy Act 2004, applied by clause 34, extends the power to make company insolvency rules conferred by section 411 of the Insolvency Act 1986 ("Section 411"), for the purposes of giving effect to RLNC administration orders under the relevant clauses of the Bill. These rules would be likely to cover procedural issues, such as the quorum required for various meetings and the detail of what constitutes service of documents.

Justification for taking the power

154. As with a normal administration procedure, this power is necessary to provide the detailed procedural requirements applicable to the relevant licensee nuclear company administration which is provided for in Part 3 of the Bill. Without it, the provisions in the Bill would need to be significantly expanded to address the very detailed issues of procedure applicable to the various aspects of the special administration regime for relevant licensee nuclear companies.

155. The power is limited to making rules for the purpose of giving effect to Chapter 3 of Part 3 of the Energy Act 2004 (as applied by clause 33 of the Bill) as it applies for the purpose of giving effect to Parts 1 to 7 of the Insolvency Act 1986.

Justification for the procedure

156. The rules that are envisaged in this clause have been prepared for other energy industry SARs and have been made using the same Parliamentary procedure. These rules can be detailed, technical and complex relating to aspects such as the machinery of proving a debt and the manner in which a claim can be quantified. Furthermore, under section 413 of the Insolvency Act 1986, before making any rules under Section 411 the Lord Chancellor must consult the Insolvency Rules Committee. Therefore, the negative resolution procedure is considered appropriate given the technical nature of the rules and the scrutiny that they will already be subject to by the Insolvency Rules Committee.

157. In effect, we are proposing to extend the application of the existing power in the Energy Act 2004 in relation to the network operator SAR. There is precedent for this in the Energy Act 2011 in relation to the energy supply company SAR and the Smart Meters Act 2018 in relation to the smart meter company SAR. The intention of this power is the same as the powers in those previous Energy Acts. As this power is provided for in the application of section 159(3) of the Energy Act 2004, which extends the power in Section 411, the same procedure in the Insolvency Act 1986 is automatically applied by the Bill drafting.

Clause 35, subsection 1, Part 3: Licence modifications: relevant licensee nuclear company administration.

Power conferred on: Secretary of State

Power exercised by: Modification of licence conditions.

Parliamentary Procedure: n/a

Context and Purpose

158. This power gives the Secretary of State the ability to modify the conditions of a relevant licensee nuclear company's generation licence, and make modifications to its licence terms. This power of modification may only be exercised while a relevant licensee nuclear company is subject to a RLNC administration order and for the purposes of facilitating the objectives of that order, as detailed in clause 32(1).

Justification for the power

159. In the very unlikely event that an administrator is appointed by the court to oversee the insolvency of a relevant licensee nuclear company under the provisions in clause 31, a power is required which permits the Secretary of State to modify the terms and conditions of the company's generation licence to ensure the objectives of the RLNC administration order can be met. Modification of the RLNC's generation licence may be required, for example, where the conditions of the licence may have contributed towards the company becoming insolvent. It is considered that a power is required to maximise options for protecting consumers should a RLNC become insolvent.

160. Given that an insolvency event is unlikely, it is difficult to provide definitive examples of the modifications to the licence which may be made by the Secretary of State during a RLNC administration order. However, we consider examples of possible modifications that the Secretary of State may make to further the objective of a RLNC order are:
    a. Provision about the revenue that the company is entitled to receive in respect of its activities;
    b. Provision about how the company's allowed revenue is to be calculated;
    c. Provision about the amounts that the company is entitled to receive, or is required to pay, under any revenue collection contract to which it is a party;
    d. provision about relevant licensee administration orders, including provision about the raising of funds for the purpose of meeting the expenses of such an order;
    e. Provision in relation to the disclosure or publication of information.

161. If the objectives of the RLNC administration order are unsuccessful this could result in the discontinuation of the project and significant sunk costs for consumers who have funded the RAB project and may have further contributed to the costs of a RLNC administration order. This may have consequences for security of supply given the reliable low carbon electricity that a nuclear RAB project would provide and may require a replacement source of electricity. This may further increase the costs to consumers or taxpayers. We consider that this power for the Secretary of State to make any licence modifications deemed necessary is required to ensure that a RLNC administration order objective is achieved and to mitigate the risk of future insolvency.

162. The scope of this power is limited by time and its application. The power can only be exercised during the period in which a RLNC administration order remains in place. Once the RLNC administration order ends this power of modification for the Secretary of State will cease. The Secretary of State may only make such modifications as he or she considers appropriate in connection with further the objective of a relevant licensee nuclear company administration.

163. Whenever exercising the licence modification powers, the Secretary of State will need to have regard to:
    a. Those duties which the Secretary of State must have regard to under sections 1 and 4(1)(b) of the Climate Change Act 2008, this includes 'net zero' by 2050 and that the net UK carbon account for a budgetary period does not exceed the carbon budget;
    b. the interests of existing and future consumers, including their interests in relation to the cost of electricity and the security of supply of electricity;
    c. costs, expenditure or liabilities of any description that the nuclear company may reasonably be expected to incur in carrying out its activities as a designated nuclear company;
    d. the need to secure that the relevant licensee nuclear company is able to finance its activities;
    e. the need to secure that the relevant licensee nuclear company has appropriate incentives in relation to the carrying out of its activities;
    f. such other matters as the Secretary of State considers appropriate.

164. In line with the modification power in clause 7(1), the Secretary of State is required to consult named parties as to the proposed modification. The Secretary of State will be required to consult with the nuclear administrator, the Authority, the Office for Nuclear Regulation, the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency, Scottish and Welsh Ministers if any part of the proposed project site is to be in the respective countries, and other such persons that the Secretary of State considers appropriate to consult. The Secretary of State is also required to publish details of any modifications made as soon as reasonably practicable after they are made, with material excluded where necessary for the purposes of commercial confidentiality or national security.

Justification for the procedure

165. Whilst no Parliamentary procedure is stipulated, the envisaged modifications serve to create a mechanism for the purpose of furthering the objective of a RLNC administration order and thereby protect consumers. We therefore consider that sufficient scrutiny will be provided through the requirement to consult, including the nuclear administrator and the Authority, prior to exercising the power.

Clause 37, subsection 1, Part 3: Modification under the Enterprise Act 2002

This empowers the Secretary of State to make certain alterations to the SAR for designated nuclear companies.

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

166. The Enterprise Act 2002 made a number of changes to insolvency law, including the regime for administration.

167. Sections 248 and 277 of the Enterprise Act 2002 conferred powers on the Secretary of State to make consequential amendments to insolvency legislation. As the SAR for relevant licensee nuclear companies contains a number of provisions from the ordinary administration and the insolvency regimes, the use of those powers in the Enterprise Act 2002 may affect the SAR in this Bill. Clause 37 extends the power of modification or application conferred on the Secretary of State in sections 248 and 277 of the Enterprise Act 2002 to make such consequential amendments to Part 3 of this Bill as the Secretary of State considers appropriate in connection with any other provision made under those sections of the Enterprise Act. Clause 37 is a Henry VIII power.

168. This regime will help ensure that the SAR is maintained as broader insolvency law evolves (allowing the Secretary of State to modify Part 3 of the Bill in circumstances where powers have been exercised under the 2002 Enterprise Act), and adopts the same approach taken in the Smart Meters Act 2018. Failure to make these changes could have detrimental impacts on the operability of the SAR, leaving consumers susceptible to considerable sunk costs in the event of a relevant licensee nuclear company's insolvency.

Justification for the power

169. As with the other SARs in the energy sector, this regime tries to preserve as much of the normal insolvency and administration regimes as possible (see for example Schedule 20 to the Energy Act 2004).

170. However, modifications or the application of enactments to the normal regimes which are applied by this Bill may create difficulty with the functioning of this SAR. Conferring the power of modification or application in sections 248 and 277 of the Enterprise Act on the Secretary of State is considered necessary to enable the Secretary of State to maintain that this SAR achieves its underlying purpose (the protection of consumers) where other provisions are made under those sections of the Enterprise Act 2002.

171. The scope of the power is limited in two respects. The power can only be used to make modifications to the SAR provisions in clauses 31-39 of this Bill. Modifications can only be made in connection with provisions made under sections 248 and 277 of the Enterprise Act. As the use of this power will depend on future uses of the power in sections 248 and 277 of the Enterprise Act 2002, it is not possible to predict what amendments may be made to this SAR. However, as the effect of the power is to ensure that this SAR functions as

intended by enabling the Secretary of State to respond to uses of the power in sections 248 and 277 of the Enterprise Act 2002, it is envisaged that the nature of those modifications will be narrowly focussed.

172. Conferring the powers in sections 248 and 277 on the Secretary of State to make consequential amendments in connection with any other provision made under those sections has been included in several other SARs, recognising the potential need to make amendments to keep SARs in line where changes are made to general insolvency law using those powers in the Enterprise Act 2002. In the energy sector, SARs are used for network, supply and smart meter communication device companies (see the Energy Act 2004, Energy Act 211 and the Smart Meters Act 2018). The SARs for these areas all contain a like power. Other non-energy SARs which confer this power on the Secretary of State include:
    a. the SAR for NHS trusts (see section 133 of the Health and Social Care Act 2012);
    b. the SAR for further education providers (see section 34 of the Technical and Further Education Act 2017);
    c. the SAR for social housing providers (see section 114 of the Housing and Planning 2016);
    d. the SAR for postal service providers (see section 84 of the Postal Services Act 2011).

Justification for the procedure

173. The modifications envisaged in this clause are consequential to provisions made under sections 248 and 277 of the Enterprise Act 2002. It is envisaged that the nature of these modifications will be narrowly focussed and can only be made in relation to the provisions in Part 3 of this Bill.

174. It is considered that the negative procedure would allow for an appropriate level of parliamentary scrutiny given the limited scope and circumstances in which this power may be exercised.

175. In effect, we are proposing to extend the application of existing powers in the Enterprise Act 2002 and the Energy Act 2004. As the power and procedure is provided for in the application of sections 248 and 277 of the Enterprise Act 2002, the same procedures in that Act are applied by the drafting of clause 36 of this Bill. The like power in the SARs referred to in paragraph 174, including the three energy sector SARs, is subject to the negative resolution procedure. The intention of this power is the same as the powers provided for in those previous SARs.

Clause 38, subsection (1), Part 3: Power to make further modifications of insolvency legislation

This power grants the Secretary of State the power to make modifications to existing insolvency legislation.

Power conferred on: Secretary of State

Power exercised by: Statutory instrument

Parliamentary Procedure: Affirmative procedure

Context and Purpose

176. This clause grants the Secretary of State a power to provide for insolvency legislation to apply, and to make such modifications of insolvency legislation as is considered appropriate in relation to any provision made by, or under, Part 3 of this Bill. This is a Henry VIII power.

177. The purpose of this power is to ensure that the SAR for nuclear projects is able to fulfil its underlying purpose to protect consumers. Given that consumers will make a considerable contribution to the funding of a nuclear RAB project, it is imperative that the Secretary of State is able to make modifications to insolvency legislation should, for example, practical experience highlight difficulties in the application of the SAR, or if a change in general insolvency law necessitates a change to this SAR.

Justification for the power

178. We consider that this power is needed to enable modifications to be made to the insolvency regime, insofar as it impacts the SAR in this legislation. There is a need to be able to amend the detail of the regime, should experience of its application highlight any difficulties or areas for concern. This is particularly important, given the long construction and operation time of a nuclear RAB project.

179. This power is limited in scope insofar as it can only be exercised in relation to provision made by or under the provisions in Part 3 of this Bill. The primary legislation that can be applied or modified under this power is limited to the Insolvency Act 1986, Chapter 3 or Part 3 of the Energy Act 2004 and any other provision contained in an Act passed before or in the same session as this Bill that relates to insolvency, or makes provision by reference to anything that is or may be done under the Insolvency Act 1986. It is only subordinate legislation made after the Bill receives Royal Assent that can be applied or modified under this power, not primary legislation enacted after that date.

180. This power is based on the existing power in section 9 of the Smart Meters Act 2018, which itself is based on a similar power in the Energy Act 2004 (see paragraph 46 of Schedule 20). The SAR for supply companies contains a similar power in the Energy Act 2011. There is a broader recognition of the need for this power in relation to SARs more generally to allow the Secretary of State to make appropriate amendments to the regime as insolvency law and practices develop. The SARs for social housing providers (see paragraph 45 of Schedule 5 to the Housing and Planning Act 2016) and for postal service providers (see paragraph 46 of Schedule 10 to the Postal Services Act 2011) contain a similar power.

Justification for the procedure

181. As this is a Henry VIII power which covers a range of insolvency legislation, compared to the limited powers taken elsewhere in this Part of the legislation, it is considered that the affirmative resolution procedure is appropriate.