

NUCLEAR ENERGY (FINANCING) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Nuclear Energy (Financing) Bill as brought from the House of Commons on 11 January 2022 (HL Bill 89).

- These Explanatory Notes have been produced by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of the Bill is to facilitate investment in new nuclear power stations, supporting the Government's delivery on the commitments made in the 2020 Energy White Paper and the Prime Minister's Ten Point Plan and contributing to the Government meeting its legally binding obligations to achieve net zero carbon emissions by 2050.

Policy background

- 2 The Government has made high-level commitments to eliminate its contribution to greenhouse gas emissions. This includes the passage of legislation that requires the UK to bring all greenhouse gas emissions to net zero by 2050, as well as subsequent commitments to reduce carbon emissions by 78% and to decarbonise the electricity system by 2035. This will require rapid, significant changes in the energy sector: total UK electricity supply will need to double by 2050 and electricity from low-carbon sources will need to quadruple, in order to deliver the UK's commitment to become a Net Zero emissions economy by that year.
- 3 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, alongside technologies such as nuclear which can provide energy to consumers when the wind is not blowing or the sun does not shine.
- 4 Large scale nuclear power plants are the only proven technology available today to provide continuous, reliable and low carbon electricity. However, the UK's existing nuclear fleet will be almost completely retired by 2030, and the Government's analysis shows that the UK is likely to need nuclear generation beyond the new plant being constructed at Hinkley Point C. To meet the challenge of net zero, the Government is working to bring at least one more new large-scale project to final investment decision in this Parliament subject to all relevant approvals, whilst rapidly exploring the development of new nuclear technologies beyond conventional large-scale plants. These goals were set in the 2020 Energy White Paper.
- 5 To support this goal, the Government has considered a range of approaches to securing private finance in both the construction and operation of nuclear assets, to complement the Contracts for Difference (CfD) model that has been used to finance construction and operation of the Hinkley Point C nuclear plant. Regardless of the funding model, the Government's aim is to agree an approach to financing the construction, commissioning and operation of new nuclear projects that can deliver value for money for electricity consumers, whilst achieving a fair and appropriate allocation of risks between investors, consumers and taxpayers.
- 6 The Government consulted on a Regulated Asset Base (RAB) model for new nuclear projects in July 2019. A response to this consultation was published in December 2020 and confirmed the Government's assessment that the model is a credible basis for financing large-scale nuclear projects and is likely to result in better value for money for consumers for some projects.
- 7 The RAB model is a well understood financing model that has received significant quantities of investment from the private sector over the last 30 years in industries including water and energy. In 2016 the RAB model was successfully modified and

applied for the first time to a single asset construction project – the £4.2 billion Thames Tideway Tunnel project.

- 8 Under the RAB model introduced by this legislation, a nuclear company receives payments in relation to the design, construction, commissioning and operation of a new nuclear energy generation project from electricity suppliers (who would be expected to pass these costs onto consumers through their electricity bills). The Secretary of State will modify a nuclear company's electricity generation licence to insert new licence conditions, giving them a right to receive a regulated revenue in relation to the provision of the infrastructure in question. In so doing it could bring significant amounts of private investment into nuclear projects at relatively low cost. Given that the cost of finance is the main driver of overall project costs, this should lead to better value for money for consumers over the life of a nuclear RAB Project.
- 9 It is the Government's intention that in the first instance the model would be used to support investment in the design, construction, commissioning and operation of large-scale nuclear, however it remains open as a means to secure the financing of emerging nuclear technologies.
- 10 To support the RAB model, and to protect the interests of consumers, the legislation will introduce the Special Administration Regime (SAR) to apply to nuclear RAB projects. In the very unlikely event of a company's insolvency, the Secretary of State, or the Gas and Electricity Markets Authority (known as Ofgem, or for purposes of these notes, 'the Authority') with the Secretary of State's permission, would be able to apply to the courts for the appointment of a special 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 SAR does not change the position that the company must continue to comply with all of its regulatory and legal duties and responsibilities, including compliance with safety, security and environmental provisions related to the power plant and the site on which it is located.
- 11 Implementing a SAR is intended to reduce the risks of consumers being deprived of the intended benefits from contributing to financing the building of a nuclear power plant using a RAB model should a relevant company become insolvent. It also reduces the risk of requiring a replacement source of electricity generation, which would further increase the cost of electricity to consumers.
- 12 The Bill also contains a further measure to help facilitate private financing in nuclear projects, specifically to amend the Energy Act 2008 to make technical changes to the regime of Funded Decommissioning Programmes (FDP). 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 an FDP to the Secretary of State. The FDP must set out the site operator's costed plans for dealing with its future decommissioning and waste management liabilities. It is a criminal offence for a new nuclear developer to start construction work on any buildings with nuclear safety significance without an approved FDP in place.
- 13 Currently, the Secretary of State has the power to unilaterally modify an FDP to impose obligations on bodies corporate which are 'associated' with the site operator. It is possible that the legislation could potentially be interpreted in such a way that security trustees and secured creditors could be at risk of falling within the scope of this power, making it less likely that a nuclear project will attract debt investment. The legislation will therefore clarify that the activities of these entities should not be caught by the

definition of being 'associated' with a site operator to the extent that they relate to the management and enforcement of security interests relating to the project, as they do not hold significant influence over its day-to-day decision making. This will facilitate the ability of projects to raise senior debt.

- 14 The legislation is made up of the elements set out below.

Nuclear Energy Generation Projects: Regulated Asset Base Model

- 15 The RAB model for nuclear energy generation projects would give an eligible nuclear company the right to a regulated revenue stream throughout the construction, commissioning and operations phase of a new nuclear project. This will be funded by a charge placed on electricity suppliers, with the expectation that this will ultimately come from consumers through their electricity bills.
- 16 The Bill allows for the Secretary of State to designate a nuclear company that is eligible to receive the benefit of the RAB special licence conditions. They can do so only if satisfied that the company meets the criteria for designation and having undertaken consultation with named persons.
- 17 Once the Secretary of State has served and published a notice to designate a nuclear company, they will have the power to amend that company's existing electricity generation licence accordingly. This will insert the special conditions of a RAB that set out how the Project will be regulated and its allowed revenue calculated. Amendments will also be made to the licence terms.
- 18 The designation of a nuclear company will cease to have effect either when the company enters into a revenue collection contract to receive payments in relation to its allowed revenue (provided this occurs before the expiry date), 5 years from the date of the designation notice (subject to any extensions by the Secretary of State), or if the designation notice is revoked or lapses in accordance with conditions attached to it. The Secretary of State will be required to consult named persons before making modifications to a nuclear company's licence whilst the designation is in effect. Once a company has its licence modified to provide for the RAB model, and it has entered into a revenue collection contract, the Secretary of State will only be able to modify its licence in very limited, specific circumstances.
- 19 As the current electricity regulator for Great Britain, the Authority will regulate the nuclear company in accordance with the terms and conditions of its modified licence the Authority will do so in keeping with its existing statutory duties including its principal objective of protecting the interests of existing and future electricity consumers.
- 20 The Secretary of State can use their power to designate and then modify the licences of multiple nuclear companies to benefit from a nuclear RAB model, provided that in each case the designation criteria and procedural requirements are met.

Revenue Collection Contracts

- 21 It is important that legislation allows for a stable flow of funding between consumers and a nuclear company which holds a generation licence which has had RAB licence conditions incorporated into it (a 'RAB licence'). The Bill allows the Secretary of State to give effect to a revenue channel necessary for the nuclear RAB model to function. This

includes a power for the Secretary of State to designate a revenue collection counterparty and direct it to enter into a revenue collection contract with a nuclear company that has been designated by the Secretary of State for the purposes of the RAB model. The Bill also allows for the Secretary of State to make regulations to implement the mechanics of the revenue stream, including placing obligations on electricity suppliers

- 22 For the purposes of the revenue stream, it is intended that the payments made to the nuclear company under a RAB model will be calculated by reference to a 'forecast allowed revenue' determined by the Authority at the start of a charging period, in accordance with the RAB licence. It will be within the power of the Authority to determine the allowed revenue forecast under the terms of the RAB licence. The Authority will calculate the Allowed Revenue throughout the lifetime of the project in accordance with the licence. It will be possible for the company to appeal to the Competition and Markets Authority (CMA) any decision made by the Authority which, in the opinion of the CMA, relates to the allowed revenue of the company, as long as the right to appeal is set out in the initial licence modifications made by the Secretary of State. Under existing legislation, the nuclear company will also have the right to bring an appeal against any decision of the Authority to modify its licence (see section 11C of the Electricity Act 1989). At the end of the charging period, the Authority will conduct any reconciliations to reflect any outstanding amounts due to the nuclear company for that period, in accordance with the RAB licence.
- 23 During the construction phase, the nuclear company will receive an amount equal to the full forecast allowed revenue, as it will not yet be generating and selling power. Where the nuclear power station is operational (including in the commissioning phase), for the purposes of forecasting revenue, the Authority will determine a market revenue, in accordance with the RAB licence conditions. It is intended that the Authority will then deduct this amount from the forecast allowed revenue that the nuclear company is entitled to receive over the course of the charging period. Reconciliation would take place to address any discrepancies between forecast and actual amounts.
- 24 Following this, the Authority will inform the revenue collection counterparty how much it needs to collect over that charging period from electricity suppliers, in order for the nuclear company to receive its forecast allowed revenue. Once collected, the revenue collection counterparty will then pay the nuclear company. The combination of market revenues and the additional amount collected from suppliers will aim to ensure that the nuclear company receives its forecast allowed revenue in each period.
- 25 Where the market revenue is greater than the forecast allowed revenue, then payment equal to the difference, as determined by the Authority, will be made by the nuclear company to the revenue collection counterparty. This is to ensure the company only receives the revenue necessary to meet its costs and expenditure incurred in the course of performing its activities in relation to the design, construction, commissioning and operation of the nuclear project.
- 26 The cost to the revenue collection counterparty of its payment obligations to a nuclear generation company, as well as the operational costs of the revenue collection counterparty, will be met by licensed electricity suppliers in Great Britain, who may share this with electricity consumers. Suppliers will be charged by reference to their share of the Great Britain (GB) electricity market. Where the revenue collection counterparty receives payments back from nuclear companies under revenue collection contracts, these will be passed back to suppliers according to their market share.

- 27 Aspects of the operation of the revenue collection counterparty will be subject to controls by the Secretary of State. This is designed to ensure the protection of suppliers and ultimately consumers.

Special Administration Regime

- 28 The RAB model requires suppliers and their consumers to fund new nuclear projects from the start of construction and likely through to most of operational life, thus reducing the project's cost of capital. To protect the interests of consumers, the legislation will introduce a Special Administration Regime to apply to these projects.
- 29 This will provide the Secretary of State, or the Authority, with the Secretary of State's permission, with a power to apply to the courts for the appointment of a special administrator (a 'nuclear administrator') in the very unlikely scenario of an economically regulated nuclear company's (a 'relevant licensee nuclear company') insolvency. The objective of a special administration order (a 'RLNC administration order') would be to complete construction and/or keep the plant running.
- 30 Implementing special administration is intended to reduce the risks of consumers being deprived of the intended benefits from financing the building of a nuclear power plant using a RAB model should a relevant licensee nuclear company become insolvent. It also reduces the risk of requiring a replacement source of electricity generation, which would further increase the cost of electricity to consumers.
- 31 Where rescue cannot be achieved and it is unnecessary for the RLNC administration order to remain in place, the Secretary of State, the Authority or the nuclear administrator with the consent of the Secretary of State, may apply to the courts to bring the RLNC administration to an end. The circumstances where those persons may apply to end the appointment of the administrator include where the objective of the RLNC administration cannot be met. It is considered that once the administration has ended, the Secretary of State may prepare a Nuclear Transfer Scheme where the nuclear installation and/or site is to be decommissioned or cleaned up. This would bring the plant under the control of a public body, or to the Nuclear Decommissioning Authority (NDA) or a publicly owned company who would be responsible for decommissioning the plant.
- 32 The Secretary of State can provide financial assistance in connection with a RLNC administration order for the purposes of achieving the objective of the RLNC administration order. The Secretary of State will make provision in the licence of a relevant licensee nuclear company for the purposes of raising the funds to cover costs which arise in connection with a RLNC administration order.

Funded Decommissioning

- 33 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 to the Secretary of State. This must set out the site operator's costed plans for dealing with its future liabilities in relation to decommissioning, waste management and waste 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.

- 34 Sections 46 and 48 of the 2008 Energy Act 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. In particular, the Secretary of State has the power to make modifications to an FDP to impose obligations on bodies corporate which are “associated” with the site operator.
- 35 The Government believes that the original intention of this was to provide the Secretary of State with flexibility to impose FDP obligations on entities who would be expected to have a substantial degree of influence over the operator’s normal activities, for example the operator’s group companies and substantial equity investors.
- 36 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.

Legal background

- 37 The relevant legal background is explained in the policy background of these notes.

Territorial extent and application

- 38 The extent of an Act can be different from its application. Extent is about the legal jurisdictions of which the provisions in the Bill are intended to form part of the law. Application is about where an Act produces a practical effect. The territorial extent and application vary across the different measures included in the Bill. A full overview is included in Annex A:

- For the RAB model and revenue stream measures in Parts 1 and 2, these will extend and apply to England and Wales and Scotland only. This is because the unique energy position of Northern Ireland means they would not benefit from energy produced by nuclear energy generation projects under a RAB model in Great Britain, and so should not be obliged to pay.
- For the changes to the Funded Decommissioning Programme, these will extend and apply to England and Wales and Northern Ireland only. This is in line with the extent of Chapter 1 of Part 3 of the Energy Act 2008.
- For the Special Administration Regime, the legislation will extend and apply to England and Wales and Scotland only. This is because it is linked to the RAB measures in Part 1 of the Bill, which extend to England and Wales and Scotland only.

- 39 The UK Parliament does not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. It is also the practice of the Government to seek the consent of the devolved legislatures for provisions that would alter the competence of those legislatures or the devolved administrations in Scotland, Wales and Northern Ireland. The matters to which the provisions of the Bill relate are not within the legislative competence of any of the devolved legislatures, nor do they alter the competence of those legislatures or the devolved administrations. No legislative consent motion has therefore been sought in relation to any provision of the Bill.
- 40 When legislating for the application of rules within the territory of the devolved administrations, the Government is doing so on the basis of these being reserved matters, as per Head C and D of Schedule 5 to the Scotland Act 1998 and Head C and D of Schedule 7A to the Government of Wales Act 2006, or excepted matters under paragraph 18 of Schedule 2 to the Northern Ireland Act 1998.

Commentary on provisions of Bill

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

Clause 1: Key definitions for Part 1

- 41 This clause seeks to define the key terms for this Part with reference to a company that is to benefit from a RAB model.
- 42 Subsection (1) clarifies the definitions apply throughout this Part. Subsection (2) identifies a ‘nuclear company’ as one that has an electricity generation licence from the Authority with respect to a prospective nuclear energy generation project.
- 43 Subsection (3) says that once a nuclear company has been designated by the Secretary of State, it should be referred to as a ‘designated nuclear company’ for as long as the designation has effect.
- 44 Subsection (4) defines a “relevant licensee nuclear company” as one which has had its licence modified by the Secretary of State under section 6(1) whilst a designation is in effect, and that is also party to a revenue collection contract.
- 45 Subsection (5) defines the term electricity generation licence for purposes of this Part.

Clause 2: Designation of nuclear company

- 46 This clause provides the power for the Secretary of State to designate a company to benefit from the nuclear RAB model.
- 47 Subsection (1) provides the power for the Secretary of State to designate a company in relation to a nuclear energy generation project in respect of which it holds an electricity generation licence (“the nuclear project”) by providing the company with a designation notice. The principal effect of this is to trigger the Secretary of State’s power to modify the electricity generation licence of a designated nuclear company under clause 6 to apply a nuclear RAB model. The designation power can only be exercised if certain criteria are satisfied and the designation notice may have certain conditions attached.
- 48 Subsection (2) determines that a company may only be designated by the Secretary of State if it meets certain criteria.
- 49 Subsection (3) sets out the criteria a company must meet to permit the Secretary of State to designate them. These conditions are:
 - a. that the Secretary of State is of the opinion that the development of the nuclear project is sufficiently advanced to justify the designation; and
 - b. that the Secretary of State is of the opinion that designating the company is likely to result in value for money.
- 50 The statement published by the Secretary of State pursuant to clause 3(1) will provide further detail on the procedure which the Secretary of State expects to follow when deciding whether to designate a company and how the criteria in subsection (2) will be assessed. It is expected that, for subsection (3)(b), the Secretary of State will have regard to matters such as, for example:
 - a. Ensuring the security of supply to consumers of electricity;
 - b. The cost to consumers;

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- c. Ensuring the provision of low carbon electricity; and
- d. Achieving UK 2050 net zero obligations.

51 Subsection (4) clarifies that for this Part of the legislation that a designation notice refers to a notice issued pursuant to the Secretary of State's power under subsection (1).

Clause 3: Designation: procedure

- 52 This clause sets out the procedure that the Secretary of State must follow to designate a nuclear company for the purposes of the nuclear RAB model.
- 53 Subsection (1) requires the Secretary of State to publish a statement, setting out the procedure for considering whether to designate a nuclear company and how they will judge it against the criteria set out in clause 2 subsection (3). The purpose of this is to provide transparency and build confidence in the decision-making process that the Secretary of State will take when designating a nuclear company. Whilst the Government does not anticipate that the Secretary of State will produce a new statement for every prospective project, they will keep its relevance and effectiveness under review and amend the statement where this is considered appropriate. By virtue of subsection (4), a statement may be published before or after the passage of the legislation.
- 54 Subsection (2) requires the Secretary of State, prior to issuing a designation notice, to prepare draft reasons for the designation and consult with the persons listed in subsection (3), including on the draft reasons. A designation notice must include the publication of final reasons which incorporate any changes to the draft reasons that appear to the Secretary of State to be appropriate in view of the responses to the consultation.
- 55 This provides opportunity for those directly affected by the potential designation, or have special expertise relevant to the decision, to provide their views on the matter.
- 56 Subsection (4) states that this obligation could be achieved through a consultation before or after the passage of the legislation.
- 57 Subsection (5) obliges the Secretary of State, when giving notice of the designation, to include a description of the nuclear project in relation to which the nuclear company is being designated; their final reasons for issuing the designation; any conditions that they are attaching to the designation as well as what will happen in the event that the conditions are not met; and the date of the notice.
- 58 Subsection (6) requires the Secretary of State to publish a designation notice and to share the designation notice with the nuclear company being designated, as well as all bodies consulted by virtue of subsection (2)(b).

Clause 4: Expiry of designation

- 59 This clause sets out the events and circumstances under which a nuclear company's designation for the purposes of the nuclear RAB model would expire.
- 60 Subsection (1) clarifies that a designation would end either on its expiry date or at the point where the nuclear company has entered into a revenue collection contract with a revenue collection counterparty (as defined in Part 2), provided that this occurs before the expiry date. A designation could also end sooner, as set out in section 5.
- 61 Subsection (2) defines the expiry date as being 5 years from the date of the designation notice, or, if the expiry date has been extended under subsection (3), the expiry date specified in the most recent extension notice.

- 62 Subsection (3) gives the Secretary of State the ability to extend the expiry date for the designation of a nuclear company beyond its current expiry date by giving a notice to the company. This can be done as long as the existing expiry period has not yet expired and the new expiry period is not more than 5 years from the date of the extension notice.
- 63 Subsection (4) requires the Secretary of State to consult on an extension to the expiry period with listed entities, and any other persons they consider appropriate. This provides opportunity for those directly affected by the extension, or who have special expertise relevant to the decision, to provide their views on the matter.
- 64 Subsection (5) states that when the designation ceases to have effect by virtue of subsection (1), the Secretary of State must publicise this fact.

Clause 5: Revocation or lapse of designation

- 65 This clause sets out the circumstances in which a nuclear company could lose its designated status, or the Secretary of State could revoke its designation.
- 66 Subsection (1) allows for the Secretary of State to revoke a nuclear company's designation either where it no longer has a generation licence with respect to the nuclear project in relation to which it was designated, or if it no longer meets the criteria set out in clause 2(3).
- 67 Subsection (2) provides that the Secretary of State must follow, with modifications where required, the same process as was followed during the designation of the nuclear company. This requires the Secretary of State to prepare draft reasons for revocation, consult named persons (including on the draft reasons) and to publish the revocation notice.
- 68 Subsection (3) means that the nuclear company's designation ceases to have effect if the company does not comply with a particular condition attached to the designation. This is the case only if, when the Secretary of State issued the designation notice subject to a particular condition, it was made clear that non-compliance with that condition would result in the end of designation, and that the Secretary of State has given notice to the nuclear company that they have failed to comply with the condition. For example, a condition which may be included by the Secretary of State at the point of designation could be that the nuclear company must conduct a successful capital raise or that the project achieves its Development Consent Order (DCO) by a certain date.
- 69 Subsection (4) means that if a nuclear company loses its designation through failure to meet a condition of designation as under subsection (3), ceasing to hold an electricity generation licence under subsection (1)(a), or by no longer satisfying the designation criteria as under subsection (1)(b), then its designation will cease to have effect at the end of the day on which the Secretary of State sends it the relevant notice.
- 70 Subsection (5) obliges the Secretary of State to publish any notice given under subsection (3).

Clause 6: Licence modifications: designated nuclear companies

- 71 This clause provides the Secretary of State with the power to make licence modifications for the purposes of applying the nuclear RAB model to a designated nuclear company.
- 72 Subsection (1) gives powers to the Secretary of State to modify any condition or term of a designated company's electricity generation licence.

- 73 Subsection (2) makes clear that this power can only be used for the purposes of facilitating investment in the design, construction, commissioning and operation of nuclear energy generation projects.
- 74 Subsection (3) confirms that this power of modification may only be exercised in relation to a nuclear company while a designation under section 2(1) has effect in relation to that company.
- 75 Subsection (4) places an obligation on the Secretary of State to have regard to certain matters when making modifications under subsection (1). These considerations include:
- a. The duties the Secretary of State has regarding the reduction of carbon emissions, specifically targets and budgets, under the Climate Change Act 2008.
 - b. the interests of existing and future electricity consumers, including in relation to the cost of electricity and the security of electricity supply;
 - c. the costs, expenditure and liabilities that the nuclear company could reasonably be expected to incur in carrying out its activities in relation to the nuclear project;
 - d. the need for the nuclear company to be able to finance its activities;
 - e. the need to ensure that the nuclear company has appropriate incentives when carrying out its activities; and
 - f. any other matters the Secretary of State considers appropriate.
- 76 Subsection (5) provides examples of the types of modifications to the conditions of a designated nuclear company's licence that could be made by the Secretary of State. This includes provision relating to (among other things): the calculation of the allowed revenue; payments under a revenue collection contract (as defined in Part 2); the company's activities; the Authority's functions in relation to the regulation of the designated nuclear company under a RAB model; decisions of the Authority that the nuclear company could refer to the Competition and Markets Authority under section 10; and relevant licensee nuclear company administration orders (as defined in section 31). These examples are illustrative and so this provision does not restrict the scope of this power set out in subsection (2).
- 77 Subsection (6) clarifies that in exercising their power to modify the terms of a designated nuclear company's licence, the Secretary of State could for example make provision in relation to the circumstances in which the company could have its generation licence revoked.
- 78 Subsection (7) gives the power to the Secretary of State to modify the standard conditions of generation, transmission, distribution and supply licences (and associated documents and agreements, such as industry codes). Subsection (8) is clear that the Secretary of State can only make these modifications if they consider it appropriate for consequential, supplementary or incidental purposes. This allows the Secretary of State to ensure the effective implementation of the RAB model for a designated nuclear company.
- 79 Subsection (9) states that modifications made under subsections (1) or (7) only come into effect where the nuclear company enters into a revenue collection contract.
- 80 Subsection (10) makes it clear that reference within this section to the activities of the nuclear company are to the company's activities in relation to the design, construction,

commissioning and operation of the relevant nuclear project, and include its activities in complying with obligations under an approved FDP under the Energy Act 2008.

Clause 7: Licence modifications: relevant licensee nuclear companies

- 81 This clause makes provision to modify a relevant licensee nuclear company's generation licence in the period up to the completion of construction. This power can only be exercised in limited circumstances where the expenditure to complete construction is likely to exceed a cap under the licence.
- 82 Subsection (1) allows for the Secretary of State to make modifications to the conditions of a relevant licensee nuclear company's generation licence.
- 83 Subsection (2) specifies that the power under subsection (1) can only be exercised if the Secretary of State considers that it is likely that the company's project will not be able to complete construction without the total expenditure exceeding a spending limit set out in its current licence; and that an adjustment to the nuclear company's allowed revenue is therefore necessary.
- 84 Subsection (3) requires the Secretary of State to have regard to the same matters when exercising this power, as when making initial licence modifications under clause 6(1).
- 85 Subsection (4) limits this power to being used before the completion of construction. Subsection (5) defines this point as being when the nuclear plant has completed the relevant procedures and tests to demonstrate that it is ready to enter commercial operations.
- 86 Subsection (6) obligates the Secretary of State to publish a document that outlines the process they foresee following in relation to the exercise of the power included in subsection (1).

Clause 8: Procedure etc relating to modifications under section 6 or 7

- 87 This clause sets out the procedure the Secretary of State must follow when making licence modifications under clauses 6(1) or (7) or 7(1) (defined as a 'relevant power'). It also provides further details on the types of modification that may be made.
- 88 Subsection (1) obliges the Secretary of State to consult a list of named entities before making any modifications under a relevant power, as well any other person they consider appropriate.
- 89 Subsection (2) clarifies that, in the case of the power under subsection 6(1) and (7), this consultation can be undertaken before or after the passage of this legislation.
- 90 Subsection (3) and subsection (4) provide further information regarding how a relevant power may be exercised and the types of modifications that the Secretary of State may make. Subsection (3) allows the Secretary of State to use the licence modification powers to make modifications which are general or specific or subject to exceptions. It also allows the Secretary of State to exercise the powers differently for different purposes and to make incidental, supplemental, consequential or transitional modifications.
- 91 Subsection (4) enables provisions included in a licence or associated document or agreement (such as an industry code) by a modification under these powers to make different provision for different purposes. It also makes clear that any provision included in a licence by such a modification need not relate to the activities that the licence authorises. Subsection (4)(c) clarifies that a provision included in a licence by

virtue of a relevant power may also do anything which is authorised for licences of that type by section 7(4), (5)(a) or (6A) of the Electricity Act 1989.

- 92 Subsection (5) obligates the Secretary of State to publish the details of any modification as soon as reasonably possible after it takes place.
- 93 Subsection (6) requires the Authority, where the Secretary of States makes a modification to standard licence conditions, to reflect this change when granting licences of that type in the future. They must also publish the modification.
- 94 Subsection (7) makes clear that any modification of part of a standard condition does not change the status of other parts of that condition for the purposes of the Electricity Act 1989.
- 95 Subsection (8) clarifies that in ‘modifying’ a licence condition, licence term, document or agreement under a relevant power, the Secretary of State may be amending, removing or adding to it.

Clause 9: Expiry of modifications made under section 6.

- 96 This clause sets out the consequences for licence modifications made under section 6 in the event the designation of the nuclear company in question expires, or if its designation lapses or is revoked.
- 97 Subsection (1) clarifies that this section is only applicable if the designation of a nuclear company ceases to have effect because the designation has expired, lapsed or been revoked. In other words, it does not apply where a nuclear company’s designation ceases to have effect in accordance with section 4(1)(b) because it has entered into a revenue collection contract with a revenue collection counterparty.
- 98 Subsection (2) provides that if a nuclear company’s designation has ceased to have effect in accordance with the provisions set out in subsection (1), any modification which was made by the Secretary of State to the terms and conditions of the nuclear company’s electricity generation licence, under the power in clause 6(1), will be treated, from the ‘relevant time’ as never having been made. Under subsection (3), the same applies to any modifications made under section 6(7) in consequence of, or for the purpose’s incidental or supplementary to, the relevant modifications under section 6(1).
- 99 Subsection (4) defines “relevant time” for the purpose of subsections (2) to (3). It means the time when the designation of the relevant nuclear company ceases to have effect.
- 100 Subsection (5) obliges the Secretary of State to publish the fact that modifications are to be treated as not having been made under subsection (2) or (3).

Clause 10: Decisions relating to allowed revenue of relevant licensee nuclear company: appeals to CMA

- 101 This clause sets out the circumstances under which a relevant licensee nuclear company can make a reference to the Competition and Markets Authority to appeal certain decisions made by the Authority relating to its allowed revenue.
- 102 Subsection (1) makes clear that this section only applies where a relevant licensee nuclear company’s electricity generation licence contains explicit provision, by virtue of section 6(5)(g), enabling the company to refer decisions of the Authority falling within section 10(3) to the CMA. For the purposes of such appeals, subsection (2) applies the existing framework in the Electricity Act 1989 applicable to appeals to the CMA brought against decisions of the Authority to proceed with the modification of a condition of a licence under section 11A of that Act.

These Explanatory Notes relate to the Nuclear Energy (Financing) Bill as brought from the House of Commons on 11 January 2022 (HL Bill 89)

- 103 Subsection (3) sets out the types of decisions that fall within this section. More specifically, these are decisions made by the Authority during the course of its regulation of the relevant licensee nuclear company, which in the CMA's opinion relate to the Allowed Revenue that the company may receive, and which the company would not be able to refer to the CMA under the existing appeal process provided by section 11C of the Electricity Act 1989. This enables a licensee nuclear company to, for example, appeal a decision of the Authority which relates to the company's allowed revenue where this has not immediately resulted in a modification to the company's licence.
- 104 Solely for the purposes of their application to the decisions in subsection (3), subsection (4) "amends" the relevant provisions of the Electricity Act 1989 where this is required to tailor the existing appeals processes for the purposes for the new appeal route established by section 10.

Clause 11: Provision of information to the Secretary of State

- 105 Subsection (1) of this clause provides the Secretary of State with the power, by notice, to require a nuclear company to provide them with such information as they reasonably require in connection with carrying out their functions under this Part.
- 106 Subsection (2) builds on this by stating that this information must be provided at any time and place, and in whatever manner or form, the Secretary of State specifies in the notice.
- 107 Subsection (3) clarifies that no information which would be protected on grounds of legal professional privilege (or, in Scotland, confidentiality of communications) is obliged to be submitted to the Secretary of State.
- 108 Subsections (4) to (5) state that sharing information under this clause does not contravene any obligation of confidence, or other limitation on how information can be shared, except if it would contravene data protection legislation. If this is the case, then the information need not be shared under this clause.

Clause 12: Provision of Information to or by the Authority

- 109 This clause deals with the powers of the Authority in relation to the sharing and receiving of information necessary to effectively regulate a relevant licensee nuclear company under a RAB model.
- 110 Subsection (1) states that the Authority may provide any information to the list of persons included in subsection (2) which it thinks is necessary to fulfil its functions relating to regulating the relevant licensee nuclear company.
- 111 Subsection (2) provides the list of named persons that the Authority can share information with. Subsection (3) states that the Authority can also request information from the same named persons, if it considers this necessary for its role as regulator of a relevant licensee nuclear company.
- 112 Subsection (4) obliges that any requests for information must as far as reasonably possible be delivered within a timescale (and in a form and manner) set by the Authority.
- 113 Subsection (5) requires the Authority to reimburse the reasonably incurred costs of any person that the Authority requires to provide it with information under subsection (3).
- 114 Subsections (6) to (7) state that sharing information under this clause does not contravene any obligation of confidence, or other limitation on how information can be

shared, except if it would contravene data protection legislation. If this is the case, then the information need not be shared under this clause.

115 Subsection (8) defines the terms used in this clause.

Clause 13: Sensitive material

116 Subsections (1) to (2) allow the Secretary of State to remove certain pieces of information from reasons to be consulted on under section 3(2)(b) (including insofar as that provision is applied for the purposes of revocation under section 5(2)) or anything required to be published under this Part, where these are commercially sensitive or should be excluded on national security grounds.

Clause 14: Interpretation of Part 1

117 This clause brings together a number of definitions for terms included in this Part.

Part 2: Revenue collection contracts

Clause 15: Regulations about revenue collection contracts

118 This clause sets out the Secretary of State's power to make regulations relating to revenue collection contracts between a revenue collection counterparty and a designated nuclear company, and the required parliamentary process for making those regulations.

119 Subsection (1) sets out the Secretary of State's power to make regulations about revenue collection contracts ('revenue regulations'). The terms of a revenue collection contract will be bilaterally negotiated between the Secretary of State and an eligible nuclear company to be designated under Part 1. There are a number of sections in this Part which set out the types of provision that may be made in revenue regulations, in particular within clauses 16 to 24 inclusive of this Part.

120 Subsection (2) defines a revenue collection contract as a contract:

- a. between a revenue collection counterparty and a nuclear company for which a designation was in effect (under section 2(1)) immediately before the contract was entered into;
- b. under which certain payments are to be funded by electricity suppliers;
- c. those payments may be made both before and after the start of generation of electricity by the relevant nuclear project;
- d. and is entered into by the revenue collection counterparty pursuant to a direction from the Secretary of State in accordance with section 18 of this Part.

121 Subsection (3) defines further key terms of this part. Subsection (4) makes clear that the provision made by this Part is without prejudice to the generality of the regulation-making power in subsection (1).

122 Subsection (5) clarifies certain points relating to the scope of the Secretary of State's powers to make revenue regulations, such as that regulations can include incidental, supplementary or consequential provision, and can make different provision for different purposes.

123 Subsections (6) to (8) provide that revenue regulations must be made by statutory instrument and that:

- a. the first time regulations are made relating to:
 - i. Information and advice (section 23)
 - ii. Functions of the Authority (section 24)
- b. Or any regulations relating to:
 - i. Designation of a revenue collection counterparty (section 16)
 - ii. Duties of a revenue collection counterparty (section 17)
 - iii. Direction to offer to contract (section 18)
 - iv. Supplier Obligation (section 19)
 - v. Payments to electricity suppliers (section 20)
 - vi. Application of sums held by a RAB revenue collection counterparty (section 21)
 - vii. Enforcement (section 22)

must follow the affirmative resolution procedure. Any other regulations must follow the negative resolution procedure.

124 Subsection (9) provides that revenue regulations should not be treated as a hybrid instrument. The regulations are expected to confer functions and obligations on a revenue collection counterparty and on electricity suppliers, in a way which could be regarded as adversely affecting their private interests, raising a possibility that revenue regulations may be a hybrid instrument. However, this subsection clarifies that it is not considered necessary for the regulations to be treated as hybrid because the duty to consult before making regulations in section 25 will provide adequate protection that private interests will be fully considered.

Clause 16: Designation of a revenue collection counterparty

125 This clause allows the Secretary of State to designate a company registered in England and Wales or Scotland or a public authority, with the consent of that person, to act as the counterparty to revenue collection contracts. The revenue collection counterparty will enter into and manage revenue collection contracts with relevant licensee nuclear companies and will act as the interface between those companies and suppliers.

126 Subsection (1) allows the Secretary of State by notice to designate an eligible person to be the counterparty for revenue collection contracts. Subsection (2) clarifies that a person designated under subsection (1) is referred to in this Part as the revenue collection counterparty.

127 **Subsection (3)** allows the counterparty to be a company registered in England and Wales or Scotland or a public authority. Whilst it is expected that the counterparty will be owned by Government, any designated counterparty would have the same rights and be bound by the same duties under the legislation, regardless of whether it was a company owned by Government, a public authority, or a private company. Subsection (4) states that a person can only be designated with their consent. Subsection (5) gives the Secretary of State the power to designate more than one revenue collection counterparty. This can only take place if the Secretary of State considers that it is necessary for one of the reasons set out in subparagraphs (a) to (c), for example to ensure that liabilities under revenue collection contracts can continue to be met.

- 128 Under subsection (6) the designation of a company as the revenue collection counterparty can be revoked by the Secretary of State. Designation will also cease if the revenue collection counterparty elects to withdraw its consent and gives 3 months notice to the Secretary of State of that withdrawal.
- 129 Subsection (8) makes clear that the Secretary of State must publish the details of the designation that took place under subsection (1) (or a revocation under subsection (6)(a)).
- 130 Subsections (7), (9) and (10) deal with the continuity of revenue collection counterparties. If the designation of a revenue collection counterparty was to lapse, the Secretary of State must as soon as reasonably practicable, designate another counterparty and make a transfer scheme under section 26 of this Part, transferring all rights and liabilities under revenue collection contracts to that new counterparty. This is designed to ensure that there is always at least one revenue collection counterparty in operation, and that where a revenue collection counterparty ceases to be designated, the contracts are transferred to a new revenue collection counterparty. Subsection (10) also provides that revenue regulations may make provision about the length of time for which, and circumstances in which, a revenue collection counterparty can be treated as such, after its designation has ceased.

Clause 17: Duties of a revenue collection counterparty

- 131 This clause sets out the duties of a revenue collection counterparty.
- 132 Subsection (1) makes it clear that it is a duty of a person who has been designated as a revenue collection counterparty to comply with the revenue regulations and any direction from the Secretary of State made under this Part.
- 133 Subsections (2) to (3) lay out examples of the duties the revenue regulations may place on the revenue collection counterparty and the powers that the Secretary of State may exercise over the counterparty, including the situations that may require consultation with, or the consent of, the Secretary of State. This will include the requirement for the revenue collection counterparty to comply with any requirements designed to ensure it manages the contracts in line with the direction of the Secretary of State and any relevant determinations by the Authority as provided for in the regulations.
- 134 Subsection (4) also places a duty on the revenue collection counterparty to exercise its functions to ensure that it can meet its liabilities under a revenue collection contract. This includes its functions relating to the recovery of sums from licensed electricity suppliers (see section 19).
- 135 Subsection (5) says that revenue regulations must make provisions for what the Secretary of State thinks is necessary to ensure that the revenue collection counterparty can meet its liabilities under revenue collection contracts.

Clause 18: Direction to offer to contract

- 136 This clause allows for the Secretary of State to direct a revenue collection counterparty to offer to enter into a revenue collection contract with a designated nuclear company.
- 137 Subsection (1) confers a power on the Secretary of State to issue a direction to the revenue collection counterparty to offer to enter into a revenue collection contract with a designated nuclear company, in accordance with terms specified in the direction.
- 138 Subsections (2) and (3) provide that revenue regulations can set out the circumstances in which such a direction can be made, as well as the terms that could be attached to the

designation. This may include certain terms that are required to be part of the revenue collection contract. For example, contract terms must set out the determinations to be made by the Authority under the nuclear company's licence. The provisions made within revenue regulations will include calculations for where payments may be due and who is to determine them.

- 139 Subsection (4) clarifies that references to a designated nuclear company in this section refer to a nuclear company in relation to which a designation under clause 2(1) has effect.

Clause 19: Supplier obligation

- 140 This clause deals with the obligations of suppliers in relation to the functioning of the revenue stream.
- 141 Subsection (1) places an obligation on the Secretary of State, when making revenue regulations under section 15, to include provision requiring electricity suppliers in GB to make payments to the revenue collection counterparty to enable it to make payments under revenue collection contracts. Subsection (2) describes other areas where revenue regulations may place obligations on suppliers to pay the revenue collection counterparty. Suppliers may also be obliged to make payments to cover administration costs of the revenue collection counterparty for managing the revenue collection contracts. Payments may also be required in order to enable the revenue collection counterparty to hold sums in reserve (subsection 2(b)) and to mutualise costs across suppliers to cover those not made by an insolvent or defaulting supplier (subsection 2(c)). **Subsection (3) defines 'costs' for the use in subsection 2(a).**
- 142 Subsection (4) enables revenue regulations to require suppliers to provide financial collateral to a revenue collection counterparty.
- 143 Subsection (5) specifies that the regulations must place the revenue collection counterparty under a duty in relation to the collection of sums that are owed to nuclear companies which are party to revenue collection contracts.
- 144 Subsections (6) to (8) enable the supplier obligation to be varied according to the supplier or factors in relation to a supplier (such as the amount of electricity it supplies to particular groups of consumers). It also provides for the revenue collection counterparty to provide notices to suppliers and to enforce such notices, and for dispute resolution arrangements.
- 145 Subsection (9) clarifies that any sum which a supplier is required to pay the revenue collection counterparty by virtue of the supplier obligation regulations, and which is not paid when it is due under the regulations, is recoverable as a civil debt.

Clause 20: Payments to electricity suppliers

- 146 This clause deals with the process related to payments from the revenue collection counterparty to electricity suppliers.
- 147 Subsection (1) enables regulations to require the revenue collection counterparty to make payments to suppliers. This is designed to enable payments to suppliers where the revenue collection counterparty has overcharged suppliers or overpaid a relevant license nuclear company. This could occur where the forecast market revenue is higher than the forecast allowed revenue over a given period. Subsection (2) highlights what the regulations enabled by subsection (1) may cover. This includes the calculations undertaken by the revenue collection counterparty where they owe funds to suppliers.

Clause 21: Application of sums held by a revenue collection counterparty

- 148 This clause deals with situations where the funds held by the revenue collection counterparty are insufficient to meet its liabilities in relation to revenue collection contracts.
- 149 Subsections (1) to (2) enable the regulations to make provision about the allocation of sums between revenue collection contracts by the revenue collection counterparty in circumstances where the supplier obligation is not large enough to meet all of its obligations in full. It also enables revenue regulations to include provision to define what is meant by “unable to fully meet its liabilities under a revenue collection contract”. Subsection (3) states that, in making these regulations, the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed, such that they are pro-rated between relevant licensee nuclear companies.
- 150 Subsections (4) and (5) enable the regulations to make provision about the use of sums a revenue collection counterparty holds and for the circumstances where monies received should or should not go to the Consolidated Fund.

Clause 22: Enforcement

- 151 This clause deals with the enforcement of requirements under revenue regulations.
- 152 Subsections (1) to (2) mean that revenue regulations may provide that the obligations of suppliers in regulations made under this Part are to be enforceable by the Authority in Great Britain as if they are relevant requirements under section 25 of the Electricity Act 1989. This means that a breach can be treated, in effect, as if it were a breach of a licence condition, thus allowing the Authority to obtain an order to secure compliance, and impose financial penalties. It also enables requirements on the national system operator to be enforced by the Authority in this manner.

Clause 23: Information and advice

- 153 This clause lays out how the regulations will deal with the information and advice sharing necessary for the functioning of revenue collection contracts.
- 154 Subsections (1) to (2) enable regulations to make provision to ensure that information and advice required to make the scheme work is provided from the bodies specified in regulations to the bodies requiring it at appropriate points. The bodies covered by these regulations will include relevant licensee nuclear companies, electricity suppliers, the Authority, the national system operator, the revenue collection counterparty, the Secretary of State and, where relevant, a nuclear administrator.
- 155 An important information interface within the scheme will be between the Authority and the revenue collection counterparty, since it would be the Authority which would determine the payments which the revenue collection counterparty would need to pay to the relevant licensee nuclear companies under the terms of their contract and any associated documents, such as the licence. It enables regulations to make provision governing the use and protection of information so received to ensure it is handled in an appropriate manner.

Clause 24: Functions of the Authority

- 156 This clause deals with advice or determinations by the Authority in relation to revenue collection contracts.
- 157 This clause enables the regulations to confer functions upon the Authority to provide advice to and make determinations for the parties to revenue collection contracts. This

could include, advising the revenue collection counterparty on which suppliers may be fully or partially exempt from the supplier obligation under provision made in regulations, and determining whether obligations have been met.

Clause 25: Consultation

- 158 This section sets out the process the Secretary of State must take before revenue regulations may be made.
- 159 Subsection (1) requires that the Secretary of State must consult licensed suppliers in Great Britain, the national system operator, every nuclear company in relation to which as designation has effect under clause 2(1), every nuclear company that is a relevant licensee nuclear company and the Authority before making or amending secondary legislation under this Part. Scottish and Welsh Ministers are also required to be consulted as well as any other persons the Secretary of State considers as appropriate. Subsection (2) clarified that this consultation can occur before or after the passage of this Bill.

Clause 26: Revenue collection counterparties: transfer schemes

- 160 This clause sets out the process by which the property, rights and liabilities of the revenue collection counterparty may be transferred from one counterparty to another, should this prove necessary either because a counterparty no longer wishes to be designated, or because it has become inappropriate for a counterparty to be designated in this role. Under subsection (7), a scheme may provide for compensation to be paid by the Secretary of State to persons whose interests are adversely affected by a scheme.
- 161 Subsections (1) to (4) allow the Secretary of State to make transfer schemes for the transfer of a revenue collection counterparty's designated property, rights or liabilities to a new body who will take on the role. This will take place on a designated transfer date.
- 162 Subsections (5) to (6) describe the types of provision that may be included in a transfer scheme, clarifying their scope and application.
- 163 Subsection (8) clarifies certain points relating to the scope of the Secretary of State's powers to make a transfer scheme, such as that a scheme can include incidental, supplementary or consequential provision, and can make different provision for different purposes. Subsection (9) defines the terms for this clause.

Clause 27: Modification of transfer schemes

- 164 This clause gives the Secretary of State the ability to modify transfer schemes made under clause 26.
- 165 Subsection (1) enables the Secretary of State to modify transfer schemes. Subsection (2) states that any further modification following the transfer can only be made with the agreement of the transferor and/or transferee affected by the modification. This narrows the scope of the power after the completion of the transfer scheme
- 166 Subsection (3) clarifies that modifications can take effect on a date decided by the Secretary of State. This can include the date on which the original transfer scheme took effect.

Clause 28: Shadow directors, etc

- 167 This makes it clear that, in exercising their controls over the revenue collection counterparty, the Secretary of State could not be deemed to be in any way managing or

controlling the revenue collection counterparty in such a way that would class them, for example, as “shadow directors” or a principal of a revenue collection counterparty.

Clause 29: Licence modifications

- 168 This sets out the Secretary of State’s power to make licence modifications.
- 169 Subsection (1) provides the Secretary of State with the power to modify transmission and distribution licences, the standard conditions of such licences and documents maintained in accordance with conditions of such licences (such as industry codes).
- 170 Subsection (2) sets out that these modification powers may only be used for the purpose of allowing or requiring services to be provided to the revenue collection counterparty or enforcing the obligations of a revenue collection contract. Subsection (3) clarifies that licence modifications under this section can include any provision that can be covered in revenue regulations.
- 171 Subsection (4) requires that the Secretary of State must consult licensed suppliers in Great Britain, the holder of any licence being modified, and the Authority before such licence modifications. Scottish and Welsh Ministers are also required to be consulted as well as any other persons the Secretary of State considers appropriate. Subsection (5) states that this consultation can occur before or after the passage of this legislation.
- 172 Subsection (6) allows the Secretary of State to use the licence modification powers to make modifications which are general (i.e. applicable to all licence holders) or specific (for example, to make different provision for different licensees). It also allows the Secretary of State to make modifications for different purposes and to make incidental, supplementary, consequential or transitional modifications.
- 173 Subsection (7) enables provisions included in a licence or associated document or agreement (such as an industry code) by a modification under these powers to make different provision for different purposes. It also makes clear that any provision included in a licence by such a modification need not relate to the activities that the licence authorises. Subsection (7)(c) clarifies that a provision included in a licence by virtue of a relevant power may also do anything which is authorised for licences of that type by section 7(2A), (3), (4), (5) or (6A) of the Electricity Act 1989.
- 174 Subsection (8) requires the Secretary of State to publish the details of any modifications as soon as reasonably practicable after they are made.
- 175 Subsection (9) requires the Authority to incorporate modifications made by the Secretary of State to standard conditions into future licences, and to publish these modifications.
- 176 Subsection (10) states that a modification to a part of a standard condition of a licence, does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of the Electricity Act 1989.
- 177 Subsection (11) clarifies that the power to modify licences includes the power to amend, add or remove.

Clause 30: Interpretation of Part 2

- 178 This section defines terms used throughout this Part.

Part 3: Special Administration Regime

Clause 31: Relevant licensee nuclear company administration orders

- 179 This clause defines the key terms of this Part and clarifies the scope of a relevant licensee nuclear company (RLNC) administration order.
- 180 Subsection (1) defines a RLNC administration order for the purposes of this part.
- 181 Subsection (2) provides that the person, or persons appointed by the court for purpose of managing the company's affairs, business and property, and the exercise of the functions set out in clause 32, is to as the 'nuclear administrator' in this Part.
- 182 Subsection (3) provides that the obligation of the nuclear administrator of the company to manage its affairs and act in a way that aims to achieve the objectives in clause 31.
- 183 Subsection (4) provides that the definitions for "relevant licence" and "relevant licensee nuclear company" are the same as those in Part 1 of the Bill.

Clause 32: Objective of a relevant licensee nuclear company administration

- 184 This clause provides the objective for a RLNC administration order and the means by which the nuclear administrator has to achieve those objectives.
- 185 Subsection (1) provides the objective of the nuclear administrator. The first is to commence or continue the electricity generation of the nuclear power until it becomes unnecessary, by virtue of the relevant licensee nuclear company being rescued as a going concern or a transfer of that company's assets to one or more companies in a manner which achieves the objective, for the order to remain in force.
- 186 To achieve the objective in subsection (1), the nuclear administrator will be required to ensure that the relevant nuclear licensee company continues to fulfil all of its responsibilities, including compliance with legislation, regulations and any conditions of a nuclear site licence held, including protections related to safety, security and the environment. The nuclear industry is subject to a robust regulatory regime which is overseen by the Office for Nuclear Regulation and Environment Agency (or Natural Resources Wales if in Wales, or Scottish Environment Protection Agency if in Scotland) which is unaffected by Part 3 of the Bill. Failure to comply with any regulatory or legal provision, including safety, security and environmental provisions may result in enforcement action, this could lead to the plant being shut down and the objective of the RLNC administration order not being met. In those circumstances, the Secretary of State, or the Authority or the nuclear administrator, with the Secretary of State's permission, may wish to apply to end the RLNC administration order. If the rescue of the company, or the transfer of its business cannot be achieved during a RLNC administration order, the Secretary of State may consider preparing a Nuclear Transfer Scheme after the end of the order.
- 187 Subsection (2) outlines the means by which the administrator can achieve the objective of a RLNC administration order. This can be done through rescuing the company as a going concern or transferring its assets, rights and obligations to one or more companies.
- 188 Subsection (3) provides that a transfer falls within subsection (2) if the transfer of the relevant licensee nuclear company's business as a going concern is made to one company, or different parts of the relevant licensee nuclear company's business is transferred to two or more companies as it is appropriate to achieve the objective in subsection (1). Subsection (4) provides for how such transfers may take place.

189 Subsection (5) provides situations where a transfer scheme, rather than the recusing of the company as a going concern, may be used to achieve the objectives of the administrator. This includes where the rescue as a going concern is not practicable, or will not achieve the objectives, and where the transfer scheme would produce a better result for either the company's creditors or members. The effect of subsection (5) is that the rescue of the relevant licensee nuclear company is preferred to transfers to one or more companies.

190 Subsection (6) provides that "nuclear installation" has the same meaning as in the Nuclear Installations Act 1965.

Clause 33: Application of certain provisions of the Energy Act 2004

191 This clause through subsection (1) to –(7) applies and modifies as necessary sections 156 to 167, 171 and 196 of, and Schedules 20 and 21 to, the Energy Act 2004 to apply those provisions to the SAR for relevant licensee nuclear companies. Those provisions will apply as follows in relation to Part 3 of this Bill:

- a. Section 156 of the Energy Act 2004, which provides that an application to the court for a RLNC administration order can only be made by the Secretary of State or by the Authority, with the consent of the Secretary of State;
- b. Section 157 of the Energy Act 2004, which empowers the court to consider an application for a RLNC administration order. The court may make an order in the following circumstances:
 - i. The relevant licensee nuclear company is unable to pay its debts;
 - ii. The relevant licensee nuclear company is likely to be unable to pay its debts; or
 - iii. on petition from the Secretary of State under section 124A of the Insolvency Act 1986, the court is satisfied that it would be just and equitable (disregarding the objective in clause 31(1)) to wind up the company in the public interest;
- c. Section 158 which provides that the nuclear administrator acts as the agent of the relevant licensee nuclear company. It further provides that the nuclear administrator must exercise management functions for the purpose of achieving the objective of RLNC administration as quickly and efficiently as is reasonably practicable. Moreover, the exercise of powers and performance of duties must be carried out in a manner which, in so far as it is consistent with the objective of the RLNC administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole;
- d. Section 159 which apply the rule making power in section 411 of the Insolvency Act 1986 (c.45). Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to RLNC;
- e. the Sections 160 to 164, which prevent the SAR being frustrated by the granting of prior orders before the Secretary of State or the Authority have been given an opportunity to apply for an RLNC administration order;
- f. Section 165 which enables the Secretary of State, with the consent of the Treasury, to give a grant or loan to a company in RLNC administration to

achieve the objective of administration. It also enables the Secretary of State to set the terms of a grant or loan including the requirement that all or part of a grant should be repaid;

- g. Section 166 which enables the Secretary of State, with the consent of the Treasury, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of a nuclear administrator's powers and duties and requires the Secretary of State to lay a statement of any such agreement to indemnify persons before Parliament as soon as practicable;
- h. Section 167 which enables the Secretary of State, with the consent of the Treasury, to provide guarantees in relation to a relevant licensee nuclear company in RLNC administration and requires the Secretary of State to lay a statement of any guarantees given before Parliament as soon as practicable;
- i. Section 171 which provides interpretations of various specific terms and Section 196 which provides interpretations of various general terms.
- j. Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to RLNC administration. This includes the court ending a RLNC administration order on the application of the Secretary of State (or the Authority or the nuclear administrator, with the Secretary of State's permission). This may happen in circumstances where the objective of the order has been achieved, or where the objective has not been achieved and a Nuclear Transfer Scheme may need to follow;
- k. Schedule 21, which provides for the transfers to another company or companies as a going concern of the whole or part of a relevant licensee nuclear company's assets to ensure that the objective of the RLNC administration is met. Such transfer schemes are to be made by the nuclear administrator with the approval of the Secretary of State, and at a time appointed by the court.

Clause 34: Conduct of administration, transfer schemes, etc

192 This clause gives the Secretary of State the power to make insolvency rules under section 411 of the Insolvency Act 1986 in order to give effect to the clauses in Part 3 of the Bill.

Clause 35: Licence modifications: relevant licensee nuclear company administration

193 This clause provides a power to the Secretary of State to make modifications to the conditions and terms of the relevant licensee nuclear company's electricity licence for the purpose of furthering the objective of the licensee nuclear company administration and may only be exercised when an RLNC administration order is in force.

194 Subsection (1) gives the Secretary of State the power to modify the conditions and terms of the relevant licensee nuclear company's electricity licence.

195 Subsection (2) clarifies that these modifications may only be made when a licensed nuclear company administration order is in force and for the purpose of furthering the objective of the RLNC administration provided for in clause 32(1).

196 Subsection (3) requires the Secretary of State to have regard to certain matters before exercising the power in subsection (1). These considerations are:

- a. the duties of the Secretary of State under sections 1 and 4(1)(b) of the Climate Change Act 2008 in relation to ‘Net Zero’ and meeting carbon budgets;
- b. the interests of existing and future consumers, including their interests in relation to cost and security of supply of electricity;
- c. the costs that the nuclear company could reasonably be expected to incur;
- d. the need for the company to be able to finance its functions;
- e. the need to ensure that the company has appropriate incentives to carry out its functions; and
- f. any other matters the Secretary of State feels are appropriate.

197 Subsection (4) provides examples of the type of modifications that could be made in clause 1. This includes the calculation of the allowed revenue; how the Authority will regulate the designated nuclear company under a RAB; and the decisions that it makes that could be appealed by the nuclear company to the Competition and Markets Authority. These examples are illustrative and so this provision does not restrict the scope of this power.

198 Subsection (5) confers a power to the Secretary of State to modify the standard conditions of electricity generation licence (and associated documentation). Subsection (6) provides that the Secretary of State can only make these modifications if it is appropriate to do so in consequence of, or for purposes incidental or supplementary to, the making of a modification under subsection (1).

199 Subsection (7) provides the scope for what is meant by activities of a relevant licensee nuclear company in this Clause.

Clause 36: Procedures etc relating to modifications under section 35

200 This clause sets out the procedure the Secretary of State must follow when exercising the power in clause 35 of the Bill.

201 Subsection (1) requires the Secretary of State to consult the named persons when exercising the powers under clause 35, including the nuclear administrator in that role and as agent of the relevant licensee nuclear company, as well any other persons considered appropriate.

202 Subsection (2) provides the definition for “relevant site” in subsection (1) refers to the site for which the relevant licensee nuclear company holds a relevant licence (see the definition of relevant licence in Part 1 of the Bill).

203 Subsection (3) provides the scope of the modification power which Secretary of State may exercise during a RLNC administration order. This includes generally in relation to specified cases or subject to exceptions providing specified conditions are satisfied. The modification power may be exercised for different purposes and allows the Secretary of State to make incidental, supplementary, consequential or transitional modifications.

204 Subsection (4) enables provisions included in a licence or associated document or agreement (such as an industry code) by a modification under these powers to make different provision for different purposes. It also makes clear that any provision included in a licence by such a modification need not relate to the activities that the licence authorises. Subsection (4)(c) clarifies that a provision included in a licence by

virtue of a relevant power may also do anything which is authorised for licences of that type by sections 7(4), (5)(a) or (6A) of the Electricity Act 1989.

205 Subsection (5) places an obligation on the Secretary of State to publish the details of the modification once they have been made. Subsection (6) allows the Secretary of State to remove certain pieces of information from anything required to be published under subsection (5), where these are commercially sensitive or should be excluded on national security grounds.

206 Subsection (7) provides that if the Secretary of State modifies the standard conditions of a licence under section 6(1)(a) of the Electricity Act 1989, the Authority must make the same modification to all licences under section 6(1)(a) of the Electricity Act 1989 granted after that point in time and are obliged to publish the modification.

207 Subsection (8) provides that a modification made by the Secretary of State to a standard condition does not prevent other parts of the condition from continuing to be considered a standard condition pursuant to Part 1 of the Electricity Act 1989.

Clause 37: Modification under the Enterprise Act 2002

208 This clause provides that the power to modify or apply certain enactments.

209 Subsections (1) to (2) of this clause provide that the power to modify or apply enactments conferred on the Secretary of State by sections 248 and 277 of the Enterprise Act 2002 includes a power to make consequential modifications to these clauses relating to the SAR, and to Chapter 3 of Part 3 of the Energy Act 2004 as applied by 33, where the Secretary of State considers this appropriate. This power is designed to ensure that the current provisions do not get out of line with wider insolvency legislation where the Enterprise Act 2002 provisions are used to modify or apply enactments.

Clause 38: Power to make further modifications of insolvency legislation

210 This clause provides the Secretary of State with the power to apply enactments and modify make other alterations to existing insolvency legislation, including Part 3 of this Bill. The power is designed to enable the Secretary of State to amend the detail of the regime if experience of its application highlights any difficulties or areas of concern or respond to changes in insolvency law, especially in relation to administration.

211 Subsection (1) grants the Secretary of State a power to provide for insolvency legislation to apply and to make such modifications of insolvency legislation (including any applied by virtue of clause 37) as they consider appropriate in relation to any provision made by or under the clauses in Part 3 of the Bill.

212 Subsection (2) provides that ‘insolvency legislation’ includes, the Insolvency Act 1986, and Chapter 3 of Part 3 of the Energy Act 2004, which are applied by clause 33 of the Bill, and any other provisions that relates to insolvency or makes provisions by reference to anything that may be done under the Insolvency Act 1986.

213 Subsection (3) provides that the power conferred on the Secretary of State by subsection (1) includes the power to amend Part 3 of this Bill.

214 Subsections (4) and (5) provide that this power is exercised by statutory instrument which is subject to the affirmative resolution procedure.

Clause 39: Interpretation of Part 3

215 This clause defines the relevant terms for this part.

Part 4: Miscellaneous and Final Provisions

Clause 40: Decommissioning of nuclear sites: bodies corporate not “associated”

216 This clause seeks to amend the Energy Act 2008 to provide clarification as to the meaning of ‘associated’ for the purposes of determining the bodies on whom the Secretary of State may impose obligations under an FDP associated with a new nuclear power station. Subsection (1) amends section 67 of the Energy Act 2008 in order to make it subject to a new section 67A.

217 Subsection (2) adds in a new section 67A to the Energy Act 2008, to clarify the actions of corporate bodies that should or should not be taken into account for the purposes of determining whether one body corporate is ‘associated’ with a nuclear site operator. The clause looks to define the activities of security trustees and secured creditors that are relevant for this exclusion. For example, secured creditors and security trustees may carry out activities connected to the holding and enforcement of certain security rights, but they would only ever exercise these to enforce or preserve the value of their security in the event of a default by the operator under the relevant financing arrangements. These rights are contingent and have nothing to do with the day-to-day management or operation of the company, and so should be disregarded when considering which bodies corporate are ‘associated’ with the operator. Subsections (1) to (3) of the new section 67A of the Energy Act 2008 make this clear.

218 Subsection (4) of the new section 67A also clarifies that, where A acquires shares in B by virtue of the exercise of ‘relevant share security rights’, such shares should only be excluded from consideration for the purposes of section 67 where A retains those shares only for the purpose of preserving the value of a security interest or of realising that security interest. This is to avoid a circumstance where corporate bodies may attempt to use this provision to exclude their activities from the definition of ‘associated’ inappropriately.

219 To ensure that the activities of security trustees are fully captured for purposes of this supplemental provision, subsections (5)(b) and (c) of the new section 67A makes clear that this section covers rights and shares held on trust.

Clause 41: Financial provision

220 This clause makes provision about expenditure, or increase in expenditure, as a result of this Bill.

221 Subsection (1) provides that there is to be paid out of money provided by Parliament.

- a. any expenditure incurred by the Secretary of State by virtue of this Bill;
- b. any expenditure incurred by the Competition and Markets Authority by virtue of this Bill;
- c. any expenditure incurred by the Authority by virtue of this Bill;
- d. any increase attributable to this Bill in the sums payable out of money so provided under any other Act.

222 Subsection (2) clarifies that clause 40(1)(a) includes expenditure by the Secretary of State for the purposes of or in connection with:

- a. the establishment of a revenue collection counterparty;

- b. making payments or providing financial assistance to a revenue collection counterparty;
- c. making payments to a nuclear RAB administrator or a relevant licensee nuclear company under or by virtue of Part 3.

223 Subsection (3) confirms that, in this context, financial assistance or payments may be subject to conditions, including repayment conditions.

224 Subsection (4) defines the relevant terms for this clause.

Clause 42: Minor and consequential provision

225 This clarifies the Schedule contains minor and consequential provisions.

Clause 43: Extent

226 This lays out the territorial scope of the Bill. The detail of this can be seen in Annex A.

Clause 44: Commencement

227 This clause provides details on early commencement of a limited number of provisions, which will come into force on the day on which the Bill is passed (subsection (1)). Subsection (2) sets out the provisions in the Bill that will come into force two months after the Bill is passed.

Clause 45: Short Title

228 This clause contains the short title by which the Bill may be cited.

The Schedule – Minor and Consequential Provision

229 This schedule makes a number of minor changes to existing legislation arising out of the provisions in this Bill.

Paragraph 1, 2 and 3

230 These paragraphs amend the Electricity Act 1989, Utilities Act 2000 and Energy Act 2004 to make certain consequential amendments. Paragraph 1(3) also adds a new subsection (6D) into section 6 of the Electricity Act 1989 in order to provide the Authority with a power to amend the terms of a relevant licensee nuclear company's electricity generation licence provided that the company consents.

Paragraph 4

231 This paragraph repeals certain provisions of the Smart Meters Act 2018 and the Domestic Gas and Electricity (Tariff Cap) Act 2018 as a corollary of the consequential amendments made to section 33 of the Utilities Act 2000 by paragraph 2(2) of the Schedule.

Commencement

232 Clause 44 makes provision for certain clauses in the Bill to come into force on the day of Royal Assent. The remaining provisions of this Bill will come into force 2 months from the passage of this Bill.

Financial implications of the Bill

- 233 The Bill will enable the Secretary of State to designate a body to act as a revenue collection counterparty for the operation of the RAB model. By designating them to take this role, they will be permitted to spend funds to prepare for the function. These funds will be provided by the Secretary of State, who will also provide financial assistance if necessary.
- 234 The Government expects that the operating costs of a designated revenue collection counterparty would be met through an operational costs levy placed on GB Electricity Suppliers. This would be consulted on and approved by Parliament annually and is likely to be a small amount.
- 235 The broader charge on GB Electricity Suppliers to fund the required proportion of a relevant licensee nuclear company's Allowed Revenue would be classed as imputed tax and spend on the Government's year budget. It is expected that the construction of any project financed through a nuclear RAB model would likely be classified as being on the Government's Balance Sheet.

Parliamentary approval for financial costs or for charges imposed

- 236 A money resolution and ways and means resolution are required for the Bill, which were passed by the House of Commons on 3 November 2021. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new expenditure – and a ways and means resolution is required where a Bill authorises new charges on the people – broadly speaking, new taxation or other similar charges.
- 237 There is potential expenditure under the Bill under a number of provisions of the Bill. The principal areas of expenditure are likely to be as follows:
- a. Clauses 6 and 10 are expected to result in new expenditure of the Competition and Markets Authority, as a result of that Authority being the body to which a nuclear company may refer, or appeal RAB-related determinations and decisions made by the Authority.
 - b. Part 2: expenditure could potentially be incurred by the Secretary of State in connection with the establishment of a revenue collection counterparty, the making of payments or provision of financial assistance to a revenue collection counterparty, and obtaining advice and assistance in relation to the exercise of functions of the Secretary of State under Part 2. The functions that are conferred on the Authority under Parts 1 and 2, or that may be conferred on the Authority by virtue of those Parts (most notably as a result of licence modifications made under Part 1), could result in increased expenditure of that body.
 - c. Part 3: clause 33 applies sections 156 to 167 of the Energy Act 2004 to the special administration regime for relevant licensee nuclear companies. Those sections of the 2004 Act include provision that authorises the Secretary of State to make grants and loans (section 165), to give indemnities (section 166), and to give guarantees (section 167).

238 The ways and means resolution is aimed in particular at the following provisions:

- a. Clause 6, which contemplates that modifications made to a nuclear company's electricity generation licence could include provision for the company to pay amounts to the Authority or to the Competition and Markets Authority in accordance with the licence.
- b. Clause 18, which requires revenue regulations to make provision for electricity suppliers to make payments to a revenue collection counterparty. The amount that suppliers may have to pay is not limited, though it could not be more than is necessary for the purpose of enabling the counterparty to make payments under revenue collection contracts.
- c. Clause 35, which authorises the Secretary of State to modify electricity licences in the context of a RLNC administration under Part 3. The modification of licences may, as envisaged by clause 35(4), include increasing charges payable under such licences.
- d. Various provisions of the Bill that provide for payments to be made into the Consolidated Fund. See for example clause 20, which could have the effect of requiring sums held by a revenue collection counterparty to be paid into the Consolidated Fund; the application by clause 33 of sections 165 to 167 of the Energy Act 2004, all of which require sums received by the Secretary of State to be paid into the Consolidated Fund; and clause 35, which could result in increased charges being payable under electricity licences (with section 7(7) of the Electricity Act 1989 requiring such charges to be paid into the Consolidated Fund).

Compatibility with the European Convention on Human Rights

239 The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy has made a statement under clause 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with the Convention rights.

Related documents

240 The following documents are relevant to the Bill and can be read on Gov.uk, in the House libraries, or on Parliament's website:

- Consultation – Regulated Asset Base (RAB) model for nuclear - <https://www.gov.uk/government/consultations/regulated-asset-base-rab-model-for-nuclear>
- The Government Response to the Regulated Asset Base (RAB) model for nuclear Consultation – <https://www.gov.uk/government/consultations/regulated-asset-base-rab-model-for-nuclear>
- The financing of new nuclear projects Impact Assessment.

These Explanatory Notes relate to the Nuclear Energy (Financing) Bill as brought from the House of Commons on 11 January 2022 (HL Bill 89)

Annex A – Territorial extent and application in the United Kingdom

241 The territorial extent and application vary across the different measures included in the Bill. The table below sets the position out in more detail.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion sought?
Part 1: Nuclear Energy Generation Projects: Regulated Asset Base Model	Yes	Yes	Yes	No	N/A
Part 2: Revenue Collection Contracts	Yes	Yes	Yes	No	N/A
Part 3: Special Administration Regime	Yes	Yes	Yes	No	N/A
Clause 40: Decommissioning of nuclear sites: bodies corporate not “associated”	Yes	Yes	No	Yes	N/A

NUCLEAR ENERGY (FINANCING) BILL

EXPLANATORY NOTES

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