

Consideration of Expediting Consent Process for Nuclear Licensed Sites

The Challenge:

To facilitate the development of nuclear power generation on existing UK licensed sites in the shortest time reasonably practicable.

The Background:

In relation to UK Nuclear site licensing, the ONR refers to this as follows:

The nuclear site licence granted by ONR is a legal document, issued for the full life cycle of the facility. It contains site-specific information, such as the licensee's address and the location of the site, and defines the number and type of installations permitted. Such installations include nuclear power stations, research reactors, nuclear fuel manufacturing and reprocessing, and the storage of radioactive matter in bulk.

A set of 36 Standard Conditions, covering design, construction, operation and decommissioning, is also attached to each licence. These conditions require licensees to implement adequate arrangements to ensure compliance.¹

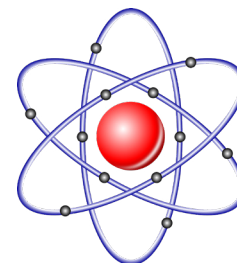
In its recently revised (November 2021) guide to "Licensing Nuclear Installations", the ONR draws attention to the fact that other consents are also required:

The site licence is not the only legal permit or authorisation required to construct and operate a nuclear facility in Britain. Additional authorisations are required from ourselves and other regulators – notably the planning authorities and the environment agencies (our emphasis) to allow the construction and operation of most nuclear facilities. So, prospective operators of new sites will need to seek advice from other regulators and government departments, BEIS in particular, at the earliest opportunity.²

This paper looks at the potential to expedite the planning consent process through the use of the DCO approach under Ministerial direction. In our view there is scope to apply the current DCO process that applies to Nationally Significant Infrastructure projects which includes nuclear power stations above 50 MW, in a way which enables early construction on existing licensed sites to begin. There is also contemporaneous precedent with the recent announcement (8 April 2022) as part of the British energy security strategy of "new government-led project accelerator schemes" to help reduce the timescales between licensing and consent for offshore energy projects. In relation to offshore wind projects the plan is to reduce consent time from up to four years down to one year.

The All-Party Parliamentary Group on Nuclear Energy (the APPG), published a roadmap on 17 March 2022 (calling for 15 GW of new nuclear generation by 2035 and 30GW by 2050), which stressed the need to support project development by streamlining the Development Consent Order process to "enable developers to carry out multiple planning, consenting and licensing requirements concurrently..."

The APPG has also called for the order of 10 SMRs in this Parliament together with the advancement of other large- and small-scale projects.



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¹ See: <https://www.onr.org.uk/licensing.htm>

² See: <https://www.onr.org.uk/licensing-nuclear-installations.pdf>

Finally, the UK Government has committed to the development of an overall siting strategy for its existing 8 designated nuclear sites.

Potential Solution under New National Policy Statements?

One route might be to introduce a new National Policy Statement (NPS) for nuclear to revise and replace the current NPS, EN-6. The current Government position (February 2022, following a Consultation on 2021 on the National Policy Statements) concluded that there was no need to amend EN-6 albeit that a new NPS for electricity generation deployable after 2025 would be developed. Current UK Government policy is that the revised EN-1 Overarching National Policy Statement for Energy (which explicitly refers to Small and Advanced Modular Reactors and Fusion) gives sufficient force for the strategic role of nuclear and new nuclear technologies.

As recently as 7 April 2022 in its British energy security strategy the UK government has referred to the need to develop an “overall siting strategy for the long term” which is generally seen as the precursor to the development of National Policy Statements. But note that this Siting Assessment and Strategy is only to apply to nuclear reactors that are above 1 GW which would exclude SMRs and AMRs.

The ONR states as follows:

The Nuclear Sector Deal (NSD) notes that the government is also actively considering the question of siting for small modular reactors (SMRs) which will fall outside the scope of this new National Policy Statement. Once the UK Government’s policy on the siting of SMRs is established this document will be updated.³

The conclusion must be therefore that the potential route of waiting for a revised National Policy Statement following the development of a new strategy on siting for SMRs (including the development of criteria and Consultation time etc) is not viable to achieve speedy changes to the current DCO process. Note there is also an option for the Secretary of State to review the current National Policy Statement (under s. 5 of the 2008 Act) although this again is likely to take too long.

An Alternative Approach:

In relation to existing licensed sites, once a nuclear site licence has been granted it is in force indefinitely, provided there are no material changes to the basis on which the licence was granted. Changes are allowed under the licence regime by reference by the licence holder back to the licensing authority, in this case the ONR.

In the scenario where an installation of another nuclear reactor technology or an installation of a prescribed kind is being considered on the same licensed site, there is scope for an exemption to be applied to that technology on the basis that the technology has already been approved.

The potential for amendment to the site licence also exists under the legislation from the 1965 Act and the ONR is open to looking at changes in licence conditions to enable new development.

See in this respect: excerpts from the Nuclear Installations Act 1965 (with our emphasis shown with underlined text):

1. Restriction of certain nuclear installations to licensed sites

- (1) No person may use a site for the purpose of installing or operating—
 - (a) any nuclear reactor (other than a nuclear reactor comprised in a means of transport, whether by land, water or air), or
 - (b) any other installation of a prescribed kind,

unless a licence to do so has been granted in respect of the site by the appropriate national authority and is in force.

³ Ibid

- (2) Such a licence is referred to in this Act as a “nuclear site licence”.
- (3) The only kinds of installation that may be prescribed under subsection (1)(b) are installations (other than nuclear reactors) designed or adapted for—
 - (a) producing or using atomic energy,
 - (b) any process which—
 - i. is preparatory or ancillary to producing or using atomic energy, and
 - ii. involves, or is capable of causing, the emission of ionising radiations, or
- (4) Regulations under subsection (1)(b) may make provision for exempting an installation from subsection (1).
- (5) Regulations made by virtue of subsection (4)—
 - (a) may provide for any exemption to be conditional;
 - (b) may not result in an installation being exempt from subsection (1) unless the Secretary of State is satisfied that it is not a relevant installation (or, in the case of a conditional exemption, would not be a relevant installation if the prescribed conditions were satisfied).

On that basis there is scope to allow an updating of the existing consent to allow a new installation which can be subject to conditions imposed by the Secretary of State.

See in this respect: from the Nuclear Installations Act 1965:

3. Grant and variation of nuclear site licences

- (1) A nuclear site licence—
 - (a) may be granted only to a body corporate;
 - (b) is not transferable.
- (2) The appropriate national authority must consult the appropriate environment authority before granting a nuclear site licence.
- (3) Two or more installations in the vicinity of one another may, if the appropriate national authority consider appropriate, be treated for the purposes of the grant of a nuclear site licence as being on the same site.

Subject to the above criteria being applied the requirement is to update the existing consent to allow a new installation which can be subject to conditions imposed by the Secretary of State. Those conditions could be that the proposed installation meets the requirements of the ONR for the 36 Standard Conditions covering design and construction.

How will the installation of an SMR on an existing licensed be treated by the ONR?

The Nuclear Installations Act 1965 (NIA 1965) as amended stipulates that the licensing of sites is required when the latter are to be used for the installation or operation of nuclear reactors (except reactors forming part of a means of transport), and certain other classes of nuclear installations which have been prescribed. Currently the latter are prescribed by the Nuclear Installations Regulations 1971 (Statutory Instrument 1971/381) and, are those designed or adapted for (in summary):

- the carrying out of any process involved in manufacturing fuel elements from enriched uranium or plutonium;
- the carrying out of any process involved in producing alloys or chemical compounds from enriched uranium or plutonium;
- manufacturing rigs incorporating enriched uranium or plutonium for subsequent irradiation in a reactor;
- installing a sub-critical nuclear assembly in which a neutron chain reaction can be maintained;

- processing irradiated nuclear fuel except where this is for assay or similar purposes;
- the storage of:
 - fuel elements containing enriched uranium or plutonium; and
 - irradiated nuclear fuel Licensing nuclear installations;
- bulk quantities of radioactive matter which has been produced or irradiated in the course of the production or use of nuclear fuel: the extraction of plutonium or uranium from irradiated materials, or for enriching uranium; and
- the production from nuclear matter of isotopes for industrial, chemical, agricultural, medical or scientific purposes.

There is no definition as such of a “nuclear reactor”, the ONR’s focus being the regulation of nuclear licensed sites.

See: NIA 1965, section 1:

Restriction of certain nuclear installations to licensed sites

- (1) No person may use a site for the purpose of installing or operating—
 - (a) any nuclear reactor (other than a nuclear reactor comprised in a means of transport, whether by land, water or air), or
 - (b) any other installation of a prescribed kind,
 unless a licence to do so has been granted in respect of the site by the appropriate national authority and is in force.

It seems reasonably clear that an SMR is likely to fit the definition of a nuclear reactor as opposed to “any other installation of a prescribed kind”. As such we are not looking at a “change of activity” where the question of relicensing for that new activity would need to be considered.

How does this fit with the 2008 Planning Act and requirements relating to nationally significant infrastructure projects?

The Secretary of State has the power (under s.11 of the Planning Act 2008) to suspend a National Policy Statement on the grounds that he believes that there have been significant changes since that policy was first published or (if later) review. Those changes in circumstances we would argue apply due to: the decarbonisation priority and the current energy crisis. This would be justified on the basis that the current National Policy Statement: ought to include a policy statement on decarbonisation; requires an expeditious delivery of nuclear new build; and the reduction on dependence on third party energy sources within the shortest time reasonably practicable. This approach would be consistent with the UK Government’s cross party statements on low carbon energy resilience of the UK. Indeed, the All-Party Parliamentary Group on Nuclear Energy in its roadmap also calls for a “net zero” obligation to be imposed on relevant regulatory bodies. The need to suspend part of a National Policy Statement would need to be verified by Leading Counsel Opinion but there is precedent in times of need for this to be done. Our view is there has been a significant change in circumstances since the National Policy Statement was first published (2011) and a suspension of certain elements to enable expedited consenting for licensed sites subject to prescribed conditions would fit clearly within the provisions below relating to the power of suspension by the Secretary of State.

11. Suspension pending review

- (1) This section applies if the Secretary of State thinks that the condition in subsection (2) or (3) is met.
- (2) The condition is that—
 - (a) since the time when a national policy statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,

- (b) the change was not anticipated at that time, and
 - (c) if the change had been anticipated at that time, any of the policy set out in the statement would have been materially different.
- (3) The condition is that—
- (a) since the time when part of a national policy statement (“the relevant part”) was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part was decided.
 - (b) the change was not anticipated at that time, and
 - (c) if the change had been anticipated at that time, any of the policy set out in the relevant part would have been materially different.
- (4) The Secretary of State may suspend the operation of all or any part of the national policy statement until a review of the statement or the relevant part has been completed.
- (5) If the Secretary of State does so, the designation as a national policy statement of the statement or (as the case may be) the part of the statement that has been suspended is treated as having been withdrawn until the day on which the Secretary of State complies with section 6(5) in relation to the review.

In Summary:

In practice therefore we have a situation where the Secretary of State is able to suspend the operation of the National Policy Statement and operation of certain parts of the Planning Act 2008 and by so doing direct that the existing planning consent for the licensed site be extended to cover the construction of a new facility or by directing that a new DCO be granted based on the existing consent.

The justification being that there has been a significant change in circumstances since the original National Policy Statement was first published.

The effect is to create a pre-consented licensed site where industry can focus on the delivery of approval of technology and have the benefit of knowing that once approval is obtained the path to construction is clear.

By suspension of the relevant parts of the 2008 Act and adopting the consenting process from elsewhere it is open to the Minister to direct that the necessary considerations have been met.

We acknowledge that this approach needs testing but in our view this is a viable approach to expedite and implement the UK Government’s now stated policy for development of nuclear power generation.

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