

# HOUSE OF LORDS

## Merits of Statutory Instruments Committee

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10th Report of Session 2010-11

Drawing special attention to:

**Draft Justification Decision (Generation of  
Electricity by the AP1000 Nuclear Reactor)  
Regulations 2010**

**Draft Justification Decision (Generation of  
Electricity by the EPR Nuclear Reactor)  
Regulations 2010**

**Draft Nuclear Decommissioning and  
Waste Handling (Designated Technical  
Matters) Order 2010**

Correspondence:

**The cumulative impact of statutory  
instruments on schools**

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### *The Select Committee on the Merits of Statutory Instruments*

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
  - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
  - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
  - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
  - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
  - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
  - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
  - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
  - (c) that it may inappropriately implement European Union legislation;
  - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

The members of the Committee are:

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| Rt Hon. the Baroness Butler-Sloss GBE        | The Lord Methuen                       |
| The Lord Eames OM                            | Rt Hon. the Baroness Morris of Yardley |
| Rt Hon. the Lord Goodlad ( <i>Chairman</i> ) | The Lord Norton of Louth               |
| The Baroness Hamwee                          | The Lord Plant of Highfield            |
| The Lord Hart of Chilton                     | Rt Hon. the Lord Scott of Foscote      |
| The Lord Lucas                               |  |

### *Registered interests*

Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

Declared interests for this Report are in Appendix 4.

### *Publications*

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at [www.parliament.uk/parliamentary\\_committees/merits.cfm](http://www.parliament.uk/parliamentary_committees/merits.cfm)

### *Contacts*

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email [merits@parliament.uk](mailto:merits@parliament.uk). The Committee's website, [www.parliament.uk](http://www.parliament.uk), has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

### *Statutory instruments*

The Government's Office of Public Sector Information publishes statutory instruments on the internet at [www.opsi.gov.uk/stat.htm](http://www.opsi.gov.uk/stat.htm), together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

# Tenth Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.**

**Draft Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010**

**Draft Justification Decision (Generation of Electricity by the AP1000 Nuclear Reactor) Regulations 2010**

**Draft Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010**

*Summary: These three linked draft SIs are an important package of legislation to support the development of the UK's nuclear energy capability. The two Justification decisions make positive regulatory justification decisions in respect of the generation of electricity by EPR and AP1000 nuclear reactors. Such justifications are required under EU law. The Draft Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010 specifies further matters for which a person intending to install a nuclear power station must make financial provision for decommissioning and cleaning up a site. The three draft SIs have been subject to consultation and the Department of Energy and Climate Change has published various documents to support the policy decisions. This legislation will support a significant expansion of the nuclear industry, and the House may therefore wish to be mindful of the broader policy context when debating the SIs. Besides satisfying itself as to the effectiveness and reliability of the reactors, the House may also wish to seek assurances as to the robustness of the UK's regulatory arrangements. The Committee has received written evidence from Greenpeace (see Appendix 1) who say that the SIs will impact on many communities for many generations to come.*

**These instruments are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. The Draft Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010 (“the EPR Regulations”) and the Draft Justification Decision (Generation of Electricity by the AP1000 Nuclear Reactor) Regulations 2010 (“the AP1000 Regulations”) make positive regulatory justification decisions in respect of the generation of electricity by the nuclear reactors known as the EPR and the AP1000. Regulatory justification requires a decision about whether the social, economic and other benefits of a practice outweigh the health detriments and must be completed before any new practice giving rise to ionising radiation can be undertaken. The process is governed by the Justification of Practices Involving Ionising Radiation Regulations 2004 (SI 2004/1769) (“the 2004 Regulations”). Both draft SIs apply to all of the United Kingdom.

2. Under the Energy Act 2008 (“the 2008 Act”), any person who intends to install a nuclear power station must submit a Funded Decommissioning Programme (FDP) to the Secretary of State for approval and this programme must set out the likely costs of decommissioning and cleaning up a site, and the financing arrangements made by that person for meeting those costs. The 2008 Act also includes protections in the event of insolvency of an operator. The Draft Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010 (“the Decommissioning Order”) specifies further matters for which a person who submits a FDP must make financial provision in that FDP. The Decommissioning Order has been laid with a detailed Impact Assessment including the costs and benefits of the proposals. The Decommissioning Order applies only to England, Wales and Northern Ireland as the relevant provisions of the 2008 Act do not apply to Scotland.
3. The House was informed of the laying of these three linked draft SIs in a Written Statement on 18 October in the context of the announcement of a further consultation on the revised draft energy National Policy Statements [HL Written Statements 18 October WS 53 to 58]. The Written Statement explains that regulatory justification is one of the actions which the Government is taking to facilitate the building of new nuclear power stations, and that such justifications are required under EU law. The Statement summarises the basis for the Secretary of State’s justification decision as being as follows:

*“there is a clear need for the generation of electricity by the nuclear reactor designs to which the statutory instruments relate because of the contribution they can make to increased security of energy supplies and reduced carbon emissions. Against this, the radiological detriment to health from these nuclear reactor designs and their associated waste facilities will be low compared to overall levels of radiation and effectively controlled by the UK’s robust and effective regulators”*

4. The Written Statement also says that the Decommissioning Order will be followed by the Decommissioning and Waste Handling (Finance and Fees) Regulations 2010 and together they will complete the statutory framework for the financing of nuclear waste and decommissioning. The Written Statement reconfirms the Government’s policy that there will be no public subsidy for new nuclear power.

#### *Context*

5. The nuclear industry is facing significant expansion. The Government has identified eight sites in England and Wales as suitable for future nuclear power stations. The possible locations are: Bradwell-on-Sea, Essex; Hartlepool; Heysham, Lancashire; Hinkley Point, Somerset; Oldbury, Gloucestershire; Sellafield, Cumbria; Sizewell, Suffolk; and Wylfa on the Isle of Anglesey. The Explanatory Memorandum (EM) for the EPR Regulations and the AP1000 Regulations explains (paragraph 2.1) that the Regulations do not in themselves allow for the deployment of these nuclear reactors, but they are an early step in building the EPR and AP1000 nuclear reactors in the UK.
6. The House may also be aware that the previous Government had intended to lay a draft Legislative Reform Order (LRO) with the purpose of creating a

new regulatory body, the Office of Nuclear Regulation (ONR).<sup>1</sup> The intention was for the ONR to function as a sector specific regulator for the nuclear industry with additional responsibility for the transport of radioactive material by road, rail and inland waterways. However, the previous Government chose not to lay the draft LRO before the General Election, and the current Government has confirmed that they are currently considering future arrangements<sup>2</sup>.

7. The Committee has received written evidence from Greenpeace (see Appendix 1). Greenpeace say that their key complaint on the EPR and AP1000 Regulations is that the Secretary of State has failed to conduct any quantification of the risks that arise from the Practices themselves, in particular in respect of: the actual dose exposure; the health detriment arising from the actual dose exposure; the risk of accident/security incident as a result of the actual Practices; and the potential health detriment and economic impact arising from an accident/security incident in respect of the actual Practices. Greenpeace note that the reactor designs themselves are untried and untested anywhere in the world; and the vendors and operators of the potential new reactors have not yet presented firm plans for the longer-term storage of spent fuel.

*Consultation outcome*

8. The EM for the EPR Regulations and AP1000 Regulations says that the draft SIs follow three full public consultations; those consulted included industry, environmental groups, regulators and other Government bodies, local campaign groups and individual members of the public (EM paragraph 8.1 and 8.2). The Government has concluded that it has not been presented with any evidence in response to the consultations which has caused it to question that the two reactors should be justified (EM paragraph 8.2). The Secretary of State's justification decisions are supported by two reasons documents: '*Regulatory Justification decision on nuclear reactor: AP1000*'; and '*Regulatory Justification decision on nuclear reactor: EPR*'<sup>3</sup>.
9. The UK legislation governing the Regulatory Justification process provides that the Secretary of State may cause an inquiry or other hearing to be held if it appears to him expedient to do so in connection with the exercise of any of his functions under the Justification process. The Secretary of State has decided that it would not be expedient to the making of his decisions to hold a public inquiry or other hearing. The Secretary of State's decision is explained in the document, '*Justification of Practices Involving Ionising Radiation Regulations 2004: Statement by the Secretary of State on provision in Regulation 17(1) to hold an inquiry or other hearing*'<sup>4</sup>.
10. Parliamentary approval would be the end of the Justification process. But the 2004 Regulations provide for the Secretary of State to review his decisions if new evidence becomes available. Applications to build nuclear power stations

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[http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/uk\\_supply/energy\\_mix/nuclear/new/reg\\_reform/reg\\_ref\\_orm.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/new/reg_reform/reg_ref_orm.aspx)

<sup>2</sup> HL Written Answers 24 June 2010 WA 204

<sup>3</sup> Both documents are available on the DECC website at [http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/uk\\_supply/energy\\_mix/nuclear/new/reg\\_just/reg\\_just.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/new/reg_just/reg_just.aspx)

<sup>4</sup> Available on DECC website at [http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/uk\\_supply/energy\\_mix/nuclear/new/reg\\_just/reg\\_just.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/new/reg_just/reg_just.aspx)

using the Justified designs will be subject to consultations as part of the planning process.

11. The Government ran a 12 week consultation on the proposals in the Decommissioning Order in the first half of 2010. The EM says (EM paragraph 8.2) that following the consultation the Government is not proposing any substantive changes to the draft.

*Consideration*

12. Nuclear energy is a high profile and sensitive issue. Collectively these three draft SIs form an important body of legislation in support of a significant expansion of the industry. The House may therefore wish to use the debates to work through some of the decision making behind the draft SIs. In particular, the House may wish to:

- satisfy itself as to the effectiveness and reliability of the EPR and AP1000 reactors within a coherent energy policy;
- ensure that any future regulatory changes, in particular to the regulatory regime, will not impact adversely on the possible operation of any new EPR and AP1000 reactors;
- test the figures in the Decommissioning Order Impact Assessment against the Government's commitment that there will be no public subsidy for new nuclear power; and
- consider whether the Secretary of State's decision not to hold an inquiry or other hearing relating to the Justification process is well-founded.

## OTHER INSTRUMENTS OF INTEREST

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***Draft National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum etc) Order 2010 and two related instruments<sup>5</sup>***

13. This draft instrument prescribes the date, together with the question and preceding statement that will be on the ballot paper, for the referendum in Wales on whether the provisions in Part 4 of the Government of Wales Act 2006 should come into force. It also sets out, amongst other things, the rules for the conduct of the referendum and those in relation to absent voting at the referendum. The referendum will take place on 3 March 2011 and the question will be, "Do you want the Assembly now to be able to make laws on *all* matters in the 20 subject areas it has powers for?". The draft instrument makes provision for the Electoral Commission to take such steps as they think appropriate to promote public awareness in Wales about the referendum; this may be very important given the technical nature of the referendum question. The draft instrument has been laid with two linked instruments, the draft National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010, and the draft National Assembly for Wales Referendum

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<sup>5</sup> Draft National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010 and the Draft National Assembly for Wales Referendum (Assembly Act Provisions) (Limit on Referendum Expenses Etc) Order 2010

(Assembly Act Provisions) (Limit on Referendum Expenses etc.) Order 2010. The Wales Office have provided a short note summarising the package of legislation and also setting out the result of a 'Yes' or 'No' vote (see Appendix 2). The draft instrument (and linked Orders) do not make provision for a scenario whereby voters are still outside and waiting to vote after the polls have closed. However, the Wales Office has said that this has not been a problem in Wales, and the Electoral Commission will be producing guidance for counting officers and providing training seminars for those officers, in order to ensure that proper administrative arrangements are in place for polling stations and the numbers of voters at each station.

***Social Fund Cold Weather Payments (General) Amendment Regulations 2010 (SI 2010/2442)***

***Social Fund Cold Weather Payments (General) Amendment (No 2) Regulations 2010 (SI 2010/2591)***

14. The Cold Weather Payment scheme has operated in broadly the same way since 1991. It provides help for certain vulnerable groups in receipt of income related benefits to meet heating costs incurred in cold weather. The Meteorological Office uses data to calculate a rolling seven day average temperature at each of its weather stations. Whenever this is recorded as, or is forecast to be, 0 degrees Celsius or below DWP is notified so that a payment can be made to eligible customers. Each residential postcode in the country is linked to one of the 91 weather stations used in the scheme. SI 2010/2442 reviews and updates these links. It also clarifies the scheme's administration by limiting the claim period to 26 weeks from the end of the winter season (31 March) which allows time for customers to inform Jobcentre Plus if they feel they should have qualified after receiving their winter fuel bills. The annual order usually also considers the rate of cold weather payments, but this element was delayed pending the Spending Review on 20 October, so a second instrument, SI 2010/2591, was laid after that announcement. It removes the need for annual uprating by fixing the rate at £25, which is the rate that has been used for the last two winters.

***Income-related Benefits (Subsidy to Authorities) (Temporary Accommodation) Amendment Order 2010 (SI 2010/2509)***

15. Housing Benefit subsidy is the means by which local authorities can recoup, from the Department for Work and Pensions, their costs from making Housing Benefit payments. For claimants living in temporary accommodation where the local authority is the landlord (rent rebate cases), the local authority has discretion over the rents that are charged to their tenants and, consequently, exercises control over Housing Benefit expenditure in this area.
16. For claimants living in temporary accommodation where a registered housing association is the landlord (rent allowance cases), the local authority is currently required to refer rents to a Rent Officer only where it considers the rent to be unreasonably high or the property unreasonably large for the size of the household. Housing Benefit can be paid up to the eligible rent (less relevant deductions) and the full amount is payable in subsidy by the Department. This instrument enables the Department to place the same subsidy limits on these rent allowance cases (i.e. claimants in temporary or

short term accommodation) as already apply to rent rebate claimants in temporary or short term accommodation.<sup>6</sup> It will be the lowest of:

- the amount of Housing Benefit entitlement (weekly or part weekly); or
- the maximum weekly amount determined by the Local Housing Allowance rate in January 2011 (based on the applicable category of dwelling and the broad rental market area in which it is situated), less 10 per cent, plus £40 for London authorities (listed in Schedule 7) or £60 for non-London authorities to help towards management costs; or
- £500 where the property is located in one of the London broad rental market areas listed in Schedule 8 or £375 where the property is located elsewhere.

The changes will come into force from 1 April 2011.

***Companies Act 2006 (Transfer of Audit Working Papers to Third Countries) Regulations 2010 (SI 2010/2537)***

17. These Regulations amend provisions in the Companies Act 2006 to provide for the transfer of audit working papers to those audit regulators identified as adequate by the European Commission. These include: Australian Securities and Investments Commission; Canadian Public Accountability Board; Financial Services Agency of Japan; Public Company Accounting Oversight Board of the United States of America; and Securities and Exchange Commission of the United States of America. In respect of the USA, the adequacy decision is time-limited by the European Commission until 31 July 2013 as the result of a compromise agreement between the Commission and the two US regulatory authorities. The Department for Business, Innovation and Skills issued draft regulations for comment in March 2010. The Explanatory Memorandum (EM) says (paragraph 8.1) that there have also been further informal consultations with the Professional Oversight Board of the Financial Reporting Council and other interested parties. The EM also states (paragraph 12.1) that the arrangements for co-operation between audit regulators will be kept under review by the Professional Oversight Board.

***Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment (England) Regulations 2010 (SI 2010/2539)***

18. The recent NHS White Paper announced that Primary Care Trusts (PCTs) will be abolished from April 2013. This amendment to the original Regulations<sup>7</sup> enables PCT chairs and non-officer members to hold office on more than one PCT Board. Previously only those local to the PCT could be recruited. The change is to aid the practical management of PCT Board membership during the transition period, as it is anticipated that as current members leave office it may be difficult to attract and recruit suitable replacements. Making provision to allow experienced non-executives to serve

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<sup>6</sup> See SI 2009/2580 Income-related Benefits (Subsidy to Authorities) (Temporary Accommodation) Amendment Order 2009

<sup>7</sup> Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000 (SI 2000/89)

on multiple PCT Boards should provide flexibility and help maintain organisations' stability during the transition period.

***Education (Student Support) Regulations 2009 (Amendment) Regulations 2010 (SI 2010/2546)***

19. The Education (Student Support) Regulations 2009 (SI 2009/1555) (“the 2009 Regulations”) provide for support for students taking designated higher education courses in respect of an academic year beginning on or after 1 September 2010. These Regulations make amendments to the 2009 Regulations in order to make provision for fee support available in relation to an academic year beginning on or after 1 September 2011. The Regulations were accompanied by a Written Statement [HL Written Statements 21 October 2010, WS 82]. The Statement gives the key provisions of the Regulations as being: for all new and continuing full-time students in 2011-12 the package of maintenance support will be maintained at existing levels; the maximum tuition fees for full-time courses in 2011-12 will be uprated in line with inflation to £3,375 a year with the amount of tuition fee loan increased to match this amount; and for those students undertaking part-time courses the maximum fee and course grants will also be maintained at 2010-11 levels. The Regulations also make some amendments to the 2009 Regulations which implement some minor policy and technical changes which apply to student support arrangements for the 2010/11 academic year, e.g. changes to the definitions of “bursary year”, “end-on course” and “Erasmus year”. The House may wish to note that, although this is the usual method for setting the student finance package, the Government is considering how to bring in their proposed changes for the following year; they expect to lay the annual set of Regulations and may also lay primary legislation<sup>8</sup>.

**CUMULATIVE IMPACT OF STATUTORY INSTRUMENTS ON SCHOOLS: CORRESPONDENCE**

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20. On 13 March 2009 the Committee published a report on the cumulative impact of statutory instruments on schools (Session 2008-09, HL Paper 45). The Committee subsequently published the government response to the inquiry on 21 May 2009 (Session 2008-09, HL Paper 100). On 30 June 2010 the Committee wrote to Nick Gibb MP, the Minister of State for Schools, enquiring into the new Government's position on the subject area. The Committee received a broadly positive response from the Minister on 27 October. The Committee will continue to monitor with interest developments in this important policy area. Both letters are printed at Appendix 3.

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<sup>8</sup> The Government is expected to make a statement on this issue on 3 November 2010, the day this report was sent to press

## INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.**

### Draft Instruments requiring affirmative approval

Draft Asylum (First List of Safe Countries) (Amendment) Order 2010

Draft Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2010

Draft National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010

Draft National Assembly for Wales Referendum (Assembly Act Provisions) (Limit on Referendum Expenses Etc) Order 2010

Draft National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc) Order 2010

Draft Official Statistics Order 2010

### Draft Instruments subject to annulment

SI 2010/2442 Social Fund Cold Weather Payments (General) Amendment Regulations 2010

SI 2010/2473 European Communities (Designation) (No. 4) Order 2010

SI 2010/2503 Animal Feed (England) Regulations 2010

SI 2010/2509 Income-Related Benefits (Subsidy to Authorities) (Temporary Accommodation) Amendment Order 2010

SI 2010/2537 Companies Act 2006 (Transfer of Audit Working Papers to Third Countries) Regulations 2010

SI 2010/2539 Primary Care Trusts (Membership, Procedure and Administration Arrangements) Amendment Regulations 2010

SI 2010/2546 Education (Student Support) Regulations 2009 (Amendment) Regulations 2010

SI 2010/2567 Structural Funds (National Assembly for Wales) (Amendment) Regulations 2010

SI 2010/2591 Social Fund Cold Weather Payments (General) Amendment (No. 2) Regulations 2010

## APPENDIX 1: DRAFT JUSTIFICATION DECISION (GENERATION OF ELECTRICITY BY THE EPR NUCLEAR REACTOR) REGULATIONS 2010 AND TWO RELATED INSTRUMENTS<sup>9</sup>: GREENPEACE SUBMISSION

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### Submission from Greenpeace

These comments relate to the Justification Decision (Generation of Electricity by the AP1000 Nuclear Reactor) Regulations 2010,<sup>10</sup> the Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010<sup>11</sup> and the Explanatory Memorandum to the Justification Decision on the above named nuclear reactors.<sup>12</sup> Greenpeace has previously made responses to the consultation on Justification (February of this year<sup>13</sup> and also in March 2009).

Greenpeace's key complaint on Justification was that the Secretary of State has failed to conduct any quantification of the risks that arise from the Practices themselves, in particular in respect of:

- The actual dose exposure.
- The health detriment arising from the actual dose exposure.
- The risk of an accident / security incident as a result of the actual Practices.
- The potential health detriment and economic impact arising from an accident / security incident in respect of the actual Practices.

In a 2008 submission on Justification the Nuclear Industry Association noted the definition of the International Commission on Radiological Protection (ICRP) - in relation to justification of reactor operations that "ICRP emphasises that waste management and disposal operations should be treated as an integral part of the practice generating the waste."<sup>14</sup> Therefore the practice of the AP1000 and EPR should include not only the operation of the reactor but all associated facilities and practices.<sup>15</sup> If so, it follows that in signing this order the Secretary of State is justifying - at this point in the time - the whole practice, including:

- longer term storage of nuclear fuel from reactors (possibly up to 160 years either at reactors or a central store elsewhere)
- the encapsulation of such fuel (at reactors sites or a 'central' point) and
- the disposal of such fuel.

We note that the vendors and operators of potential new reactors have not yet presented firm plans for where the longer-term storage of spent fuel might be, nor have the regulators signed off on the safety case for such plans. Similarly there are no firm plans for where an encapsulation (packaging prior to disposal) plant might be sited, nor is there any site selected for the disposal of nuclear wastes and spent fuel from new reactors (nor any site for the 'head works' for a disposal facility).

The Nuclear Decommissioning Authority is currently undertaking work for the Nuclear Industry Association scoping the issue of central storage and/or encapsulation.<sup>16</sup> The Committee on Radioactive Waste Management noted in its response to the draft Nuclear NPS earlier this year

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<sup>9</sup> Draft Justification Decision (Generation of Electricity by the AP1000 Nuclear Reactor) Regulations 2010 and Draft Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010

<sup>10</sup> [http://www.opsi.gov.uk/si/si2010/draft/ukdsi\\_9780111502891\\_en\\_1](http://www.opsi.gov.uk/si/si2010/draft/ukdsi_9780111502891_en_1)

<sup>11</sup> [http://www.opsi.gov.uk/si/si2010/draft/ukdsi\\_9780111502884\\_en\\_1](http://www.opsi.gov.uk/si/si2010/draft/ukdsi_9780111502884_en_1)

<sup>12</sup> [http://www.opsi.gov.uk/si/si2010/draft/em/ukdsiem\\_9780111502891\\_en.pdf](http://www.opsi.gov.uk/si/si2010/draft/em/ukdsiem_9780111502891_en.pdf)

<sup>13</sup> <http://www.greenpeace.org.uk/files/pdfs/nuclear/GPUKJustificationResponse.pdf>

<sup>14</sup> [http://www.decc.gov.uk/assets/decc/consultation\\_nuclear\\_justification\\_vol2.pdf](http://www.decc.gov.uk/assets/decc/consultation_nuclear_justification_vol2.pdf)

<sup>15</sup> <http://www.decc.gov.uk/en/content/cms/consultations/open/nuclear/nuclear.aspx>

<sup>16</sup> <https://www.nda.gov.uk/news/spent-fuel-feasibility-study.cfm>

that “There is uncertainty about where new build spent fuel would be encapsulated for disposal and by whom.”<sup>17</sup> The Environment Agency has also noted that “clarification will be needed of how and where the spent fuel will be packaged.”<sup>18</sup> This is relevant to the decision on Justification and exactly what is being ‘justified’ at this point in time because the totality of the plans (and acceptance of such) for the ‘practice as a whole’ are not known. We also note the reactor designs themselves are untried and untested anywhere in the world.

We believe that the Committee should take certain matters into account when considering Statutory Instruments, namely:

- That it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
- That it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
- That it may inappropriately implement European Union legislation;
- That it may imperfectly achieve its policy objectives.

If the decision is accepted on the practice of the AP1000 and EPR, and if this is intended to cover the practice as a whole, it would mean that further consideration of key aspects of the practice cannot be considered in the future. This will impact on the proposed voluntarism on siting a nuclear waste geological disposal facility (because disposal would have been justified therefore some community somewhere will have to take it), it may render ineffective the full examination (through separate planning, licensing and permitting processes) of the longer-term storage and / or encapsulation of spent fuel from the reactors as well as the disposal of such spent fuel.

In this regard the Statutory Instruments may “inappropriately implement European Union legislation” (and those aspects relevant to processes other than reactor operations alone) and that as such it may “imperfectly achieve its policy objectives.” They are ‘politically or legally important or gives rise to issues of public policy likely to be of interest to the House’ and also ‘it may be inappropriate in view of changed circumstances since the enactment of the parent Act.’

In relation to this last point, we note in 4.4 of the explanatory memorandum that “this is the first time these powers have been exercised.” It is crucial the Statutory Instruments are examined further as they cover a ‘practice as a whole’ for the first time on a scale which will impact on many communities for many generations to come. It is questionable whether such a far ranging decision is compatible with the European Convention on Human Rights.

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

We note the following:

- Justification has never been subject to Parliamentary debate.
- Only one (limited) stakeholder event has ever been held on the issue of Justification (19th January 2010). This matter was not listed for discussion at the public events held by DECC on the draft Nuclear National Policy Statement published in November 2009.
- The second consultation on Justification took place at exactly the same time as the consultation on all the energy National Policy Statements (and at the same time the House of Commons Energy and Climate Change committee was taking evidence on all the

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<sup>17</sup> <http://www.corwm.org.uk/Pages/e%20Bulletins/Forms/DispForm.aspx?ID=49>

<sup>18</sup> <https://consult.environment-agency.gov.uk/portal/ho/nuclear/gda?pointId=1276871149397>

energy NPSs). The Commons noted the matter in its report in March 2010 on the energy NPSs.<sup>19</sup>

- As the Justification consultations, in particular the second one, took place at the same time as the Nuclear NPS, and as there has been no opportunity to examine Justification fully i.e. the health detriments versus the claimed benefits (for the practice as a whole). The decision not to hold an inquiry on this is wrong.
- The Justification decision now effectively rules out any examination of the potential health impacts for the ‘practice as a whole’ - as it said in future this matter has already been signed-off.
- We note (para 2.6.3 ) of the revised Nuclear National Policy statement (Oct 2010) that “in October 2010 the Secretary of State published his decisions that two nuclear reactor designs, Westinghouse’s AP1000 and Areva’s EPR, are justified.”
- Also (para 2.7.5) that: Certain matters are for consideration of the Nuclear Regulators and the IPC should not consider these matters itself. This would include the Generic Design Assessment (GDA) and the site licensing and environmental permitting processes (including in respect of the management/disposal of radioactive waste, the protection of human health, the permitting of cooling water discharges, etc). The Nuclear Regulators are also responsible for those matters listed in paragraph 3.6.3 of this NPS (our emphasis).
- At the planning stage the public will not understand that issues around health and reactors operations (as well as spent fuel management and disposal) have, at a certain level, being ‘justified’ and cannot be examined further.

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<sup>19</sup> <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmenergy/231/231i.pdf>

## APPENDIX 2: DRAFT JUSTIFICATION DECISION (GENERATION OF ELECTRICITY BY THE EPR NUCLEAR REACTOR) REGULATIONS 2010 AND TWO RELATED INSTRUMENTS<sup>20</sup>: GREENPEACE SUBMISSION

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### **Further information from the Wales Office**

*The National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc) Order 2010* makes the bulk of the provision relating to the holding and the running of the referendum. It makes provision for the date of the referendum (3 March – article 3), the referendum question (article 4), how people can vote in the referendum and the referendum rules (how the referendum is run and administered). The Order also makes provision for the Ministers of the Welsh Assembly Government to make orders in relation to fees and charges for counting officers and accounting requirements for those officers.

*The National Assembly for Wales (Assembly Act Provisions) (Limit on Referendum Expenses Etc.) Order 2010* is a short Order, mainly dealing with the spending limits for campaigners who are permitted participants (spending more than £10,000) and whose expenditure is therefore subject to regulation. These limits are as recommended by the Electoral Commission.

*The National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010* updates Schedule 7 of the Government of Wales Act 2006 (GOWA 2006). The Schedule lists the subjects on which the Assembly could legislate in the event of a ‘Yes’ vote. The changes update the Schedule to take account of the powers the Assembly Government has gained since the Schedule was last updated in 2007.

### **Result of ‘Yes’ or ‘No’ vote**

The referendum is about the law-making powers of the National Assembly for Wales. In the event of a No vote, the current position will continue; in the event of a Yes vote, the Assembly will acquire further law-making powers as provided for in GOWA 2006.

*The current position – continues in the event of a No vote:*

There are twenty subject areas, known as fields and set out in Schedule 5 to GOWA 2006, where the Assembly can, currently, acquire law-making powers. The fields include education and training, health and health services, environment and housing.

The agreement of Parliament is required each time the Assembly acquires a new power, which is then listed as a matter under one of the fields in Schedule 5. Schedule 5 is, therefore, a record of what the Assembly’s law-making powers are at any one time. In the event of a No vote, this will continue.

*Further law-making powers – given to the Assembly in the event of a Yes vote:*

GOWA 2006 provides that, in the event of a Yes vote, the Assembly will acquire the full range of law-making powers across the 20 subject areas, as set out in Schedule 7 to the Act.

There would still be non-devolved areas where the Assembly does not have law-making powers, for example, defence and welfare benefits.

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<sup>20</sup> Draft Justification Decision (Generation of Electricity by the AP1000 Nuclear Reactor) Regulations 2010 and Draft Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010

### APPENDIX 3: CUMULATIVE IMPACT OF STATUTORY INSTRUMENTS ON SCHOOLS: CORRESPONDENCE

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#### **Letter from Lord Goodlad to Nick Gibb MP, Minister of State for Schools, Department of Education**

I have recently been appointed Chairman of the Merits of Statutory Instruments Committee. The Committee agreed that I should write to you on the issue of regulation in the school sector.

The Committee welcomes your recent statement that it is not the role of Government to make sweeping assumptions from the centre about what is best for schools and colleges and to introduce unnecessary bureaucracy. You may be aware that last year the Committee published a report into the cumulative impact of statutory instruments (SIs) on schools.<sup>21</sup> The Committee sought to draw out the then Department for Children, Schools and Families' (DCSF) intentions for this secondary legislation, setting this against what it learnt from those working day-to-day in the schools themselves.

The Committee's first recommendation was "The Department for Children Schools and Families should actively manage the planning and production of secondary legislation. The Department should also strengthen its gate-keeping activity, particularly to minimise the burdens imposed upon schools by Regulations from all Government Departments".

We heard a great deal of persuasive evidence about the importance of properly managing the introduction of new requirements on schools, and in response to the recommendations in the report the last Government committed to making several major changes to the way they managed SIs. In particular, the Government agreed to adopt 1 September as the common commencement date for schools-related SIs (except where this was clearly inappropriate, such as school finance regulations); and also agreed that, by next year, schools SIs would be laid by 1 April, allowing schools a full term's lead-in time between the notification of a new requirement and the commencement of that requirement. One of our witnesses explained the importance of the 'lead-in' time very well:

"To change what they do in any significant way schools need to appoint or train staff, change computer and data collection systems, amend working practices and find the money and time to do all this, all while at the same time maintaining their day to day focus on teaching and learning and keeping hundreds of children and young people safe. Schools resources are finite and already fully committed. Much new legislation requires schools to 'consult' or 'have regard to' – all this takes time" (*Implementation Review Unit, report page 8*).

Without at this stage wishing to 're-run' our inquiry, the Committee believe the House would welcome a statement from the new Government on your strategic approach to schools regulation, and confirmation that the commitment to lay schools-related SIs by 1 April to come into force no sooner than 1 September remains in force.

30 June 2010

#### **Letter from Nick Gibb MP to Lord Goodlad**

Thank you for your letter of 30 June regarding the Merits of Statutory Instruments Committee's report into the cumulative impact of statutory instruments (Sis) on schools. I welcome the aims of the report and the recommendations, which are in line with where we want to be as a Department, managing the planning and production of secondary legislation and avoiding overloading schools with unnecessary burdens.

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<sup>21</sup> The cumulative impact of statutory instruments on schools 9th Report of Session 2008-09 HL Paper 45

We are aware that schools do feel over-burdened and are looking to remove the barriers which stop teachers from teaching, including those imposed by top-down prescription and bureaucracy. We will support school leaders, giving them the freedom to use their professional judgement about how to provide the best possible education for their pupils. We will refocus accountability on schools' core educational purpose.

We are taking a strategic approach to schools regulation, and aiming to reduce the requirements, burdens and guidance currently imposed on schools, as well as better managing the cumulative impact of regulation and other burdens on schools.

I agree with the findings of your report, and in particular the statement that: "Able, brilliant and skilled professionals do not thrive in an environment where much of their energies are absorbed by the need to comply with a raft of detailed requirements. Education professionals - schools practitioners - understand the objectives of education policy which are set by Government, and should be expected to deliver these objectives using their own skill and experience without the need for wide-ranging prescription. "

In addition, your report highlighted that the light-touch regulatory framework for Academies has led to increased freedoms, and recommended that the Department should consider extending this approach to more maintained schools. As you know, we have already taken significant steps to increase school freedoms in this way, extending the Academies programme to outstanding schools. At the same time we will continue to expect schools to deliver high standards for their pupils, and all schools will be held to account for this through inspection.

Further to the points raised in your letter, I would like to set out in detail my response to each of the recommendations of your report:

*Recommendation 1. The Department for Children, Schools and Families should actively manage the planning and production of secondary legislation. The Department should also strengthen its gate-keeping activity, particularly to minimise the burdens imposed upon schools by Regulations from all Government Departments.*

We have carried out an extensive review of all the requirements (both statutory and non-statutory) impacting on schools with a view to reducing burdens and ensuring that bureaucracy is minimised in the future.

We recognise the good work that was carried out by the Implementation Review Unit (IRU) from its formation in 2003, including their extensive input into the Committee's 2009 report. We have reformed the IRU as the Bureaucracy Reference Group, extending its membership and focusing the remit so that the group is able to support the Department in strengthening its gate-keeping activity. They will help us to minimise the burdens imposed by other agencies, including other Government Departments.

The Departments Star Chamber continues to act as a gate-keeping unit, ensuring that data collections on schools and Local Authority children's services are kept to a minimum. In addition to this we are carrying out a root and branch review of all data collections from schools, including collections led by other Departments and Arm's Length Bodies (ALBs) associated with the Department for Education. The review will make recommendations about data collections which can be removed, and processes for scrutinising data collection requests.

In addition, the Coalition Government has introduced the new system of 'One In, One Out'. Government departments are encouraged to use the legislative route only as a last resort, but if it is unavoidable, then an existing piece of legislation of the same 'value' of burden (as determined by the impact assessment) must be given up.

This system has not yet been introduced for the public sector. However, we are committed as a Department to reducing legislative burdens on schools, and ensuring that alternatives to regulation are used where possible.

*2. DCSF should adopt 1 September as the commencement date for all schools-related SIs (except in very exceptional circumstances).*

AND

*3. Schools should be given at least one full term's lead-in time between the notification of a new requirement in a statutory instrument and the commencement of that requirement.*

Your letter sets out the importance of properly managing the introduction of new legislation impacting on schools, and I agree that schools should be given adequate time to make the necessary changes to bring in new requirements. I would like to confirm that the previous government's commitment to lay schools-related SIs by 1 April to come into force on 1 September remains in force. This means that all SIs requiring implementation by schools will have a commencement date of 1 September, except in exceptional circumstances, such as where public commitments have already been made, or where a correcting regulation requires urgent change. Some exceptions will always apply; such as finance regulations which will commence on 1 April to coincide with the financial year, and regulations related to data collections, which will commence on 1 January to coincide with Census collections. We also agree that schools should have time to plan for any changes affecting them and will use our best endeavours to give a full term's notice unless, again, there are exceptional circumstances: for example, the parliamentary stages of a Bill containing a power to make regulations may not be complete until after 1 April in a particular year. For major changes, such as the introduction of the new National Curriculum, we will ensure that schools have a longer lead-in time than one term to enable them to implement the new curriculum effectively.

The Government is committed to removing unnecessary burdens from schools, which means that we will lay some statutory instruments in order to deregulate. Whilst every effort will be made to lay these within the timetable set out, we will assume that instruments that are deregulating and remove burdens from schools are outside the spirit of this agreement, and that the Committee would prefer them to be laid as early as possible, to increase school freedoms and allow the professionals in schools to get on with their core business of raising standards.

*4. DCSF should intensify their work to improve communication to schools, which needs to be fully informed by advice provided by practitioners.*

A great deal of work has been done to address this, informed by advice provided by teachers. The Department's website now provides a single portal for clear information and communications to schools and others. We continue to engage with groups of teachers, including the Bureaucracy Reference Group, to ensure that our communications to schools are clear, concise and contain only what is necessary.

We are currently reviewing the thousands of pages of guidance issued to schools and will remove any unnecessary documents. We will also significantly strip back and consolidate what remains into a small number of clear, readable and useful guides on key issues.

*5. We recommend that the DCSF should ensure that all significant statutory instruments are subjected to post-implementation review, and that the review findings are made known to Parliament.*

The Coalition Government has introduced the principle of sunset clauses for secondary legislation. A sunset clause is a provision that terminates or repeals all or portions of the law after a specific date, unless further legislative action is taken to extend it.

Sunset clauses will apply to most new legislation, although there may be some exceptions, for example to do with funding.

Sunset clauses have been linked to post-implementation review, to ensure that proper consideration is given to whether a statutory instrument should continue or be terminated. Post-

implementation reviews take place after three to five years, and the sunset clause will come into force after seven years, so that there will be plenty of time to argue the merits of the case.

*6. DCSF should seriously consider a less heavy-handed approach to maintained schools. Furthermore, if DCSF consider that the light touch regulatory framework for academies is appropriate and successful, that lighter touch should be extended to all maintained schools.*

The Department has already begun a substantial programme of change to reduce central prescription on maintained schools. This means significantly reducing the number of initiatives from the centre, increasing school autonomy and streamlining the amount of duties, requirements and guidance which schools have to follow.

The Academy programme has proved to be a genuine revolution in raising standards in schools across the country. Independent status and the additional freedoms and flexibilities are crucial in enabling Academies to succeed. The Academies Act 2010 allows all maintained primary, secondary and special schools to apply to become an Academy, with schools rated outstanding by Ofsted being fast-tracked for approval by the Secretary of State. Other primary, secondary and special schools will be able to convert at a later stage. As I set out earlier, the Department for Education has begun the conversion process for interested schools. Since September the first 57 outstanding schools (including 8 primary schools) have opened as Academies, and 90 more are in the pipeline.

*7. DCSF should now look to shift its primary focus away from the regulation of processes through statutory instruments, towards establishing accountability for the delivery of key outcomes.*

As I said in Parliament on 11 October, we will no longer send all schools lever arch files full of prescriptive instructions about how to teach. The forthcoming Schools White Paper will establish sharper accountability measures for educational outcomes, with no hiding place for failure. We have also already signalled our intention to free outstanding schools from routine inspection by Ofsted, subject to them maintaining high standards; and have also announced that from September 2011 maintained primary and secondary schools will no longer be required to fill in the Self Evaluation Form (SEF). Head teachers have estimated that this alone will save them and their leadership team at least a working week. This is just the start of this work. We will adopt a concerted approach to ensuring that bureaucratic burdens are kept to a minimum in the future, avoiding overloading schools with initiatives and constant change, using alternatives to regulation wherever possible and providing slim, clear and user-friendly guidance.

I would like to thank you again for your letter. I very much appreciate the work of the Merits of Statutory Instruments Committee, which has helped us to take a more strategic approach to schools regulation.

27 October 2010

#### **APPENDIX 4: INTERESTS AND ATTENDANCE**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the House of Lords Record Office and is available for purchase from The Stationery Office.

For the meeting on 2 November 2010 Members declared no interests on any of the instruments of interest.

#### ***Attendance:***

The meeting was attended by B. Butler-Sloss, L. Eames, L. Goodlad, B. Hamwee, L. Hart of Chilton, L. Lucas, L. Methuen, L. Plant of Highfield and L. Scott of Foscoate.