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HEALTH AND SAFETY COMMISSION

HSE Criteria for Delicensing Nuclear Sites

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Issue

1. Proposed consultation on 'HSE Criteria for Delicensing Nuclear Sites'.

Timing

2. We aim to start the consultation exercise in May 2004.

Recommendation

3. You are invited to agree to the publication of the Consultative Document.

Background

4. HSE has received requests to delicense both parts of and whole sites licensed under the Nuclear Installations Act 1965. As nuclear installations close down, HSE expects to receive an increasing number of these.
5. Under the Nuclear Installations Act, HSE cannot delicense any part of a nuclear licensed site until it is satisfied that there has ceased to be any danger from ionising radiation. However, assessment of what constitutes "no danger" is not a straightforward matter, particularly if radioactive contamination remains.
6. The Commission agreed in principle at its 28 May 2002 meeting (HSC/02/64 refers) to HSE undertaking a public consultation on draft HSE Policy Guidelines for nuclear site delicensing. Two further papers (MISC/02/39 and MISC/03/01) updated the commission on this issue's progress.

7. Following consultation with the Nuclear Safety Advisory Committee, other government departments and industry (via a delicensing workshop), it was decided to amend the original draft of the "HSE Policy Guidelines for delicensing nuclear licensed sites" to form a policy statement focusing on the interpretation of the "no danger" criteria. This removed technical considerations, which it was agreed would be better placed in separate Nuclear Safety Directorate technical assessment guidance, and which might otherwise have detracted attention from the policy statement.

Argument

8. Publication of HSE's criteria for delicensing is now pressing – with the increasing focus on nuclear site decommissioning and clean up there is an expectation from other government departments and industry that HSE will clarify its policy on the 'no danger' criteria. Following the Commission's agreement in principle to undertake a consultation exercise, HSE has foreshadowed it in a number of public forums. The recent Government consultation on a revised decommissioning policy included a reference to HSE's developing delicensing proposals and the proposed HSE consultation exercise.
9. The main purpose of the policy statement will be to set out clearly the basis for HSE's assessment of licensees' applications for delicensing. It will be available to the licensees and the general public, and will provide a useful reference for anyone seeking information about delicensing. Consulting publicly will allow us to test whether the criteria presented for "no danger" is generally acceptable, and minimise the potential for future challenge. It would clearly be undesirable if HSE's criteria for delicensing failed to provide public confidence that delicensed land is safe for re-use.
10. Amending the Nuclear Installations Act to insert a less literal delicensing requirement than "no danger" would require primary legislation and would be time consuming and resource intensive. Changing the law in such a way could also be viewed as a diminution, rather than maintenance or strengthening of safety standards, and would be likely to be controversial. HSE considers that keeping the Nuclear Installations Act as it is, and issuing a clear interpretative policy statement, is a better alternative and should go a long way towards averting potential legal challenges.
11. The consultation will last for three months, following which the responses will be analysed and the policy statement will be amended as appropriate. Unless the consultation process throws up 'showstoppers' or reveals a high level of disagreement, HSE will aim to issue a formal policy statement by autumn 2004 and the Commission will be informed via a misc paper. If responses to the consultation dictate a major rethink, then HSE will return to the Commission in the autumn with further proposals.

Consultation

12. HSE's Nuclear Safety Directorate and Solicitor's Office, the Nuclear Safety Advisory Committee, other government departments and nuclear industry representatives have been consulted during the drafting of this policy statement.

Presentation

13. Putting the draft policy statement out to consultation will demonstrate openness, allow HSE's reasoning to be subject to scrutiny and should increase public confidence in future HSE delicensing decisions.
14. An electronic only version of the Consultative Document (in both the English and Welsh languages) will be available on HSE's website and publicised via a Press Release.

Costs and Benefits

15. There is a benefit to society in removing nuclear sites wholly or partly from regulatory control. If 'no danger' is interpreted too stringently, delicensing could only be achieved, if at all, at a grossly disproportionate cost to licensees and society generally.
16. On the other hand, if the 'no danger' criteria are too loose, a delicensed site may pose a significant residual risk; this is unlikely to be acceptable to the public and would erode confidence in regulation.

Financial/Resource Implications for HSE

17. Existing resources within Policy Group will be used for the public consultation exercise and within Nuclear Safety Directorate for the drafting of the separate technical assessment guidance.

Environmental Implications

18. Once a site or part of a site has been delicensed, any residual traces of radioactivity will not be subject to regulatory control. From a radiological viewpoint, the land will be fit for any purpose.

Other Implications

19. Local Authorities, in which there are nuclear licensed sites, and relevant non-governmental organisations will be informed of the consultation exercise.
20. Nuclear safety is reserved to Westminster but environmental matters have been devolved. Devolved Administrations will therefore be alerted to the consultation exercise.

Action

21. If you agree to our proposal we will commence the consultation exercise from May 2004 and report back the findings to the Commission by autumn.

Draft Consultative Document on proposal to publish the draft HSE criteria for delicensing parts of, or entire sites licensed under the Nuclear Installations Act 1965.

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CONSULTATIVE DOCUMENT ON PROPOSAL TO PUBLISH THE DRAFT HSE CRITERIA FOR DELICENSING PARTS OF, OR ENTIRE SITES LICENSED UNDER THE NUCLEAR INSTALLATIONS ACT 1965.

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Appendix 1 - Proposed HSE Criteria for Delicensing Nuclear Sites

Draft Policy Statement

PROPOSAL TO PUBLISH THE DRAFT HSE CRITERIA FOR DELICENSING PARTS OF, OR ENTIRE SITES LICENSED UNDER THE NUCLEAR INSTALLATIONS ACT 1965.

INTRODUCTION

1. This Consultative Document seeks comments on a proposal by the Health and Safety Executive (HSE) to publish a policy statement that sets out its criteria for delicensing parts of, or entire sites licensed under the Nuclear Installations Act 1965.

BACKGROUND

2. HSE receives requests from time-to-time to delicense parts of, or even entire sites licensed under the Nuclear Installations Act 1965. The Act requires that before allowing all or part of a site to be delicensed, HSE must be satisfied that “there has ceased to be any danger from ionising radiations from anything on the site or, as the case may be, on that part thereof”.

3. The future use of the UK’s nuclear sites was discussed in a recent Government consultation on nuclear decommissioning policy¹. With an expected increase in requests for delicensing, HSE considers that the publication of a policy statement setting out its criteria for delicensing and interpretation of ‘no danger’ is timely. It will help make regulatory decision-making more transparent.

4. It will also provide a useful reference for anyone seeking information about delicensing. As the freeing up of increasing amounts of formerly licensed land may raise public concerns about the safety of using that land for other purposes, the Health and Safety Commission has agreed that HSE should consult publicly to ensure that the published criteria is widely acceptable.

PROPOSED DATE OF PUBLICATION

5. If the response to this consultation proposal is generally favourable, then we expect the policy statement to be adopted and formally published by autumn 2004.

COSTS AND BENEFITS

6. Publishing the policy statement will establish a consistent and defensible basis for HSE’s assessments of delicensing applications, and will be of assistance to nuclear licensees in developing plans for restoration of their sites. The greater clarity achieved will also be consonant with the Government’s aim to encourage greater private sector interest in taking on the work of decommissioning and restoring the UK’s nuclear legacy sites.

COMMENTS WELCOMED

7. We have already discussed these proposals with stakeholders during the process of drafting the policy statement and believe that there is broad acceptance of them. We would welcome any comments from those affected by, or interested in, these proposals by 31 July 2004.

¹ “A Public Consultation on Modernising the policy for Decommissioning the UK’s Nuclear Facilities”. The consultation ran from November 2003 TO February 2004. Details on the DTI website: <http://www.dti.gov.uk/nuclearcleanup/tl/tl-d.htm#decommissioning>

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Please complete and enclose this form with your reply to this CD.

Do you agree with HSE's proposed criteria for the evaluation of 'no danger' - in the context of delicensing - under the Nuclear Installations Act? [Tick one box]	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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If you answered 'no' please explain why you don't agree with HSE's proposed criteria.
[Please add extra sheets if you wish]

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HSE CRITERIA FOR DELICENSING NUCLEAR SITES

Introduction

1 This policy statement provides a basis for the considerations that need to be made by the Health and Safety Executive (HSE) in order to:

- a) Delicense a nuclear licensed site, or
- b) Vary a nuclear site licence (to exclude part of a licensed site), or
- c) Terminate the period of responsibility of a licensee

for sites licensed by HSE under the Nuclear Installations Act 1965, as amended¹.

Objective

2 This statement forms a policy basis from which HSE can establish from its own assessment, from the licensee's evidence, and through information from other regulatory bodies concerned with the site (e.g. the Environment Agency and the Scottish Environmental Protection Agency), that residual radioactivity on the site represents 'no danger'. Once the criteria of 'no danger' set by the Nuclear Installations Act is met, HSE will be able to make a decision on delicensing all or part of a site, or ending the period of responsibility.

What Is Delicensing?

3 For the purposes of this policy statement we refer to the term delicensing as meaning the "ending of the period of responsibility under the Nuclear Installations Act". This is defined in section 5(3) of the Nuclear Installations Act and can only happen when the HSE gives notice in writing to the licensee that in its opinion there has "ceased to be any danger from ionising radiations from anything on the site or, as the case may be, on that part thereof".

4 Before delicensing any land on nuclear sites, HSE must satisfy itself that delicensing (as interpreted in this policy statement) is appropriate and that licensable activities are no longer being carried out on the site or the part of the site to be delicensed. This means, among other things, that no radioactive waste remains on the site or the part of the site to be delicensed.

No Danger

5 Sections 3(6)(b) and 5(3)(a) of the Nuclear Installations Act contain a requirement that there is "no danger" and has "ceased to be any danger" from ionising radiations from anything on the site or that part of site under consideration for delicensing. These requirements apply to the release of a licensee from his period of responsibility. However, assessment of what constitutes 'no danger' is not a straightforward matter, particularly if a site has been subject to radioactive contamination. This is because it is assumed internationally that there is a linear harm/dose relationship for ionising radiation and that there is no threshold below which small doses are harmless. Interpreted in a literal way, therefore, HSE could never delicense any part of a site. However, since the Nuclear Installations Act allows for delicensing, Parliament must have intended that sites (or parts of sites) should be capable, in some circumstances, of being delicensed.

¹ Sections 3(6) and 5(3) of the Nuclear Installations Act 1965, as amended.

HSE's Criteria For No Danger

6 In HSE's view, requiring a licensee to demonstrate "no danger" cannot mean asking the licensee to demonstrate that the site is "completely safe". Such absolute certainty could never be delivered, no matter how comprehensively a site is cleaned up and monitored. To us, it suggests that after termination of licensable activities on a site, and following rigorous decontamination and clean up, it may be acceptable for there to remain a small but finite radiological hazard, whose further detection and reduction would necessitate a disproportionate effort and cost. HSE would, however, require the licensee to show that any residual radiological hazard will not pose a significant ongoing risk to any person, regardless of the future uses to which the site, or anything left on the site, may be put.

7 On the basis that HSE considers the possibility of death of 1 in a million per year (1 in 10⁶/y) as a "broadly acceptable" risk (see HSE's "Tolerability of Risk"² and "Reducing Risks, Protecting People"³ documents), then for practical purposes we will use this as the criterion for the maximum allowable residual risk in a licensee's demonstration of "no danger" for the purposes of sections 3(6)(b) and 5(3)(a) of the Nuclear Installations Act. Therefore, "no danger" = a residual risk of no greater than 1 in a million chance of death per year from radiological exposure arising from any man made radioactivity left on a delicensed area of a nuclear licensed sites.

8 This does not mean that a site that has been cleaned up and monitored sufficiently to achieve this criterion could not be cleaned up further: an assessment may reveal that the risk could be reduced even further by additional simple and non-costly actions.

9 In certain instances, therefore, where it is apparent that the residual risk on a site could be reduced further (and without incurring disproportionate additional costs), HSE will expect the licensee to undertake additional actions to achieve such further reduction. This method is consistent with the general approach to reducing risks so far as is reasonably practicable outlined in HSE's "Reducing Risks, Protecting People" document⁴.

Notification

10 In line with HSE's policy on openness and stakeholder involvement, HSE will inform local stakeholders of its decisions with respect to delicensing applications via routine Local Liaison Committee meetings and reports⁵.

HSE

March 2004

² "The Tolerability of Risk from Nuclear Power Stations", HSE 1988, ISBN 0 11 883982 8

³ "Reducing Risks, Protecting People", HSE 2001, ISBN 0-7176-2151-0

⁴ Appendix 3 of R2P2

⁵ HSE reports to Local Liaison Committees (LLC) as part of the commitment to making information about inspection and regulatory activities relating to licensed nuclear sites available to the public. Each major licensed nuclear site has a liaison committee, run by the licensee, that includes local authorities, trade unions, interested local groups and members of the public. The LLC reports are distributed quarterly to members of the committees and cover activities associated with the regulation of safety at the sites. Site Inspectors of HSE's Nuclear Installations Inspectorate attend LLC meetings, report on any regulatory actions taken and respond to any questions raised there. These reports are also published on HSE's website (<http://www.hse.gov.uk/nsd/index.htm#local>).