

SUMMARY OF THE MAIN POINTS MADE TO DELICENSING POLICY CONSULTATION DOCUMENT

The public consultation on the proposal to publish the HSE criterion for delicensing parts of, or entire sites licensed under the Nuclear Installations Act 1965, was undertaken during the period 01 May – 31 July 2004.

The consultation document was available as an online document only from HSE's website and advance notice of its availability was made to a variety of organisations (industry, trade unions, environment groups, local authorities, devolved administrations and other government departments and other stakeholders with an interest in nuclear matters).

The consultation document contained the proposed policy statement 'HSE Criterion for Delicensing Nuclear Sites' and sought comments on the text. A copy can be found at www.hse.gov.uk/consult/2004.htm

This document summarises the main points made to the proposal. All of the comments¹ to the consultation are available for viewing in all of HSE's Information Centres.

RESPONDENTS

32 comments were received. Respondents fell into the following categories:

Nuclear Licensee	8
Nuclear Industry Working Group	2
Consultants to Nuclear Industry	4
Trade Union ²	1
Local Government/Authority	4
Environment Group	1
Government Department/Agency (including EA and SEPA)	4
Non-Departmental Government Body	1
Devolved Administrations	1
Advisory Group	2
Other	4

17 responses were against the proposed 'no danger' criterion and 11 in favour, 3 made comments on the implications of the proposal but didn't confirm whether they were in favour or against, and 1 respondent merely confirmed they had no interest.

¹ Except one comment made – requested not to be made publicly available.

² Comment received from Prospect. The Nuclear Safety Advisory Committee (NuSAC) has Trade Union representation.

MAIN POINTS MADE + HSE RESPONSE

1 Proposed International Commission on Radiological Protection (ICRP) levels for 2005 would lower the risk criteria of death from radioactivity to 1 in 2.5 million. Many of the respondents who alerted us to this proposal urged that we reconsider the draft HSE criteria in light of this proposal and aligned the 'no danger' criteria with the latest ICRP thinking on radiological protection minima HSE response: *HSE's proposed criterion for 'no danger' is in line with current international/scientific thinking, and is consistent with the approach to regulating risk that HSE applies to industry generally. The proposed ICRP recommendations have yet to be agreed and it is by no means certain that the minimum dose exemptions levels suggested will remain in the final document. It should be noted that the ICRP recommendations aren't legally binding but if the European Commission eventually transposes them – in the form of an EC Directive – then the timetable for this and subsequent changes to UK law would be 5-7 years away.*

2 Confusion over the application of the As Low As Reasonably Practicable (ALARP) requirement. Many were unsure when and how it would apply whilst others stated that the proposed use - in the context of delicensing - went beyond its normal application (i.e. it's normally applied to a risk criteria region of between 10^{-5} and 10^{-6} rather than beyond 10^{-6}). HSE response: *HSE notes the comments made and has amended the policy statement accordingly. Although reference to ALARP remains in the policy statement, it is no longer an explicit requirement of the 'no danger' criterion.*

3 Need to define the levels of radioactivity/dose on a site to illustrate how the 10^{-6} + ALARP criteria can be achieved. HSE response: *This will be defined in the forthcoming technical assessment guidance drafted by HSE's Nuclear Safety Directorate.*

4 It would be more pragmatic to define 'no danger' in terms of exemption levels for each radionuclide that is consistent with international and UK standards for public risk. HSE response: *The will be considered in the forthcoming technical assessment guidance drafted by HSE's Nuclear Safety Directorate.*

5 Lack of consistency with other regulations and guidance – especially the (proposed) Radioactively Contaminated Land (RCL) regulations and Radioactive Substances Act 1993 (RSA93) Substance of Low Activity (SoLA) exemptions. For example, HSE would be delicensing to a far more stringent criteria than the Environment Agency (EA) planned for RCL but in the case of some nuclides, be applying a less stringent criteria than those applied under SoLA exemptions. HSE response: *Whilst HSE considers that the risk of a fatality of 1 in a million per year is low enough to satisfy the 'no danger' requirement of sections 3(6)(b) and 5(3)(a) of the Nuclear Installations Act 1965 (NIA65), as amended, this cannot guarantee that other, particularly environmental, legislation will not impose ongoing management requirements on the delicensed land. Therefore, it would be prudent for any operator submitting a delicensing application to have regard for any legislation other than the NIA65 that might apply to the delicensed site and to seek the views*

of the appropriate government department, environment agency and local planning authority. This acknowledgement has been included in the new 'Other Legislation' of the redrafted policy statement.

6 Is it permissible for HSE's Nuclear Installations Inspectorate (NII) to delicense land meeting the 10^{-6} criteria but not meeting RSA Schedule 1 or the Exemption Order criteria where authorisation of the disposal under RSA would be required? HSE response: *See response to bullet point 5.*

7 An acknowledgement in the policy statement that a delicensed site could still be subject to other regulations and guidance. HSE response: *Issue acknowledged and reference to other regulations and guidance made in the new 'Other Legislation' section of the redrafted policy statement. See also response to bullet point 5.*

8 Does the 10^{-6} criteria only apply at the point of delicensing? What happens if 5-10 years a new source of radiation is found? HSE response: *Yes. If a new source of radiation is found on a delicensed site then the appropriate regulations could apply.*

9 The policy statement needs to clarify whether the 'one in a million risk' criterion applies to any single member of the public, is averaged across the potentially exposed group, or is averaged across the whole population? HSE response: *The policy statement has been amended to clarify how the 'no danger' criterion applies to the public*

10 10^{-6} should be a guide/target but not a minimum requirement. HSE response: *Disagree. The 1 in a million criterion is consistent with the requirements placed by HSE on licensees in all recently approved delicensing proposals. The proposed public policy statement is therefore entirely consistent with our current practice. Therefore, although a less onerous risk criterion advocated by some respondents would result in cheaper and easier clean-up, any move by HSE to allow a higher level of residual risk may be seen as being counter to our general duties, and could undermine public confidence that enough was being done to ensure the safety of future users of delicensed sites. Furthermore, as discussed in the consultation document, the proposed risk level is consistent with the approach to regulating risk that HSE applies to industry generally. We consider that the proposed criterion would require clean-up to a level of residual radioactivity that would be 'broadly acceptable'³ and do not propose to amend this further.*

11 Consultation on the delicensing of the site would be required as per the requirements of the Aarhus Convention. HSE response: *This will be addressed in the technical assessment guidance drafted by HSE's Nuclear Safety Directorate.*

12 Various complaints about previous lack of consultation on prior draft guidance with local authorities. HSE response: *The prior draft guidance was an internal document comprising both the policy and technical assessment elements for delicensing. This draft format was abandoned and no formal consultation subsequently took place. However, for the Delicensing Policy Statement, relevant Local Authorities and Local Authority groups were given*

³ Residual activity refers to a measurable level above the average background radioactivity.

advance warning of the consultation exercise. 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 reports.

13 The real issue is that the Nuclear Installations Act 1965, as amended (NIA 65) needs to be amended and this is the approach that should be adopted. HSE response: *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. We believe this approach negates the need to amend the NIA 65.*

14 For disposal facilities it would be helpful if HSE were to introduce more flexibility in the numerical criterion by, for example, applying a similar risk criteria to the one used by the EA - where the 1 in a million per year risk criteria is a target and not an upper limit. HSE Response: *Disagree – see response to bullet point 10.*

15 Need to be clear as to what type of radioactivity the 10^{-6} + ALARP criteria would apply. For example, what do you do with activity on a site that exceeds the 10^{-6} + ALARP criterion but was not attributable to licensable activities or work on the site? Would the site, or part of the site, still be delicensed, but regulated under RSA93 and/or the Ionising Radiations Regulations 1999 (IRR99)? HSE response: *The policy statement makes clear that when considering an application to delicense all or part of a licensed site, HSE needs "a demonstration that any residual radioactivity, above background radioactivity, which remains on the site, which may or may not have arisen from licensable activities, will lead to a risk of death to any member of the public using the site for any foreseeable purpose, of no greater than 1 in a million per year." See also response to bullet point 5 regarding other regulations and guidance.*

16 Should sites be delicensed on a case-by-case basis rather than adopting a prescriptive approach based on numerical values and limits to be applied to all sites? HSE response: *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. 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.*

NEXT STEPS

HSE has analysed all the responses to the consultation exercise and following consideration with other government departments, made changes (where appropriate) to the delicensing policy statement. The revised policy statement 'HSE Criterion for Delicensing Nuclear Sites' will be available on the HSE website at www.hse.gov.uk.

HSE's Nuclear Safety Directorate will consider some of the comments that are technical in nature during the drafting of the separate technical assessment guidance⁴ for delicensing all or part of a licensed site.

⁴ A draft version is scheduled to be accessible via HSE's website from summer 2005, with a formal version available late 2005.