



**Nuclear Free Local
Authorities**
Steering Committee

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Secretary: **Stewart Kemp**

Date: 31 October 2006

To: Energy Review: Nuclear Policy Framework
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Dear Sir/Madam,

DTI CONSULTATION: THE POLICY FRAMEWORK FOR NEW NUCLEAR BUILD

1. **Introduction:** the consultation itself

NFLAs welcome in general the opportunity to respond to DTI consultations. However the following comments after this introduction are made in this instance without prejudice to NFLAs' view that this consultation is especially confusing and in breach of legal and administrative requirements.

1.1 *Cabinet Code breaches*

The consultation does not comply with the Cabinet Code on Consultation¹: it is in breach of Criterion 2. "Be clear about what your proposals are..." and Criterion 3. "Ensure that your consultation is clear..."

The obligation set out and underlined in the Code to reproduce all 6 consultation criteria *within* the consultation document has not been met.

The consultation is in breach of the following parts of the Code

1.2 It is important to identify proactively relevant interested parties and those whom the policy will be likely to affect. These groups should be contacted and engaged in discussion as early as possible in the policy development process.

1.3 Informal consultation with these stakeholders should be conducted prior to the written consultation period. Not only does this lead to a more informed consultation exercise but it also ensures that stakeholders are engaged early and have a better understanding of the policy.

1.6 Where a consultation takes place over a holiday period or lasts less than 12 weeks, extra effort should be made to ensure that the consultation is still effective, by supplementing the written exercise with other methods of consultation.

1.8 ...It is important to engage proactively with individuals, organisations and trade associations. Written consultation is not the only or even always the most effective means of consultation. Other forms of consultation may help in this process. These might include:
stakeholder meetings;
public meetings;
web forums;
public surveys;
focus groups;
regional events; and
targeted leaflet campaigns.

2.3 As far as possible, consultation should be completely open, with no options ruled out. However, if there are things that cannot be changed because, for example, they are part of a European Directive or due to prior Ministerial commitments, then make this clear. The risks and consequences of doing nothing should be outlined.

3.4 Efforts should be made to bring the consultation to the attention of all interested parties. As well as using the internet you should consider publicising the consultation in ways most appropriate for the groups you wish to reach.

6.2 Ensure that a Regulatory Impact Assessment (RIA) is attached, where required, highlighting the costs, benefits and risks of the proposal. Respondents should be encouraged to comment on and challenge the assumptions in the RIA where one is included.

1.2 *Breach of requirements relating to Regulatory Impact Assessment*

No RIA is attached to the consultation document; the RIA that features on the consultation web-site is an “initial” regulatory impact assessment but there ought to be a “partial” regulatory impact assessment. This omission breaks Government’s own administrative requirements: the RIA process consists of three phases:

Initial RIA - You should prepare this as soon as a policy idea is generated. For policies which will only impact on public services you should carry out an Initial Public Sector RIA

Partial RIA - This builds on the initial RIA It is produced prior to the consultation exercise and must accompany the consultation document.

Full/final RIA - This builds on the information and analysis in the partial RIA and incorporates consultation responses and how they have influenced policy. You must prepare a full RIA for the post-consultation collective agreement and, if it is a legislative proposal, for the Parliamentary process.¹

¹ http://www.cabinetoffice.gov.uk/regulation/ria/overview/the_ria_process.asp

Initial RIA

The initial RIA should inform and ideally accompany your submission to your own ministers seeking agreement to a proposal. It should include your best estimates of the possible risks, benefits and costs, and will help you to identify areas where you need more information.

An initial RIA should:

provide a clear statement of the high level policy objectives - what it is you want your policy to achieve

describe the issue and, where possible, quantify the scale of the issue you want to address

identify a range of regulatory and non-regulatory alternative options, including 'do nothing'.

consider the pros and cons of each option and the fit with existing requirements on the relevant sector

identify who is affected, including business sectors and groups on which there may be a disproportionate impact.

set out what you already know about the costs and benefits

highlight any potential unintended consequences

try to identify markets that may be affected and flag up any potential competition issues

consider how to secure compliance and how you will review whether the policy is.

Partial RIA

The partial RIA builds on the initial RIA.. The partial RIA must be submitted with any proposal needing collective agreement from Cabinet, Cabinet Committees, No 10 or other interested ministers. It must also accompany the public consultation. It should be informed by more discussions, data gathering and informal consultations. You will have refined your cost and benefit estimates. You will also have worked up the options and developed your thinking on implementation and delivery, enforcement, compliance and monitoring. This is very important, as it will be too late to cover these issues meaningfully if left until the full RIA stage.

A partial RIA should:

provide a clear statement of the policy objectives and the issue

As it is, the initial RIA does not meet the requirements of a partial RIA as spelt out by Government (see footnote 2). There is a failure to assess the environmental effects as required by Government policy and the principles of the Strategic Environmental Assessment Directive.

1.3 *Breach of commitment to the “fullest public consultation” promised on at least two occasions: see 5.2 below.*

As far as NFLA’s are aware there have been no arrangements for consultation in the forms of workshops, meetings, conferences and seminars equivalent to those which occurred in the preparation of the 2003 Energy White Paper or which have been arranged during the consideration of the policy to be adopted for the long-term management of radioactive waste under the Committee on Radioactive Waste Management. NFLA’s view is that the effort put into consulting over the creation of *new* nuclear waste must logically be at least as good as that that has occurred over the management of *existing* waste. Yet there have been no meetings associated with potential sites to be used nor have these sites yet been openly identified.

1.4 *Incoherence of the consultation process*

It appears at first sight that the assessment of need is to take place *in the future* by way of a national discussion:

A policy framework for new nuclear build *should be developed*. It would include a nuclear “Statement of Need” ... Annex A p162

The Government proposes that *the most appropriate process for discussion of whether there is a need for nuclear power is at a national level*. Annex A p165

However it also appears that the consultation is *itself* this very national discussion since the consultation asks for comment on the following:

The Government believes that nuclear has to play a role in the future UK generating mix because of its contribution to increased diversity of energy supplies and its role as a source of low carbon generation. The Government believes that the evidence gathered during the Energy Review and the associated public consultation supports such a view. p166

However it also appears that the Government has *already* made up its mind:

Taking all these issues into account, the Government has concluded that nuclear has a role to play in the future UK generating mix alongside other low carbon generating options.

How is a national discussion to take place if the decision has already been arrived at?

1.5 *Failure to ensure clarity regarding documentation?*

describe and quantify the scale of the issue you want to address
identify regulatory and non-regulatory options
consider the pros and cons of each option and the fit with existing requirements on the relevant sector
include high level implementation and delivery plans for each option.
identify who is affected, including the business sectors and groups on which there may be a disproportionate impact.
estimate the benefits and costs and identify the key risks associated with each option
highlight any potential unintended consequences
include the outcome of the Small Firms Impact Test
provide a competition assessment that includes a clear statement of anticipated competition impacts for each option
consider options for enforcement, sanctions and monitoring of each policy option and how the risk factors identified would affect this

It is not clear what the documentation is that forms part of the consultation. Annex A makes references to the following other information:

Through the Energy Review, the Government has carefully considered the relevant issues to new nuclear power:

- economics of nuclear power;
- environmental and climate change issues;
- security of energy supply issues; and
- safety, security and radiological issues, including waste, for nuclear.

Further details are available on the Energy Review website:

<http://www.dti.gov.uk/energy/review/>

It is therefore not clear whether it is intended that consultees be consulted on all the information at this web-site address, which is also referred to again at p174 (top).

The Government has gathered and assessed considerable amounts of evidence on these issues...

Again it is not clear whether we are being consulted on all this material and if so what this consists of.

The consultation document itself does not explain that there are three additional documents that are intended to form part of the consultation: Annex A does not explain that the DTI website for this consultation

<http://www.dti.gov.uk/consultations/page32340.html> lists FOUR documents:

- Consultation on the Policy Framework for New Nuclear Build [Annex A]
- The Policy Framework for New Nuclear Build: Initial Regulatory Assessment
- Nuclear Power Cost Benefit Analysis
- Overview of modelling of the relative electricity generating costs of different technologies.

2. **In brief**

We understand that the Government intends to:

- issue a statement that new nuclear power stations are needed;
- rely on the statement thereafter so as to exclude argument on the need for nuclear power at any future public inquiry or in any other regulatory decision-making process;
- emasculate the role of the public inquiry by the use of other decision-making procedures separate from and prior to the inquiry; and
- restrict the inquiry to the consideration of local impacts only.

We believe that the statement is premature and has not been the subject of proper consultation and we disagree with it. We consider that the decision-making framework suggested is intended to undermine the inquiry system and reduce meaningful opportunities for the public to register their views and examine those of others and as such is fundamentally objectionable.

3. **NFLAs position on New Build**

Recent issues of the Nuclear Free Local Authorities *New Nuclear Monitor* briefings set out our views on the general issue of the desirability or otherwise of a nuclear new build programme:

Issue 10: *Powering Britain: Sustainable Energy Strategies and the Role of Local Authorities: key highlights from submission to the UK Energy Review* July 2006

Issue 9: *Responding To 'our Energy Challenge'* March 2006

Issue 8: *Nuclear Power Is Not The Solution To Climate Change* May 2005

See: http://www.nuclearpolicy.info/New_Nuclear_Monitor/new_nuclear_monitor.html

4. **The Consultation (Issue 1): emasculating the public inquiry**

To progress the nuclear option, the Government has agreed to the nuclear industry demand to speed-up the decision-making procedures and remove uncertainty about the outcome. The Government plans that there will be no cross-examination or opportunity to present evidence at an inquiry as respects:

- the need for new nuclear power;
- the justification for new nuclear power;
- the appropriateness of the site(s) chosen for new nuclear power;
- the safety of new nuclear power;
- the steps to be taken to protect the environment and people from radioactive waste;
- the security hazards involved intrinsically and post 9/11 and 7/7.

To achieve this result, the Government:

- is purporting to consult now on "need" (see 7 below)
- may consult on "justification"
- will consult on a "strategic siting assessment".

The Health and Safety Executive will consult on safety issues and the Environment Agency (or SEPA) will consult on environmental protection issues. The intention is that:

- all these processes will merely allow the public to offer their views principally via written response: there will be no opportunity to challenge other responses from industry and no commitment to the rigorous analysis that cross-examination at an inquiry brings to bear. The Government and Regulators will themselves decide what weight to attach to the comments they receive;
- all these matters will be decided on *before* any public inquiry;
- the outcomes will *not* be open to any further debate at the inquiry.

NFLAs strongly object to this approach because:

- a public inquiry is necessary so that *all* these issues are properly considered within a public inquiry to ensure environmental protection, public safety, authentic local democratic accountability for an extremely hazardous industry, transparency and public confidence in the decision-making;
- it would set a precedent for railroading other projects and undermining vital aspects of land-use planning which must concern all planning authorities.

NFLAs also believe that the Government's proposed framework is legally flawed.

Apart from this:

- the assertion of need is not underpinned with any consensus on the evidence (see below);
- justification is not merely an option: it is required under European law;
- strategic siting assessment must not be used to avoid the requirements of the EU Strategic Environmental Assessment directive;
- consultation on safety issues will be impossible whilst it remains the view of the Office of Civil Nuclear Security that all new nuclear reactors will present a terrorist threat and so all information on safety should be protected from disclosure.²

NFLAs believe the best way forward is to provide for a *joint* public inquiry, which would consider all the issues mentioned above under the following powers to hold inquiries -

1. Regulation 17 Justification of Practices Involving Ionising Radiation Regulations (for the analysis of justification);
2. Section 14(1) and (2B) Health and Safety at Work Act 1974 (safety issues and safety licensing)
3. Section 24(2) Radioactive Substances Act 1993 (radioactive waste issues)
4. Schedule 8 Electricity Act 1989 (whether consent to construct and operate a nuclear station should be granted)

NFLAs note that the idea of a separate “generic issues” Public Inquiry is also being promoted by British Energy.³

5. The Consultation (Issue 2): Statement of Need

5.1 In 2003 Government saw no case for new nuclear build.⁴ A review of this decision started in January this year by way of consultation on the document “Our Energy Challenge: Securing clean affordable energy for the long term” (“Our Energy Challenge”).

5.2 The 2003 Energy White Paper – ‘Our energy future – creating a low carbon economy’ stated

Before any decision to proceed with the building of new nuclear power stations, there will need to be the fullest public consultation and the publication of a further white paper setting out our proposals.

In a letter to me dated 31 October 2005, the Minister for Energy stated that “the fullest public consultation” would take place *before* the publication of a White Paper.

Prior to the publication of Our Energy Challenge, NFLAs with Greenpeace, obtained assurance from the DTI that consultation on that document was not the consultation promised by the 2003 White Paper. This was confirmed, for example, when it was stated in the Energy Challenge:

The key issues on which it may be useful to focus can be summarised as follows:

...

Q.3. The Energy White Paper left open the option of nuclear new build. Are there particular considerations that should apply to nuclear as the government reexamines the issues bearing on new build, including long-term liabilities and waste management? If so, what are these, and how should the government address them?

This suggested that this was a preliminary consultation about how Government should go about decision-making and not a consultation about the substantive issues. This was consistent with the statement in the Energy Challenge that

² For example, the details of potential hazards from new reactors will not be released: “The type of detailed information contained in safety cases would be of great use as an aid to a potential attacker for choosing targets and planning an operation.” see OCNS “Finding the balance” page 17:

<http://www.dti.gov.uk/files/file23308.pdf#search=%22OCNS%20Balance%22>

³ BE’s Response to the HSE public consultation on pre-licensing, p5, para 7

⁴ The 2003 Energy White Paper – ‘Our energy future – creating a low carbon economy’

The government is clear that, in making important decisions about energy policy including nuclear power, there should be the fullest public consultation. This consultation paper is part of that process. The government is not at this stage bringing forward policy proposals. [page 6]

It was therefore very surprising to note that when the conclusions of the Energy review were issued in July, the Government stated

We have *concluded* that new nuclear power stations would make a significant contribution to meeting our energy policy goals. [p17] (our emphasis)

Such a view was premature for the reasons mentioned above. NFLAS are aware of the pending judicial review sought by Greenpeace and agree with its reasoning. This failure to consult properly cannot be cured by the present consultation because this no longer carries the necessary attributes of an open mind because of the prejudicial view already arrived at and confirmed in the policy expressed.

5.3 The Government had stated in the present consultation that it intends to adopt the following policy statement:

Proposed statement of Need:

The Government believes that nuclear *has to play a role* in the future UK generating mix because of its contribution to increased diversity of energy supplies and its role as a source of low carbon generation. The Government believes that the evidence gathered during the Energy Review and the associated public consultation supports such a view. [Energy Challenge P166 Box A3, our emphasis]

The Government's rationale for this statement is as follows:

Through the Energy Review, the Government has carefully considered the relevant issues to new nuclear power:

- economics of nuclear power;
- environmental and climate change issues;
- security of energy supply issues; and
- safety, security and radiological issues, including waste, for nuclear.

Further details are available on the Energy Review website: <http://www.dti.gov.uk/energy/review/>

The Government has gathered and assessed considerable amounts of evidence on these issues and the potential role that nuclear could play in helping the UK meet its energy policy goals. As a low carbon form of energy nuclear can help reduce our emissions, and in increasing the diversity of our energy supplies it can help to increase the reliability of our energy supply. Taking all these issues into account, the Government has concluded that nuclear *has a role to play* in the future UK generating mix alongside other low carbon generating options. [Energy Challenge p165/6]

With no explanation whatever the statement “nuclear has a role to play” has been converted into “nuclear has to play a role”: from the expression of comment to the expression of necessity in one unsupported leap.

5.4 NFLAs disagree with this conclusion:

- the economics are not remotely clear;
- the asserted CO2 and security of supply advantages of nuclear are not as good as those of other methods of replacing current nuclear capacity;
- safety is yet to be demonstrated for the new reactors envisaged;
- security is not demonstrable when the Office of Civil Nuclear Security considers all new reactors are potential terrorist targets;
- neither the method of management of radioactive waste nor its cost are known.

In addition NFLAs believe there are two powerful arguments against nuclear new build upon which there has not yet been appropriate consultation, viz. (i) the time lag before any nuclear generated electricity could come on stream and (ii) the fact that favouring nuclear technology whilst trying to dissuade other countries such as Iran from pursuing it is a hopelessly inconsistent position that undermines any efforts to secure non-proliferation.

The Government has in our view been very selective over the evidence: *New Nuclear Monitor 10* (see 3 Resources above) shows Government has not based its Energy Review conclusions on the evidence it received. Local government as a whole was particularly strong in its opinion that renewable energy, combined heat and power generation, better energy efficiency and energy saving in homes and workplaces must be prioritised over new nuclear construction. The contractor to the Department of Trade and Industry that prepared an analysis of responses to the Energy Review concluded:

Most individuals who responded to the consultation, including a significant number of people responding to campaigns, were negative about nuclear energy, because of accidents, such as Chernobyl, as well as the danger of terrorist attacks and concerns over the security of uranium supply.

Radioactive waste was also cited as a major concern.

5. 5 On economics, the Government states that it “does not take a view on the future relative costs of different generating technologies” (Energy Challenge Para 5.96 p113). Despite this it concludes: “Nuclear is a *potentially* economic source of electricity generation.” Energy Challenge para 5.98 P113). This conclusion was based on a DTI cost-benefit study comparing nuclear costs with gas costs, which was not made available for consultation under the Energy Review and whose assumptions have not been independently verified.⁵ The study itself states, variously:

The analysis highlights considerable uncertainty surrounding economic appraisal of possible nuclear investments. This stems from various sources, including uncertainty as regards nuclear construction costs and gas prices. [p3]

There is considerable uncertainty as regards the forecast cost of new nuclear power generation. Cost data from detailed studies summarised in Table 2 shows that this applies to construction costs (ranging from £500-2,500 / kW), construction time (60-120 months), and cost of capital (5-10%)⁶ [p13]

The fact that designs are at least somewhat untested suggests that there must be a degree of uncertainty about what costs would be in the UK context if there were to be a new nuclear programme. [p16]

Despite all these caveats, the same study is then used to underpin the much firmer conclusion in the consultation document that “Nuclear *is* economic in a range of likely gas and carbon price scenarios.” This appears to verge dangerously on spin when “is *potentially* economic” becomes “is economic”. Yet this is the sand upon which the statement of need is built.

NFLAs prefer the views of the Government’s Sustainable Development Commission:

The economics of nuclear new-build are highly uncertain. There is little, if any, justification for public subsidy, but if estimated costs escalate, there’s a clear risk that the taxpayer will be have to pick up the tab.⁷

... and of the House of Commons Select Committee on Environmental Audit:

18. No simple answer can be given to the question of the likely cost of nuclear power.⁸

6 Ernst & Young LLP (special advisers to the Energy Review) were asked by the DTI to verify the model but not the assumptions see p2 <http://www.dti.gov.uk/files/file31936.pdf>

7 Table 2 is taken from “*The Economics of Nuclear Power – Analysis of Recent Studies*, by Steve Thomas, Public Sector International Research Unit, Greenwich University, July 2005, funded by The Environment Agency.

7 <http://www.sd-commission.org.uk/pages/060306.html>

5.6 On waste, one of the Committee on Radioactive Waste Management's "main assumptions" in its recent recommendations (31 July 2006) is that "No new build waste is consigned to the repository"⁹

The DTI's own cost benefit study appears to be in error in assuming the opposite.¹⁰

5.7 Future regulatory decision-making processes on justification, safety, security and waste need to consider the issues free from this premature view. The Government cannot exercise its legal role vis-à-vis these processes if it has already a closed mind. The analysis of justification, for example, must occur before need can be established: Government Guidance on justification states quite explicitly that "This appraisal should include the economic, social, health and safety, waste disposal and decommissioning benefits and detriments."¹¹

6. Conclusion

NFLAs consider:

- that the Government is intent on emptying the public inquiry of any significance other than the consideration of local environmental impacts. This policy has been demanded by the nuclear industry as a prerequisite to investment so as to avoid proper scrutiny of its case;
- that Government's attempt to curtail debate and the role of the public inquiry in this way is offensive, misguided, potentially unlawful and corrosive of democratic values and the traditions of local participation in planning matters;
- that the conclusion that nuclear is needed that it wishes to enshrine as policy has not been arrived at properly, is entirely premature and may constitute an unlawful limitation on the discretion that it must use in supervising subsequent regulatory decision-making;
- that there has been no proper process of fact gathering, or authentic consultation and that the present consultation is equally inadequate and a sham.

NFLAs

- deplore the failures of the present consultation process to comply with (a) the Government's Code on Consultation, (b) the Government's requirements relating to Regulatory Impact Assessment, (c) the Government's commitment to the fullest public consultation on important issues regarding energy and nuclear energy and (d) legal principles requiring clarity in the presentation of proposals and in the explanation of the documentation upon which views are sought;
- call on Government to reopen the consultation for a further three months after the defects identified above are corrected and to ensure that fullest public consultation takes place having regard to the processes pursued prior to the publication of the 2003 White Paper and those adopted by CoRWM; and without prejudice to the above request and the defects in the consultation,

⁸ Annex 1: Conclusions and recommendations Paragraph 18 House of Commons Select Committee on Environmental Audit Sixth Report <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmenvaud/584/58411.htm>

⁹ Annex 5 Page 183 CoRWM: Report on final recommendations for the long-term management of the UK's radioactive waste: <http://www.corwm.org.uk/content-1092>

¹¹ p20 waste disposal cost in DTI "Nuclear power generation cost benefit analysis"

<http://www.dti.gov.uk/energy/review/implementation/nuclear-framework/page31831.html>

¹² Para 45, "Guidance on the implementation of the Justification of Practices Involving Ionising Radiations Regulations 2004", DEFRA <http://www.defra.gov.uk/environment/radioactivity/government/legislation/justification.htm>

- do not agree that new nuclear build is needed;
- believe this view is not supported by impartial consideration of the issues and that the conclusion is premature and prejudicial to other regulatory decisions that would have to be taken;
- strongly object to the plan to undermine the importance of the public inquiry and has no confidence that the procedures for allowing prior public comment on aspects of the overall regulatory process can ever be a substitute for the rigorous testing and analysis of the evidence of industry, government and regulator at an inquiry;
- call on the Government to confirm that if a firm proposal to build is made, Government will provide for a joint public inquiry based on the powers contained in Regulation 17 Justification of Practices Involving Ionising Radiation Regulations, Section 14(1) and (2B) Health and Safety at Work Act 1974, Section 24(2) Radioactive Substances Act 1993 and Schedule 8 Electricity Act 1989.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. [unclear]', written over a large, loopy flourish.

Secretary