

**ANNEX A:  
Response Form for the Consultation Document on the Restructuring of the  
Nuclear Directorate**

You may respond to this consultation by email or by post.

<b>Respondent Details</b>	
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<b>Please return by 22 September 2009 to:</b>
Thomas Wood Department for Energy and Climate Change 3 Whitehall Place London SW1A 2HD
You can also submit this form by email: ndrestructuring@decc.gsi.gov.uk

Tick this box if you are requesting non-disclosure of your response.

No.	Question
<b>Part A: Questions relating to the Proposal</b>	
<b>(A.1)</b>	Do you agree with the proposal to create a new sector-specific independent nuclear regulator which reports to Ministers and HSE? Please explain your answer.
Response	<p>The Nuclear Free Local Authorities (NFLA) agree with the proposal. The UK nuclear industry has needed a single, unified regulator on its activities for many years. It has been detrimental to the success of the current regulators that it has been poorly resourced and staffed in the last decade.</p> <p>The NFLA are particularly keen to see the new regulator be both strong and independent, so as to ensure the upcoming decisions being made on the design of a potential new generation of new nuclear power stations and long-term solutions for a radioactive waste management repository are undertaken with full openness and transparency. There needs to be full confidence that such decisions are taken carefully and for the right reasons, not to fulfil other political agendas.</p> <p>The NFLA see it as essential that the regulator is driven first and foremost by a desire to improve the quality of regulation, and not by a desire to save money or costs for the well-resourced nuclear industry.</p>
<b>(A.2)</b>	Do you agree with the governance and accountability arrangements set out in Chapter 3 of this consultation document? Please explain your answer.
Response	<p>On the whole the NFLA agrees with the governance and accountability arrangements set out in the consultation document. In particular, we agree with the desire to create an independent board for the new body.</p> <p>True independence though will only come if the membership of the Board is drawn from across the nuclear policy field, and not just industry and nuclear representatives. Local government should be considered as members of the board, along with trade union representatives, members of nuclear policy non-governmental organisations and respected, independent academic nuclear policy consultants.</p> <p>The Chair of the new board should also be chosen carefully and be well-respected beyond the nuclear industry to ensure confidence in the new structure. The possibility of creating an additional post of 'Vice Chair' from a different background to the Chair may enhance independence and public acceptability in the board. The NFLA would like to see a Chair and Vice Chair that have proven experience in the environmental and safety sectors as any decisions on nuclear regulation should be governed by sound principles from both sectors.</p> <p>The NFLA believes that the Board would function more effectively if supported</p>

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	<p>by a small number of expert sub-groups able to advise on areas of particular technical specialisms.</p> <p>The NFLA would like to envisage such sub-groups taking over the duties previously held by the former Nuclear Safety Advisory Committee (NuSAC). The NFLA are disappointed that NuSAC was disbanded at such an important period in the debate over nuclear safety and nuclear regulation, and would hope that the creation of a new sector-specific independent regulator could restore the effective and useful work it provided.</p>
<b>(A.3)</b>	<p>Do you agree with the transfer of DfT's regulatory functions in relation to the transport of radioactive materials? Please explain your answer.</p>
Response	<p>The NFLA agree with the proposed transfer, which it feels will increase the effectiveness and expertise of the new regulator and will help in providing an integrated regulatory service. The NFLA would like to see new arrangements for recovery of the costs for regulation of the transport of nuclear materials from industry introduced at an early stage.</p> <p>The NFLA would like to see much more interaction from the new regulator with local government on the transport of nuclear materials. At present the Police will be notified of major radioactive material convoys (particularly of nuclear weapons material waste) but rarely will the Council's Chief Emergency Planning Officer. As an agency that could be one of the first on scene during an accident involving a radioactive transport movement, Councils have an important role to play and should be brought in to the planning process. The NFLA would also like to see the new regulator being more pro-active in promoting contingency planning exercises and training across all Category 1 and Category 2 responders under the Civil Contingencies Act.</p>
<b>(A.4)</b>	<p>Are there any other relevant matters that the Government should consider? If so, please provide details.</p>
Response	<ol style="list-style-type: none"> <li data-bbox="309 1373 1415 1765">1. The NFLA agrees with the Government's proposal that the bulk of the new organisation's funds should come from cost recovery from the nuclear industry. However, the NFLA feels strongly that the new regulator is also provided with sufficient resources to do it properly. Recent reports leaked to the media, quoting the NII Chief Inspector noting that there had been over 800 incidents which 'had the potential to challenge a nuclear safety system' emphasises the need for a generous centrally-provided budget for such a safety-critical industry sector. The NFLA believe that the Government should allow the new regulator to set fees at a level which allows it to provide a high standard of service and should resist industry demands for a lower fee structure and lower regulatory standards, particularly if new reactors are sanctioned.</li> <li data-bbox="309 1776 1415 1982">2. The NFLA have some concern that the penalties put on the nuclear industry by the HSE Nuclear Installations Inspectorate have not always been enforced to the level they should be in the event of a reported incident. Although progress has been made in improving the Inspectorate's openness and transparency, more could be done in this area. The NFLA have raised recently the case of a major leak at the Sizewell site, where only the fortuitous</li> </ol>

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	<p>presence of an external contractor prevented the leak of 40,000 litres of radioactively contaminated water (indeed a quarter of it actually did) in 2007.</p> <p>Furthermore, a similar case of a leak at the Sellafield plant not being identified for 14 months concerns the NFLA that the current regulator has been inadequately staffed for a number of years. The new regulator should be seen by the public to be a credible and strong regulator which operates to high standards of openness and transparency - in both of the above examples it has taken considerable time for the public to be alerted to some alarming safety incidents. The NFLA are concerned that the nuclear industry is not sufficiently penalised in both examples to a level that would improve the safety culture.</p> <p>3. The NFLA believes that, along with the current agencies the new regulator will subsume, that it should as soon as possible to assume responsibility for regulation of the defence nuclear programme and take over the duties of the Defence Nuclear Safety Regulator. Current arrangements, whereby the Ministry of Defence regulates its own nuclear programme, do not represent good practice and are neither transparent nor trusted by observers of the defence nuclear programme. Furthermore, the support the NFLA provides for creating a new sector specific nuclear reactor would be greatly enhanced if MOD nuclear activities are firmly under central control. The NFLA remain very concerned about the safety culture at both the Faslane and Devonport naval bases, and the lack of executive power from the Environment Agency and Scottish Environmental Protection Agency in enforcing safety improvements after radiation releases at both bases. The NFLA believes that the new arrangements should allow for the future migration of the Defence Nuclear Safety Regulator into the proposed 'Nuclear Statutory Corporation', and Ministers should develop a case for allowing independent external regulation of the defence nuclear programme.</p> <p>4. The NFLA is aware that the Calman Commission is currently considering the devolution settlement of government powers for Scotland between the Scottish and Westminster Governments. NFLA supports the principle of devolved regulation wherever possible (indeed the NFLA has been structured into English, Welsh, Scottish and Irish Forums for many years), and believes that regulation of the nuclear industry is an issue which could reasonably be devolved at some time in the future to the Scottish Government. Given the apparently diverging paths that nuclear policy is taking north and south of the Scottish border, the NFLA would like to see an independent Scottish nuclear regulator established in the near future, and believes that the new Nuclear Statutory Corporation should at the appropriate time be ready to divest powers and resources to allow this. Similarly, consideration should be given for the Welsh Assembly and the Northern Ireland Assembly to be given a devolved role with nuclear safety and regulation as deemed appropriate.</p> <p>5. The NFLA has been concerned that the concept of crown immunity, used by the MOD to keep themselves at one step aloof from the nuclear regulatory system, has no place whatsoever in a modern democracy. It is a principle that has too often been abused in the past, and it is not unreasonable to expect</p>

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	<p>government institutions to be subject to the same criminal sanctions as the nuclear industry. The NFLA welcomes the statement that the new regulator will not enjoy crown immunity and would not support proposals to give a similar form of immunity of prosecution to the new regulator.</p> <p>6. The NFLA has concerns that the potential pay differentials between staff in the new nuclear safety regulator and staff in the Environment Agency (EA) and the Scottish Environmental Protection Agency (SEPA) could create future staffing problems for the latter agencies. Though it is sensible to keep the environmental regulatory roles of both the EA and SEPA separate from the new regulator the increasing salaries of the new regulator - in order to attract new staff - could have a detrimental effect on the EA and SEPA retaining their own staff on lower pay. Consideration should be given in the creation of the new regulator to how this possible scenario could be limited - for example, reviewing payscales of EA / SEPA staff at the same time.</p> <p>7. The NFLA has concerns that the new staff that may be attracted into the new regulator do not simply come from the nuclear industry but are trained up through an independent, transparent and equitable training programme. To ensure the true independence of the new regulator to all groups there must be vigorous attempts to prevent the creation of a 'cosy' relationship between the regulator and the nuclear industry. The current pool of skilled labour in this area is limited because of the - in many respects welcome - decline in the nuclear industry. A key focus of the new regulator should be to develop true independence of thought of new inspectors and a reporting process that encourages public acceptability for the reports of the regulator.</p> <p>8. Kevin Allars, the Director of New Nuclear Build Generic Design Assessment has suggested that whilst the GDA would be as complete as possible by June 2011, any Design Acceptance Confirmation we provide may need to be subject to 'exclusions' if regulators consider that issues remain unresolved at that time. These could subsequently be resolved at an appropriate time during the ongoing new build process. He claims this will not undermine the robustness of the assessments, because all of these issues will still need to be resolved before the licensee is allowed to progress beyond the appropriate hold point in the construction/commissioning process. The NFLA believes this represents a failure to appreciate the need to maintain public confidence in the workings of the HSE. Setting artificial deadlines, particularly in the context of an organisation with staff shortages and where safety should be paramount, threatens to undermine that public confidence.</p> <p>9. The NFLA believe that the recent introduction of contracts for consultants to ease staff shortages at the NII needs to be carefully scrutinised. The HSE has recently awarded contracts to engineering consultancies Frazer-Nash and Praxis to provide independent advice. Yet Frazer-Nash is currently trying to recruit a team leader for its nuclear business unit, a nuclear physicist and a nuclear consultant. Assurances should be sought that consultants are not simply going to poach staff and otherwise compete to recruit nuclear safety specialists at much higher salaries. Contractors should be able to show that they already have the necessary staff to carry out contracts , or a recruitment</p>

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	plan that is not going to damage the NII, before contracts are awarded.
<b>Part B: Questions relating to the legislative process and the pre-conditions of the LRRRA</b>	
<b>(B.1)</b>	Are there any alternative non-legislative means that would satisfactorily remedy the difficulties that the proposals in this consultation document intend to address, without the use of a legislative reform order? If so, please provide details.
Response	The NFLA is concerned that a Legislative Reform Order (LRO) reduces the amount of Parliamentary scrutiny and oversight in the establishment of the new regulator. The creation of a transition advisory committee which is not made up of MPs, seems to provide evidence of a lack of political scrutiny of the regulator. It also seems that speed is the watchword for the change of the regulatory system, while this major change should be still undertaken with due care and consideration.
<b>(B.2)</b>	Are the proposals put forward in this consultation document proportionate to the policy objectives? Please explain your answer.
Response	The NFLA has no comment to make in this area.
<b>(B.3)</b>	Do the proposals put forward in this consultation document taken as a whole provide a fair balance between the public interest and any person adversely affected by them? Please explain your answer.
Response	The NFLA has no comment to make in this area.
<b>(B.4)</b>	Do the proposals put forward in this consultation document remove any necessary protections? If so, please provide details.
Response	The NFLA has no comment to make in this area.
<b>(B.5)</b>	Do the proposals put forward in this consultation document prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise? If so, please provide details.
Response	The NFLA has no comment to make in this area.
<b>(B.6)</b>	Do you consider the provisions of the proposals to be constitutionally significant? If so, please provide details.
Response	The NFLA has no comment to make in this area.

No.	Question
<b>(B.7)</b>	On the basis of the information provided on each of the LRO procedures in Chapter 5 do you agree with our view that the affirmative procedure should apply to the scrutiny of this proposal? If not, please state your reasons.
Response	The NFLA has no comment to make in this area.
<b>Part C: Questions arising from the partial Impact Assessment</b>	
<b>(C.1)</b>	Do you consider that the partial Impact Assessment set out in Annex D provides an accurate assessment of the likely impact, costs and benefits of the proposals and how does this affect your view of the proposals set out in the consultation document?
Response	The NFLA has no comment to make in this area.
<b>(C.2)</b>	The Government estimates that creating the NSC would result in a maximum increase in fees payable by duty holders of 12-16% in the first year and between 3 and 7% per annum thereafter. The Government would welcome your view on whether or not the estimated increase is justified by the potential benefits of setting up the new body.
Response	The NFLA are not in a position to comment on the government's estimate of the costs needed to create the new regulator without receiving more information on the current fee process. The NFLA does believe that it is important that the initial additional costs that will be required to establish the new regulator are provided by the Government to allow for it to function effectively from the date of its creation. In attending the recent HSE / EA / HPA stakeholder dialogue on generic design assessment of new nuclear reactors, the NFLA are clearly aware that the Nuclear Installations Inspectorate is currently heavily tasked and struggling to effectively undertake this task to the extremely ambitious (and in the NFLA view unsustainable) timetable put on it by Government. There are obvious risks in undertaking a major organisational reorganisation when resources are already heavily committed. The NFLA believe sufficient resources should be provided and time provided by the Government to allow short-term support to the Nuclear Installations Inspectorate and its successor, thus avoiding a shortfall in performance during the reorganisation on its other important regulatory tasks.
<b>(C.3)</b>	Please provide any further information that is relevant to the partial Impact Assessment?
Response	The NFLA have no further information to provide here.

Please select the category below which best describes who you are responding on behalf of.

- Business representative organisation/trade body
- Central Government
- Charity or social enterprise
- Individual
- Large business ( over 250 staff)
- Legal representative
- Local Government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please describe):

Thank you for taking the time to let us have your views. The Government does not intend to acknowledge receipt of individual responses unless you tick the box.

Department of Energy and Climate Change  
Department for Work and Pensions  
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