

ENERGY ACT 2004

NDA Designation of Torness AGR Station Site

ENERGY ACT 2004

Directions to the NDA in respect of the Torness AGR Station Site

Made under sections 3, 5 and 6 of the Energy Act 2004

INTRODUCTION AND SUMMARY

This introduction and summary are not part of the direction

The Secretary of State and the Scottish Ministers, acting jointly in the exercise of the powers conferred upon them by sections 3, 5 and 6 of the Energy Act 2004 (the “**2004 Act**”), have made this direction (the “**Direction**”) designating the Torness AGR Station Site.

By virtue of such designation, the Nuclear Decommissioning Authority (the “**NDA**”) has the responsibility for securing the decommissioning and cleaning-up of the Torness AGR Station Site as set out in this Direction. This Direction is known as the “**NDA Designation of the Torness AGR Station Site**”.

Directions ancillary to the designation of the Torness AGR Station Site are included in this Direction in order to address the unique arrangements, including certain commercial agreements, which govern the future transfer of ownership of certain land located at Torness AGR Station Site and which prescribe the respective roles and responsibilities of the parties to those agreements.

In accordance with, and subject to, a separate agreement between the NDA and EDF Energy Nuclear Generation Limited (“**ENGL**”) made for the purposes of section 20(4) of the 2004 Act, ENGL is not subject to the duty to comply with any direction issued by the NDA pursuant to section 18 of the 2004 Act.

It is acknowledged that ENGL remains the owner, operator, and Nuclear Site Licensee of the Torness AGR Station Site in the period prior to the Transfer Date, and, as such, the role of the NDA during that period shall be limited to that of Station Purchaser, providing advice to the Secretary of State in relation to certain aspects of the AGR decommissioning arrangements as set out in this Direction, engaging with ENGL in accordance with the Co-operation Memorandum of Understanding and preparing to commence the decommissioning and cleaning-up of the Torness AGR Station Site from the Transfer Date.

The person with control of the Torness AGR Station Site is ENGL, who acquired it on 24th September 2008. ENGL has consented to the giving of this Direction.

1. Citation and Interpretation

(1) This Direction may be cited as the NDA Designation of the Torness AGR Station Site.

(2) In this Direction “**the 2004 Act**” means the Energy Act 2004 and references to sections are to sections of that Act.

(3) The Interpretation Act 1978 shall apply to the interpretation of this Direction as it applies to the interpretation of an enactment, and words and expressions used in this Direction that are defined in the 2004 Act shall have the same meaning as in the 2004 Act. Where a word or expression is defined in both the Interpretation Act 1978 and the 2004 Act or in both the Interpretation Act 1978 and this Direction, the meaning attributed to such word or expression in the 2004 Act or this Direction respectively will prevail.

(4) For ease of reference, the following definitions from the 2004 Act apply:

“**cleaning-up**” and “**decommissioning**” in relation to a site or installation, includes:

- a) the treatment, storage, transportation and disposal of hazardous material and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes; and
- b) the construction of buildings and other structures to be used in connection with the cleaning-up or decommissioning of the site or installation;

“**facility**” includes a business or other undertaking and installations, vehicles or other property comprised in or used for the purposes of a business or other undertaking;

“**hazardous material**” means:

- a) nuclear matter;
- b) radioactive waste; and
- c) any other article or substance that has been and remains contaminated (whether radioactively or chemically) as a result (within the meaning of section 36) of nuclear activities;

“**installation**” includes buildings, structures and apparatus (whether or not fixed to land);

“NDA facility”

means a facility which:

- a) is being or has been used for or in connection with the storage, disposal or treatment of hazardous material; and
- b) is a facility for the operation of which the NDA has or has had a responsibility;

“nuclear installation”

means:

- a) an installation which is situated in or on a principal nuclear site but is not comprised in an NDA facility;
- b) pipes, conduits and other apparatus which are not situated in or on a principal nuclear site but are connected to an installation falling within paragraph (a);

“principal nuclear site”

means the whole or a part of a site of any of the following descriptions:

- a) a site in respect of which a nuclear site licence is or is required to be in force;
- b) a site in respect of which such a licence would be required to be in force if the licensing requirements of the 1965 Act applied to the Crown;
- c) a site not falling within paragraph (a) or (b) in or on which there is an NDA facility;
- d) a site on which there is an installation used for practical research into the production of energy by the fusion of atomic nuclei;
- e) a site which has been a site falling within paragraphs (a) to (d) but which, without being such a site, remains contaminated (whether radioactively or chemically) as a result of nuclear activities carried on while it was such a site or before it became one;

“site”

includes:

- a) land within the United Kingdom;
- b) an area of territorial waters adjacent to the United Kingdom;
- c) the seabed and subsoil in any such area;

“the 1965 Act” means the Nuclear Installations Act 1965;

“treat” in relation to any matter or substance, includes processing and reprocessing (including any use as a material in a process for the manufacture of nuclear fuel), and cognate expressions are to be construed accordingly.

(5) The following words and expressions as used in this Direction shall have the meaning set out below:

“Closure Date” means, in relation to the Torness AGR Station Site, the date on which ENGL notifies the ONR that it has permanently ceased to generate electricity for delivery in bulk to the Scottish Electricity Grid from all nuclear reactors, such notification also to be provided to each of the Secretary of State, the Scottish Ministers and the NDA;

“Co-operation Memorandum of Understanding” means the Memorandum of Understanding that will be entered into between ENGL, the NDA, Magnox, Sellafield and DRS on or around the date of this Direction;

“Deconstruction Strategy” means Deconstruction Strategy as defined in the Nuclear Liabilities Funding Agreement;

“Designation Ancillary Agreement” means the agreement that is ancillary to this Direction and that is entered into between NDA and ENGL on or around the date of this Direction for the purposes of clarifying:

- (i) the scope and extent of certain powers and duties under sections 10, 17, 18 and 20 of the 2004 Act; and
- (ii) certain circumstances in which the NDA will propose modifications to this Direction;

“DRS” means Direct Rail Services Limited (company number 03020822);

“ENGL” means EDF Energy Nuclear Generation Limited (company number 03076445), including its permitted successor or assigns;

“Intellectual Property and Confidentiality Agreement” means the Intellectual Property and Confidentiality Agreement to be entered into between ENGL, NDA and Magnox on or around the date of this Direction;

“Magnox” means Magnox Limited (company number 02264251);

“NDA”	means the Nuclear Decommissioning Authority;
“Nuclear Liabilities Funding Agreement”	means the nuclear liabilities funding agreement dated 14 January 2005, as amended and restated on 5 January 2009 and as further amended and restated on or around the date of this Direction between the Secretary of State, Nuclear Liabilities Fund Limited, ENGL and EDF Energy Nuclear Generation Group Limited;
“Nuclear Site Licensee”	means the holder of a nuclear site licence granted under section 3 of the Nuclear Installations Act 1965;
“ONR”	means the Office for Nuclear Regulation or any body which replaces the same from time to time;
“Option Agreement”	means the Option Agreement dated 14 th January 2005, as amended and restated on 1 st January 2009, further amended on 3 rd December 2012 and as further amended and restated on or around the date of this Direction between the Secretary of State, ENGL and EDF Energy Nuclear Generation Group Limited;
“Secretary of State Deconstruction Change”	means Secretary of State Deconstruction Change as defined in the Nuclear Liabilities Funding Agreement;
“Sellafield”	means Sellafield Limited (company number 01002607);
“Station Purchaser”	means the Station Purchaser as defined in the Option Agreement;
“Torness AGR Station Site”	means the parts of Torness power station in Torness, Dunbar, East Lothian, EH42 1QU, as more fully described in Schedule 1 to this Direction;
“Transfer Date”	means the Completion Date (as defined in the Option Agreement) in relation to Torness AGR Station Site in accordance with the Option Agreement;
“Transferring Land”	means, in relation to Torness AGR Station Site, the relevant land owned by ENGL that is required to be transferred to the Station Purchaser on the Transfer Date in accordance with the Option Agreement.

2. Direction

(1) This Direction is given by the Secretary of State under sections 3 and 5 of the 2004 Act.

(2) This Direction is given by the Secretary of State acting jointly with the Scottish Ministers under section 6(1) of the 2004 Act, in so far as it gives, removes or varies any responsibility under section 6(2) of the 2004 Act.

(3) This Direction is also given by the Secretary of State under section 3 of the 2004 Act, having consulted the Scottish Ministers in accordance with section 6(3) of the 2004 Act.

3. Designation

(1) The sites, installations and facilities in column 2 of Schedule 1 and described in column 3 shall be designated to the NDA for the purposes set out in column 4.

(2) As at the date of this Direction, the Secretary of State and the Scottish Ministers have designated the Torness AGR Station Site situated on the land marked as being in 'BE Ownership' in the plan in the Annex, other than that marked as 'Excluded Land'.

(3) The designated responsibilities in Schedule 1 are subject to the provisions of Schedule 2 as to when decommissioning and cleaning-up shall commence.

4. Ancillary Directions

(1) Upon the Secretary of State giving notice under the Option Agreement in respect of the Torness AGR Station Site, the NDA is directed to:

(a) be the Station Purchaser for the purposes of the Option Agreement;

(b) be party to the Co-operation Memorandum of Understanding, the Intellectual Property and Confidentiality Agreement and the Designation Ancillary Agreement;

(c) co-operate with ENGL pursuant to the terms of the Co-operation Memorandum of Understanding;

(d) use its power as a shareholder pursuant to the Articles of Association of Magnox (or other such subsidiary) to direct Magnox (or other such subsidiary) to discharge the NDA's responsibilities under this Direction by acting as the future site licensee for the Torness AGR Station Site;

(e) use its power as a shareholder pursuant to the Articles of Association of Magnox to direct Magnox (or other such subsidiary) to be a party to the Co-operation Memorandum of Understanding and the Intellectual Property and Confidentiality Agreement; and

(f) procure Sellafield and DRS to be parties to the Co-operation Memorandum of Understanding.

5. Modification

(1) The Secretary of State and the Scottish Ministers note that this Direction does not determine the boundary of the Transferring Land or the requisite extent of the NDA's future decommissioning obligations and that there are mechanisms agreed with ENGL in the Option Agreement for determining the Transferring Land. Once the Transferring Land has been determined in accordance with the Option Agreement, to the extent that the scope of land subject to this Direction is not consistent and coextensive with the scope of such Transferring Land, the NDA shall propose to the Secretary of State such modifications to this Direction as are necessary to ensure that the scope of land subject to this Direction is consistent and coextensive with the scope of such Transferring Land. The Secretary of State and the Scottish Ministers may modify the Direction in respect of the land to be designated with the consent of ENGL in accordance with paragraph 8(2).

(2) The Secretary of State and the Scottish Ministers note that on and from the Transfer Date, modifications to this Direction may be required to supplement the purposes for which this Direction is given. In particular, modifications may be required to extend the NDA's responsibilities to cover the treatment, storage, transportation and disposal of hazardous material in accordance with section 3(1)(e) of the 2004 Act and/or the decommissioning of designated installations comprised in NDA facilities in accordance with section 3(1)(f) of the 2004 Act after the Transfer Date.

6. Ownership, Operation and Strategy

(1) The Secretary of State and the Scottish Ministers note that ENGL shall remain the owner, operator, and Nuclear Site Licensee of the Torness AGR Station Site until the earlier to occur of:

- (a) the Torness AGR Station Site being transferred to the NDA in accordance with the Option Agreement;
- (b) the Secretary of State effecting a nuclear transfer scheme pursuant to section 38 of the 2004 Act; or
- (c) the Torness AGR Station Site otherwise being transferred to the NDA with the consent of ENGL.

(2) During the period prior to the Transfer Date, and for so long as ENGL shall remain the owner, operator and Nuclear Site Licensee of the Torness AGR Station Site:

(a) in accordance with a Secretary of State requirement issued to the NDA under section 7(4) of the 2004 Act, and the Co-operation Memorandum of Understanding, the NDA shall, where feasible:

(i) provide advice, observations and recommendations to the Secretary of State in respect of the Deconstruction Strategy; and

(ii) support the Secretary of State in the potential exercise of its Secretary of State Deconstruction Change rights,

in each case under and in accordance with the Nuclear Liabilities Funding Agreement; and

(b) ENGL will continue to set the Deconstruction Strategy for the Torness AGR Station Site. Any duty of the NDA to prepare a strategy pursuant to section 11 of the 2004 Act, so far as the Torness AGR Station Site is concerned, shall only have effect in respect of the Torness AGR Station Site after the Transfer Date.

7. Funding

(1) The Secretary of State confirms that section 21 of the 2004 Act does not apply to the Torness AGR Station Site prior to the Transfer Date on the basis that ENGL does not fall within section 21(2) of the 2004 Act as it is not a Crown appointee, the UKAEA, a wholly-owned subsidiary of the UKAEA, any other publicly owned company which was so owned on 4th July 2002 or a wholly-owned subsidiary of any such a company.

(2) The Secretary of State confirms that NDA may make an application for funding pursuant to section 22 of the 2004 Act.

8. Consent

(1) The Secretary of State and the Scottish Ministers confirm that ENGL has consented to the designation of the Torness AGR Station Site on the terms set out in this Direction in accordance with section 3(4)(e) of the 2004 Act.

(2) The Secretary of State and the Scottish Ministers may modify this Direction with the consent of ENGL, in accordance with section 5(5)(e) of the 2004 Act.

9. Commencement

- (1) This Direction is made on 22 June 2021.
- (2) This Direction shall come into force on 23 June 2021.

Signed: 

On behalf of the Secretary of State for Business, Energy and Industrial Strategy.

Signed: 

Authorised to sign by the Scottish Ministers

Schedule 1
Designated Responsibilities
Torness AGR Station Site

No	Site/Installation/Facility	Description	Designation purpose (paragraphs of section 3(1) of the 2004 Act)
1	The Torness AGR Station Site (the principal nuclear site)	Land situated in Torness, Dunbar, East Lothian, EH42 1QU that is marked in the drawing in the Annex and entitled Torness Power Station, as being in 'BE Ownership' other than that marked as 'Excluded Land'.	3(1)(c) the cleaning-up of the principal nuclear site ¹
2	Reactor Plant & Buildings and Peripheral Buildings	Deplanting and decommissioning.	3(1)(b) decommissioning
3	Waste Management	Treatment, storage, transportation and disposal of hazardous material and of other matter and substances, whether in gaseous, liquid or solid form, that need to be dealt with or removed in cleaning-up the principal nuclear site.	3(1)(c) cleaning-up, as covered by row 1
4	Miscellaneous Contaminated Plant and Buildings	Plant and buildings, including, but not limited to, active waste treatment systems,	3(1)(b) decommissioning

¹ Section 3(6) of the 2004 Act provides that unless the direction provides otherwise, the designation of a principal nuclear site for cleaning up is to have the effect of including a designation to decommission every installation situated in or on that site.

No	Site/Installation/Facility	Description	Designation purpose (paragraphs of section 3(1) of the 2004 Act)
		active drains, active laboratories, laundries, etc.	
5	Pipes, Conduits and other Apparatus	Including, but not limited to, cooling water, mains water, storm drain outlets, effluent outlets and inlet and outlet culverts not situated in or on the principal nuclear site, but which are connected to buildings, structures and apparatus in or on the principal nuclear site.	3(1)(b) decommissioning
6.	Environmental remediation	Environmental remediation and land quality management relating to land on the principal nuclear site but outside the Nuclear Licensed Site.	3(1)(c) cleaning-up, as covered by row 1
7.	Offsite infrastructure	Plant and facilities such as labs, substations and railheads situated on the principal nuclear site but outside the Nuclear Licensed Site.	3(1)(c) cleaning-up, as covered by row 1

Schedule 2

Site and installations in respect of which decommissioning and cleaning-up is postponed until the Transfer Date

1. The Torness AGR Station Site.
2. All installations, facilities, off-site infrastructure, associated infrastructure (whether or not they are on or under the land or are fixed to the land or mobile, and including infrastructure to be built for the purposes of decommissioning), within or relating to the principal nuclear site, including but not limited to: sewage, drainage, effluent discharge, electricity, water, gas, or which form part of an electronic communications network² operated by a person, other than the person with control of the principal nuclear site, for as long as such services are needed to supply the principal nuclear site or to provide services to users outside the principal nuclear site.
3. All installations used or occupied by persons other than the person with control of the principal nuclear site until such time as the agreements (including any new agreements) under which such installations are used or occupied are terminated, or otherwise come to an end.
4. All installations necessary to operate the facilities as required in Schedule 1 (under a section 3(1) designation) until such time as the facilities are no longer needed in order to fulfil NDA clean-up functions.

² As defined in section 32(1) of the Communications Act 2003.

Annex

