Insights

IS NUCLEAR ENERGY (FINANCING) ACT 2022 AN ANSWER TO UK'S ENERGY SECURITY?

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The UK government has enacted the Nuclear Energy (Financing) Act 2022 (the "**Nuclear Act**") on 31 March 2022. This note sets out a summary of the Nuclear Act and looks into the question whether it is an adequate measure towards the UK's energy security and net zero emissions target.

As set out in its preamble, the purpose of the Nuclear Act includes making a provision for the implementation of a regulated asset base model for nuclear energy generation projects; revenue collection for the purposes of that model; a special administration regime for licensees subject to that model; and clarifying the circumstances in which bodies corporate are not associated with site operators for financing of decommissioning of nuclear sites.

The Nuclear Act envisages the use of the regulated asset base ("**RAB**") model to fund future nuclear power projects in the UK – a model which has successfully been used in the UK for the construction of large infrastructure assets such as Thames Tideway Tunnel and the Heathrow Terminal 5.

Under the RAB model, consumers would start paying indirectly towards the costs of a nuclear power project during the construction phase as they would pay a small amount on their bills during the construction of a nuclear project. Under the existing mechanism to support new nuclear projects – the Contracts for Difference (CfD) scheme – developers have to finance the construction of a nuclear project and only begin receiving revenue when the nuclear plant starts generating electricity. This requires the developers to take a significant risk on their balance sheet and have deterred developers from taking part in Government initiative to build new nuclear projects. Currently only the Hinkley Point C project is expected to be completed under the CfD scheme.

The Nuclear Act has four parts as follows:

NUCLEAR ENERGY GENERATION PROJECTS: REGULATED ASSET BASE MODEL

Part 1 of the Nuclear Act sets out the procedure for designating a nuclear generation company as eligible to receive funding through the RAB model. There are two criteria for such designation:

a. the Secretary of State is of the opinion that the development of the nuclear project is sufficiently advanced to justify the designation of the nuclear company in relation to the project; and
b. the Secretary of State is of the opinion that designating the nuclear company in relation to the project is likely to result in value for money.

The Nuclear Act requires the Secretary of State to publish a statement setting out the procedure for considering whether to designate a nuclear company and how they will judge it against the criteria for such designation. The Secretary of State has published such statement on 11 April 2022. We would discuss this document in our next article.

For the purpose of facilitating investment in the design, construction, commissioning and operation of nuclear energy generation projects, the Secretary of State may modify a nuclear company's electricity generation licence. Such modifications may include provision about the revenue that the nuclear company may receive in respect of its activities and how such allowed revenue is to be calculated.

REVENUE COLLECTION CONTRACTS

The Government believes that it is important that legislation allows for a stable and insolvency risk-free flow of funding between consumers and a nuclear company. Hence, Part 2 of the Nuclear Act sets out provisions in relation to revenue collection contracts. A revenue collection contract is a contract between a designated nuclear company and a revenue collection counterparty - the body responsible for collecting payments from electricity suppliers. The revenue collection contracts will be used to fund a designated nuclear company.

The revenue collection counterparty will enter into and manage revenue collection contracts with the designated nuclear company and will act as the interface between them and suppliers. Suppliers are expected to pass the cost on to consumers. The Government expects The Low Carbon Contract Company (TLCCC) to take on the role of the revenue collection counterparty. TLCCC is a private company wholly owned by the Government, which functions as a counterparty in existing CfD schemes.

The process of designation of a nuclear company under the Nuclear Act is the first step for a nuclear company seeking to benefit from the RAB model, after which it would need to go through a number of additional stages. These stages could include procuring investment approvals, obtaining of regulatory approvals including planning permissions, reaching the final investment decision, and entering into a revenue collection contract, at which point the modifications to the nuclear company's electricity generation licence would come into effect, which would allow the nuclear company to receive payments from the revenue collection counterparty.

SPECIAL ADMINISTRATION REGIME

Part 3 of the Nuclear Act sets out a ‘special administration regime’ which would apply should a nuclear company become insolvent. If a nuclear company with a RAB contract becomes insolvent, the Government can apply for a court order to appoint a special administrator to manage the company and the nuclear plant.

Implementing special administration is intended to reduce the risks of consumers being deprived of the intended benefits from financing the building of a nuclear power plant using a RAB model should a nuclear company become insolvent. It also reduces the risk of requiring a replacement source of electricity generation, which would further increase the cost of electricity to consumers.

DECOMMISSIONING OF NUCLEAR SITES: BODIES CORPORATE NOT “ASSOCIATED”

Part 4 of the Nuclear Act clarifies that secured creditors and security trustees are not considered 'associated' with a designated nuclear company and hence are not liable for funding a decommissioning programme. This provision would remove barriers to project-financing of nuclear power projects and would be another help in building new nuclear projects.

GOVERNMENT RESPONSE TO CRITICISM

One of the criticisms of the RAB model is that it would increase energy costs of consumers. However, the Government believes that a large-scale project funded under a RAB model will add at most a few pounds a year to typical household energy bills during the early stages of construction and on average less than £1 per month during the full construction phase of the project. According to the Government, overall, the lower cost of financing a nuclear project is expected to lead to savings for consumers of at least £30 billion on each project. This according to the Government translates to a saving of more than £10 per year for an average domestic dual fuel bill throughout the life of the nuclear power station - which can operate for 60 years - compared to the existing CfD scheme.

As the consumers, under the RAB model would pay a small amount on their bills during the construction of a nuclear power station, such payments would avoid the build-up of interest on debts that would ultimately lead to higher costs to consumers once the power station is in operation. This would reduce the overall costs of a nuclear power project.

The Government also believes that initial contributions will give private investors greater certainty through a lower and more reliable rate of return in the early stages of a nuclear power project, lowering the cost of financing it, and ultimately helping reduce consumer electricity bills.

The Government further believes that the RAB model will reduce the UK’s reliance on overseas developers for financing new nuclear power projects by substantially increasing the pool of private investors to include British pension funds, insurers and other institutional investors.

The British Energy Security Strategy published on 7 April 2022 has proposed a significant acceleration of nuclear energy, with an ambition of up to 24GW by 2050. This would represent up to around 25% of UK's projected electricity demand. The RAB model proposed under the Nuclear Act compliments this strategy.

CONCLUSION

The RAB model envisaged under the Nuclear Act would make investments in new nuclear power projects more appealing than they currently are under the CfD scheme. It would also reduce the overall costs of a nuclear power project indirectly reducing the consumers' bills in the long run. Therefore, the Nuclear Act would be a great help in achieving the UK's energy security and net zero emissions target.

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