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Decision-making
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Decision-making and Responsibilities within the Process of Providing Robust Interim Storage and the Implementation of Geological Disposal CoRWM Task 3.12

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Summary

This paper summarises CoRWM's understanding of:

- The roles and responsibilities of the organisations that are involved in the management of radioactive waste,
- Decision-making on Government policy,
- Decision-making on the governance of the NDA,
- Decision-making on waste conditioning, packaging and storage and
- Decision-making in the implementation of geological disposal.

Generally, the decision-making processes and responsibilities are considered to be appropriate but a document, which is readily available and produced by Government, that gives a clear description of decision-making responsibilities is recommended

1. Introduction

This paper addresses Task 3.12 of CoRWM's 2008/09 work programme, which is to evaluate and advise on the appropriateness of decision-making processes and responsibilities (CoRWM, 2008a). It reviews these in the context of providing robust interim storage of higher activity wastes and the implementation of geological disposal within the *Managing Radioactive Waste Safely* (MRWS) programme.

2. Roles and Responsibilities in the Management of Radioactive Wastes

2.1 Overview

The main organisations that have roles and responsibilities in the management of radioactive wastes in the UK are the Government, the regulators, the Nuclear Decommissioning Authority (NDA), the nuclear site licensees and other waste producers (often called "small users" of radioactive materials). These organisations are discussed in Sections 2.2-2.5. The relationships between them are summarised in Figure 1.

2.2 Government

In the context of this paper, "Government" means the UK Government, the Scottish Government, the Welsh Assembly Government (WAG), and the relevant government

department in Northern Ireland, namely the Department of the Environment in Northern Ireland (DoENI). Government sets radioactive waste management policy and provides legislation. The UK and Scottish Governments exercise governance of the NDA and the WAG and DoENI influence this governance through the Waste Management Steering Group, which is discussed in Section 4.2. Within the UK Government, the department that is most concerned with radioactive waste management is the Department of Energy and Climate Change (DECC).

Policy
The policy positions of the UK Government and the devolved administrations on the management of higher activity wastes are (Defra et al, 2008):

- the policy of the UK Government is geological disposal, preceded by safe and secure interim storage, with a programme of research and development (R&D) to support implementation
- the Scottish Government is in favour of long term interim storage and an on-going R&D programme on the management of higher activity wastes, and is not in favour of geological disposal
- WAG reserves its position on geological disposal; it attaches particular importance to ensuring safe and secure interim storage and to carrying out R&D to support the optimised management of higher activity wastes
- DoENI supports the MRWS programme in recognition that it is in the best interests of Northern Ireland that the UK's higher activity radioactive waste is managed in the safest and most appropriate manner.

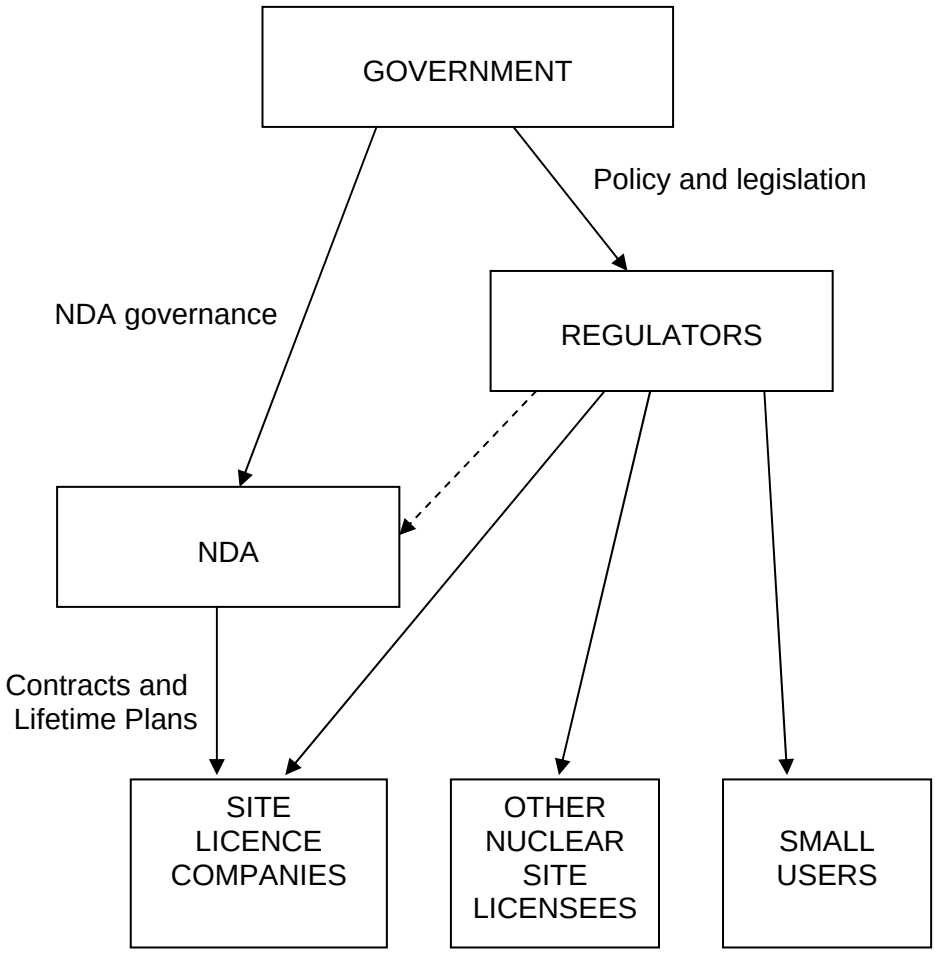


Figure 1 Relationships between Government, Regulators, the NDA, Nuclear Site Licensees and Waste Producers

Legislation
The key pieces of legislation for the management of radioactive wastes are:

- the Nuclear Installations Act 1965, under which all operators of prescribed types of nuclear facility must have a nuclear site licence (except MoD, which is exempt from the Act)
- the Radioactive Substances Act 1993, under which all those who wish to dispose of radioactive wastes must have an authorisation, and all except nuclear licensed sites must register to keep and use radioactive materials (except MoD, which is exempt from the Act)
- the Health and Safety at Work etc Act 1974, which set up the Health and Safety Executive (HSE) and under which all HSE regulators (see Section 2.3) work
- the Environment Act 1995, which set up the Environment Agency and Scottish Environment Protection Agency
- the Energy Act 2004, which set up the NDA
- the Town and Country Planning Act 1990.

The Government considers that this primary legislation is appropriate for the future management of higher activity radioactive wastes (Defra et al, 2008). It is expected that changes will be made to secondary legislation to allow the staged authorisation of geological disposal facilities (GDFs) under the Radioactive Substances Act, and to allow GDFs to be licensed under the Nuclear Installations Act as disposal facilities (rather than as facilities where radioactive wastes are stored). The pubic consultation on regulations that include staged authorisation for GDFs began in February 2009 (Defra, 2009).

Although MoD is exempt from both the Nuclear Installations Act and the Radioactive Substances Act it operates equivalent procedures and standards, as far as is practicable. In particular, its Defence Nuclear Safety Regulator uses the HSE's Safety Assessment Principles for Nuclear Installations, and MoD applies to the relevant environment agencies for letters of authorisation for disposals of radioactive wastes. Most of MoD's nuclear sites[1] are operated by contractors and are nuclear licensed sites that are subject to the civilian regulatory regime.

The NDA is not regulated directly under either the Nuclear Installations Act or the Radioactive Substances Act. However there are provisions in both Acts that enable the relevant regulators to prosecute the NDA if it causes a nuclear site licensee to fail to carry out its duties under the Acts or to comply with the conditions in its nuclear site licence or authorisation.

Governance of the NDA
Governance of the NDA is carried out by the UK Government and, for all matters concerning sites in Scotland; this responsibility is exercised jointly with the Scottish Government (see the Energy Act 2004). The departments of the UK Government that are involved are DECC, the Department of Business, Enterprise and Regulatory Reform (through the Shareholder Executive) and Her Majesty's Treasury.

[1] Aldermaston, Burghfield, Devonport and Rosyth are all nuclear licensed sites.

Government (UK and Scottish) approves the NDA Strategy (see Section 2.4) and business plans, and provides its funding. It has oversight of the NDA's planning and development for the long term management of radioactive wastes.

2.3 Regulators

The regulators enforce the relevant legislation and Government policy. They are:

- HSE, including the Nuclear Installations Inspectorate (NII), the Office of Civil Nuclear Security (OCNS) and the UK Safeguards Office (UKSO), which are all within the Nuclear Directorate of HSE
- the Environment Agency (EA), for England and Wales
- the Scottish Environment Protection Agency (SEPA)
- the Northern Ireland Environment Agency (NIEA, part of DoENI)
- Department for Transport (DfT)
- Local Authorities.

The roles and responsibilities of these regulators with respect to geological disposal and interim storage are outlined in CoRWM document 2420 on regulatory coherence and co-ordination (CoRWM 2008b).

Local Authorities differ from the other regulators in that they operate a permitting regime under Town and Country Planning legislation. Their role in respect of most radioactive waste management facilities is the same as that for other proposed developments for which planning permission is required. Their role in respect of geological disposal facilities will be somewhat different if the UK Government decides that such facilities should be covered by new planning arrangements in England involving the Infrastructure Planning Commission (IPC). Under these arrangements, the UK Government would produce national policy statements for different categories of nationally significant infrastructure setting out the national need. Decisions on individual applications for development consent for nationally significant infrastructure would be taken by the IPC, which would be composed of experts from a range of fields (Defra et al, 2008, Para 5.25).

The UK Government stated in January 2009 that the HSE's Nuclear Directorate will become an autonomous body but will remain within the auspices of HSE. This change is structural and operational and will not affect safety standards. It will require legislation and it is hoped that it will be completed by mid-2010 (UK Government, 2009).

2.4 Nuclear Decommissioning Authority

2.4.1 Remit and Objectives

The remit of the NDA is (NDA, 2008a, 2008b):

"*to ensure that the UK's civil public sector nuclear sites are decommissioned and cleaned up safely, securely, cost-effectively and affordably, in ways that protect the environment for this and future generations.*"

The NDA states that this means never compromising on safety or security, taking full account of its socio-economic responsibilities, always seeking value for money for the taxpayer and actively engaging with stakeholders. It is also required to maximise revenue for existing commercial assets and operations (NDA, 2008a, 2008b). The NDA's proposed principal objectives for 2009-2012 are to (NDA, 2008b):

- encourage the highest standards in health, safety, security, and environmental performance
- deliver hazard and risk reduction
- progress decommissioning and clean-up
- maximise commercial value from its existing assets and operations
- ensure safe and secure management of radioactive waste and materials
- identify opportunities for reducing liabilities.

Its proposed secondary objectives are to provide socio-economic support and development, and deliver skills, research and development, and supply chain development (NDA, 2008b).

For most radioactive waste management operations, the NDA acts as a strategic authority. It is its site licence companies (SLCs) that carry out radioactive waste management operations. With respect to geological disposal, the NDA has the responsibility for planning and implementation (UK Government et al, 2006; Defra et al, 2008).

2.4.2 Strategy

The first NDA Strategy was approved by Government and published in 2006 (NDA, 2006). It was developed before CoRWM had made its recommendations to Government and, thus, before the NDA was given the responsibility for implementing geological disposal of higher activity wastes and for developing and implementing the strategy for the management of nuclear industry low level wastes. The NDA has now set up a Strategy and Technology Division and a Strategy Management System. It is developing "topic strategies" for each of the main areas of its work (see NDA website, www.nda.gov.uk/strategy/overview.cfm). Those relevant to CoRWM are shown in Table 1.

The topic strategies will feed into the NDA Strategy, which is currently under review. The review will be completed in 2010/11 and will be informed by a Strategic Environmental Assessment (SEA). The public consultation on the draft strategy document will begin in summer 2010. Subject to Ministerial approval, the new Strategy is expected to be published in 2011 (NDA, 2008b).

Category	*Strategy Topic*	*Indicative date for strategy approval*
Critical Enablers	Funding	*3rd quarter 2009*
	Supply chain	*4th quarter 2008*
	Communications and stakeholder engagement	*completed*
	Socio-economics	*completed*
	Skills and capability	*completed*
	Transport and logistics	*To be confirmed (tbc)*
	R&D	*tbc*

Category	*Strategy Topic*	*Indicative date for strategy approval*
Business Optimisation	(7 topics, not in CoRWM's remit)	-
Integrated Waste Management	Lower activity and non-radioactive wastes	*4th quarter 2009*
	Higher activity wastes – overseas' owned HLW	*completed*
	Higher activity wastes – wet ILW	*tbc*
	Higher activity wastes – solid ILW	*tbc*
	Higher activity wastes – graphite	*tbc*
	Higher activity wastes – interim storage	*tbc*
	Higher activity wastes – UK owned HLW	*tbc*
Nuclear Materials Management	Uranium	*2nd quarter 2010*
	Plutonium	*4th quarter 2010*
Site Restoration	(4 topics, not in CoRWM's remit)	-
Spent Fuels Management	Exotic fuel	*3rd quarter 2015*
	Magnox fuel	*4th quarter 2010*
	Oxide fuel	*4th quarter 2011*

Table 1 NDA Topic Strategies

2.4.3 Geological Disposal

The NDA has established the Radioactive Waste Management Directorate (RWMD), which it will develop into a delivery organisation to implement geological disposal. The NDA intends that RWMD will evolve into a separate Site Licence Company (SLC), which will be a wholly owned NDA subsidiary. The first stage will be for RWMD to become a "prospective SLC" (NDA, 2008b). The prospective SLC will demonstrate that it is competent to hold a disposal authorisation and, ultimately, a nuclear site licence. The progression towards the SLC will take place in a staged manner but the move to a formally established NDA subsidiary will be made at an early stage. Once the SLC for geological disposal is formed, its relationship to the regulators will be the same as that of any other SLC (see Figure 1 and Section 2.5).

2.5 Waste Producers

The waste producers are:

- the SLCs, which hold the nuclear site licences, operate under contract to the NDA, and are owned by private sector companies or consortia called "parent body organisations" (PBOs)
- the private sector nuclear site licensees, i.e. British Energy, Urenco, GE Healthcare, Rolls Royce and BAE Systems

- the private sector organisations that manage nuclear sites for MoD and hold the relevant nuclear site licences, i.e. AWE plc and Babcock Marine
- the MoD, at the nuclear and non-nuclear sites that it owns and operates
- public and private sector "small users", e.g. hospitals, research establishments, educational establishments, factories.

Each NDA site has a site strategy that includes radioactive waste management, and which is delivered via the site's Lifetime Plan (LTP). The sites' strategies will be consistent with the NDA topic strategies (see Section 2.4.2).

All nuclear licensed sites are required to have regulatory approval for their radioactive waste management and decommissioning strategies, under the terms of their nuclear site licences. Small users have waste management strategies and plans that are appropriate to their organisations and are approved by the relevant environment agency. MoD has a waste management strategy that is approved by its Secretary of State, in consultation with other Ministers.

3. Decision-Making on Government Policy

All major Government policy decisions on radioactive waste management are taken by Ministers. Where required, UK Government Ministers consult with the Ministers in the appropriate devolved administrations and vice versa.

The Government has set up two groups to assist in decision-making on policy:

- the Radioactive Waste Policy Group, which is chaired by an official from DECC, provides advice on policy and regulatory processes and arrangements.
- the Geological Disposal Implementation Board, which is also chaired by an official from DECC, has been set up to manage the Government and NDA arrangements for the planning and delivery of geological disposal as set out in the White Paper [Defra et al, 2008].

Figure 2 shows how these groups fit within the policy and NDA governance framework.

3.1 The Radioactive Waste Policy Group

The Terms of Reference of the Radioactive Waste Policy Group (RWPG) are in Annex 1. They state that the RWPG will:

"*Review and make recommendations on issues which arise in relation to radioactive waste management policy and corresponding regulatory processes and arrangements across the UK".*

The RWPG's remit is taken to include appropriate coordination of policy and regulatory initiatives.

RWPG has representatives from all the relevant government departments and regulators, the Health Protection Agency and the Food Standards Agency (see Annex 1). Its responsibilities include (see Annex 1):

- providing a forum for the exchange of information and views
- providing guidance on issues of Government policy and direction on issues for policy development
- overseeing specific UK-wide policy reviews.

3.2 The Geological Disposal Implementation Board (GDIB)

The Geological Disposal Implementation Board (GDIB) replaces the MRWS Implementation Planning Group. It manages the Government and NDA arrangements for the planning and delivery of geological disposal. It is a means by which civil servants from the relevant Government departments can discuss the programme, provide advice to Ministers and prepare and publish Government decision documents. It has members from DECC, WAG, HM Treasury and the NDA (as the Government's delivery body) (see Annex 2).

The current, first, phase of the GDIB work corresponds to stages 1 to 3 of the geological disposal siting process (see Section 5), namely activities leading to local community Expressions of Interest (EoIs) through to the first Decision to Participate (DtP). This includes negotiation and oversight of Engagement Packages, oversight of the initial site screening by the British Geological Survey (BGS), discussion of issues that communities wish to raise (eg Benefits Packages, Siting Partnerships), and monitoring of arrangements for the next stage of site assessment and for strategic environmental assessment, sustainability assessment and environmental impact assessment (SEA/SA/EIA). The GDIB will decide how subsequent phases of work will be defined and managed during phase one (see Annex 2).

Government has agreed that members of CoRWM will be invited to observe GDIB meetings as necessary. John Rennilson is the CoRWM observer to the GDIB.

4. Decision Making on NDA Governance Matters

Major decisions on NDA governance are taking by UK Government Ministers and Scottish Ministers. Two groups have been set by Government to assist in such decisions. These are shown in Figure 2 and are:

- the Strategy Development and Delivery Group, which is chaired by an official from DECC, and provides advice on NDA Strategy issues.
- the Waste Management Steering Group, which is chaired by an official from DECC, and provides advice on the management of HLW, ILW and LLW by the NDA.

There are also monthly governance meetings between the relevant government departments and the NDA.

4.1 Strategy Development and Delivery Group

The purpose of the Strategy Development and Delivery Group (SDDG) is (see Annex 3):

"*to address issues and monitor progress in the development and implementation of the NDA Strategy, in the light of existing and emerging Government and regulatory policy, taking account of value for money and affordability".*

The SDDG's membership includes officials from UK Government departments, the Scottish Government, WAG, the regulators, the NDA and the MoD (see Annex 3). Its work includes (see Annex 3):

- identifying strategy topics affecting delivery of the NDA's mission

- agreeing and endorsing the NDA's approach to strategy development through the use of the Strategy Management System
- monitoring NDA delivery against policy and strategy commitments
- identifying strategic issues to be escalated for consideration by Government
- prioritising strategy development activities.

There are a number of groups set up by the NDA that will assist in the development of topic strategies. These include the Higher Activity Wastes Strategy Working Group and the Spent Fuels and Nuclear Materials Forum. There is also the NDA Research Board, which co-ordinates NDA research. The Research Board is advised by the Nuclear Waste Research Forum. NDA is also considering setting up a Geological Disposal Research Forum. Most of these groups involve representatives from other waste producers and from the regulators.

4.2 Waste Management Steering Group

The Waste Management Steering Group (WMSG) was established to augment the previous governance arrangements for the NDA by recognising the joint statutory responsibilities of the relevant Secretary of State in the UK Government and the Scottish Ministers, and also recognising the interests of other UK government departments, WAG and DoENI (Defra et al, 2008, Paras 4.41 to 4.43).

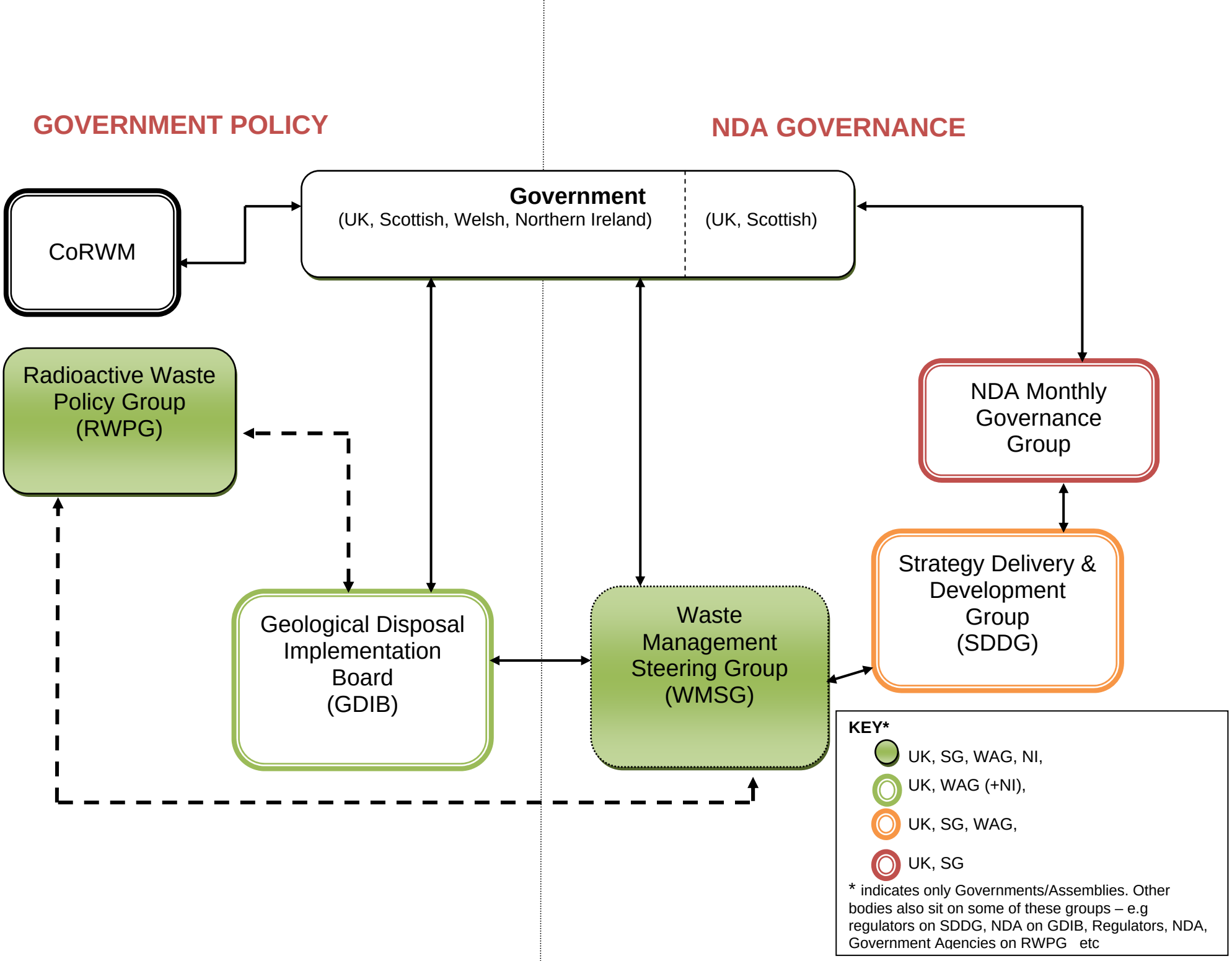
The WMSG's membership includes representatives from DECC, the Scottish Government, WAG, DoENI, HM Treasury and the NDA. Its terms of reference state that (see Annex 4):

"The WMSG will scrutinise all of the NDA's long term waste management planning and development programmes, taking a holistic approach to radioactive waste management. This will include, but not be restricted to, implementation of Government policy on a repository for intermediate and high level wastes, spent fuel and such other materials as may ultimately be disposed of in such a facility.

The aim will be to provide assurance to Ministers as appropriate that Government policy on the long term management of radioactive waste is being implemented efficiently and effectively."

It is the WMSG that will consider CoRWM's advice to Government on the delivery of the NDA's long term waste management planning and delivery programmes. The WMSG may make proposals to Ministers on how Government, in conjunction with the NDA, should respond to such advice.

The Chair and appropriate Members of CoRWM will be invited to the meetings of the WMSG as necessary. Mark Dutton is the CoRWM observer to the WMSG.


GOVERNMENT POLICY
NDA GOVERNANCE
Government
(UK, Scottish, Welsh, Northern Ireland)
(UK, Scottish)
CoRWM
Radioactive Waste Policy Group (RWPG)
NDA Monthly Governance Group
Strategy Delivery & Development Group (SDDG)
Geological Disposal Implementation Board (GDIB)
Waste Management Steering Group (WMSG)
KEY*
UK, SG, WAG, NI,
UK, WAG (+NI),
UK, SG, WAG,
UK, SG
* indicates only Governments/Assemblies. Other bodies also sit on some of these groups – e.g regulators on SDDG, NDA on GDIB, Regulators, NDA, Government Agencies on RWPG etc

5. Decision Making on the Implementation of Geological Disposal in the MRWS Programme

5.1 Roles of Government, the NDA, Communities and Local Government

The roles and responsibilities in the programme to implement geological disposal are summarised in Paragraph 2.3 of the 2008 White Paper (WP) (Defra et al, 2008, Para 2.3) as follows:

- *Government is responsible for the policy, will take final decisions and engage with stakeholders to ensure that the objectives of the MRWS programme are met.*
- *The NDA is responsible for planning and delivering the geological disposal facility and, as part of this process, will engage with communities and other stakeholders* (UK Government et al, 2006). *The NDA will also undertake a programme of research and development to support optimised delivery of geological disposal and interim storage.*
- *Communities with a potential interest in hosting a geological disposal facility will have the opportunity to work with the NDA and others in a partnership approach during the process.*
- *Local Government will be fully engaged in a partnership approach and will play a part in local decision making during the site selection process.*

In terms of implementing geological disposal, the steps in Chapter 6 of the White Paper contain a mixture of local and national decision-making that is broadly in line with CoRWM's recommendations on implementation (CoRWM, 2007a & 2007b). Thus, after a Decision to Participate by the local Decision-making Body in Local Government, representatives of the local community and the NDA's Delivery Organisation will work in partnership to develop a Benefits Package (Defra et al, 2008, Paras 6.53 to 6.58). This would input to the recommendation that the Partnership puts to the local Decision-making Body which would justify the community moving to the stage of surface-based investigations.

Based on overseas experience, CoRWM expected that the interests of the community would be wider than potential benefits and referred to a Community Package (CoRWM 2007a). CoRWM envisaged that the Community Package would contain elements that address protecting the safety of humans and the environment and generic technical issues associated with the design and siting of the faculty, such as the layout of the surface facilities or the extent to which the waste can be retrieved for a certain period of time, as well as measures to enhance the well being of the community.

The relevant Minister would approve the Benefits Package before the decision is made to move to work underground. If there is more than one potential site, the Minister would decide which sites should proceed to the stage of surface-based investigations and ultimately to underground investigations.

Government needs to involve the NDA in preparatory work such as developing the criteria for selecting the sites for surface-based investigations and ultimately for the selection of the site for underground works. Based on Overseas Experience, it is important that the role of the NDA's Delivery Organisation is restricted to providing information on each site and is not part of this decision-making process (CoRWM 2008c, 2009a). The success of the partnership approach will depend on a high level of trust of the local stakeholders in the NDA. That trust would be threatened if, at the

end of years of working in partnership, the NDA were involved in the choice between sites by Government.

The following sections discuss decision making in the various stages of the MRWS geological disposal siting process (see Defra et al, 2008, Figure 1).

5.2 Stage 1

This corresponds to the period up to the time when a community decides that it wishes to start discussions with Government. Thus, the main decision-making role in this stage will be played by the local community.

The WP identifies five steps in this stage as follows (Defra et al, 2008, Para 6.13; Table 2).

Indicative Step	***Comment***
1. Publication of White Paper and invitation for Expression of Interest	*Internet based information pack launched – www.defra.gov.uk/mrws*
2. Preliminary discussion between potential local partners	*Preliminary soundings taken. For example, through existing Local Strategic Partnerships or specifically convened meetings. Potential local partners might include County/District Councils, Parish/Town Councils, local Community, Business and Environmental stakeholder groups, and neighbouring local authorities.*
3. Opportunity for initial discussions between potential local partners and Government/NDA	*Preliminary discussions between potential local partners may raise issues that require clarification from Government/NDA prior to making an Expression of Interest*
4. Further soundings from potential local partners	*The outcome of any discussions with Government/NDA may require further soundings to be taken from potential partners*
5. Decision about Expression of Interest	*This decision will only be a trigger point to initiate high level geological screening and development of a programme of community engagement*

Much of the discussion in this stage is at local level but in Step 3 there is an opportunity for initial discussions between potential local partners and Government/NDA. Currently, such discussions are with DECC in England.

In the case of interest by a community in Wales, the approach should be to WAG (Defra et al, 2008, Para 8.5). WAG would then consider its position with respect to the geological disposal programme and the specific interest.

In the case of interest by a community in Northern Ireland, the approach should be to the Department of the Environment in Northern Ireland.

In the case of Scotland, the UK Government would refer the issue to the Scottish Government through the existing devolution mechanisms.

5.4 Stages 2 and 3

These stages cover the period from the expression of interest by a local community to the time when a community makes a Decision to Participate.

The WP identifies eight steps in these stages, namely 6 to 13, as follows (Defra et al, 2008, Para 6.13; Table 2).

Indicative Step	***Comment***
6. Communicate Expression of Interest to local stakeholders and communities	*It is important that the limited nature of the decision is widely understood. It is without commitment.*
7. Undertake high level geological screening	*The screening will inform the community engagement. The screening process will enable potential local partners to review preliminary findings.*
8. Develop programme for community engagement	*The objective of community engagement would be to inform a Decision to Participate. Planning for the programme of engagement might run in parallel to the high level geological screening.*
9. Seek agreement with Government on an Engagement Package	*A Community may incur costs from taking part in the process and Government will contribute to these costs*
10. Undertake community engagement	*A mixture of engagement methods could be used to ensure feedback from stakeholders and disinterested members of the public. This might include citizens panels, workshops, discussion in local groups or organisations, information provision to local communities, groups or individuals, quantitative feedback from opinion polls etc. Engagement should seek to identify the extent of support for participation; any issues of concern about participation; and the reasons for any opposition to participation.*
11. Opportunity for discussion with Government/NDA about the outcome of community engagement	*Community engagement may raise issues requiring further discussion with Government/ NDA prior to a local Decision to Participate.*
12. Local review of pros and cons of participation	*Local authority decision-makers will wish to review the outcome of community engagement and discussions with Government/NDA prior to reaching a Decision to Participate*
13. Local Decision to Participate	*Decision Making Body/ies make a formal Decision to Participate (probably through a full meeting of the council/s)*

Stage 2 is the initial screening out of unsuitable areas (Defra et al, 2008, Paras 7.4 to 7.12) by the British Geological Survey (BGS) i.e. Step 7. The BGS will apply the sub-surface screening criteria (also known as site exclusion criteria) to identify any areas in the region within the potential host community that are obviously unsuitable for a disposal facility (Defra et al, 2008, Paras 7.4 to 7.13). Following the application of

the screening criteria, the BGS will issue a draft report for discussion and review by the Host Community, the Decision-Making Body, the NDA, the regulators and CoRWM (Defra et al, 2008, Para 7.12).

In the event that one or more of the reviewers disagree with the conclusions of the BGS and the BGS considers that its assessment is correct, Para 2.3 of the WP implies that it will be for Government to decide whether or not to accept the findings of the final BGS report. This will presumably be DECC for communities in England.

Because of the high level nature of the sub-surface screening criteria, their application does not depend on the design of the disposal facilities. However, it is recognised that the criteria would not apply to the deep borehole concept of geological disposal.

In Stage 3, the main decision-making role will be played by the local community but there are two explicitly identified steps that involve Government/NDA participation. The first is Step 9, when the local community seeks agreement with Government on an Engagement Package. Defra informed NuLeAF that this negotiation will be led by Defra for communities in England and the funding will be from the Defra budget [CoRWM, 2008d]. This responsibility has now passed to DECC, which will take advice from the GDIB.

The second step that involves Government/NDA participation is Step 11, which is an opportunity for the community to discuss the outcome of the community engagement with Government/NDA. The discussion will be led by DECC, with advice taken from the GDIB.

Government will want to be satisfied that a Decision to Participate is credible (Defra et al, 2008, Para 6.22), which will involve an assessment of the report setting out the approach taken to engagement, the outcome of that engagement and the basis of the decision. This will presumably be done by DECC for communities in England.

5.5 Stage 4

This stage covers the period from the time that communities make the Decision to Participate to the time when the decision is taken for one or more sites to move forward to surfaced-based investigations. These will firstly involve non-intrusive seismic investigations and then boreholes. During this time, much of the decision-making will be at a local level. Work within partnerships will develop proposals that, if implemented, would result in the facility being acceptable to the communities and the local Decision Making Bodies will decide whether or not to accept the proposals made by the partnerships. This will include developing a Benefits Package (Defra et al, 2008, Annex C) and, in order to avoid the need for a community to withdraw from the process after borehole investigations have been started, it may be desirable to reach agreement about a Benefits Package before they start (Defra et al, 2008, Para 6.41).

The development of the Benefits Package will involve several stages such as: identifying community aspirations in the partnerships, ratification or amendment by the Decision Making Bodies and formal agreement with Government. In order to minimise the number of iterations through these stages, it may be helpful to have a Community Benefits Framework in place before the partnerships are formed or during the early stages of their work. NuLeAF considered that such a framework should have been included in the White Paper (CoRWM, 20008d). CoRWM understands that the GDIB is considering what further work could be undertaken to

help communities in their discussions as to whether to recommend a Decision to participate. As a minimum, there will need to be clear guidance from Government to the partnerships. Government will be a signatory to the eventual agreement.

If there are more than about two sites, the key decision for Government is how decisions are made to select the sites for borehole investigations following application of the Site Assessment Criteria. How this will be achieved has yet to be determined.

The Planning Process
Borehole investigations will require planning permission (Defra et al, 2008, Para 5.34). Advice from the regulators (the EA and the NII) will be an important input to the planning decision.

Whilst not having taken a final decision, Government is currently inclined to look towards applying the new planning system to the implementation of a GDF in England (Defra et al, 2008, Para 5.30) but no decision has been made yet.

5.6 Stage 5

This stage covers the period from the start of surface-based investigations to the time when one site is selected for underground operations.

Once the borehole and other data from surface-based investigations have been analysed and reviewed, the partnerships will make a recommendation on whether or not to proceed and the Decision Making Bodies will decide whether or not to accept the recommendation.

If there is more than one site, the key decision for Government is how the outcome of the site assessments are used to select the site.

Proposed Environment Agency Authorisation Process
Stage 5 is likely to contain the first two hold points in the staged regulatory process proposed by the EA to regulate the development of a GDF (EA & NIEA, 2009).

The UK Government and the Welsh Assembly Government are proposing to amend the legislative powers that are available to the EA to enable it to undertake a staged authorisation process more effectively. It is proposed to implement the required legislative change by taking radioactive substances regulation into the Environmental Permitting Regulations (Defra, 2009). Staged authorisation would not be available in Northern Ireland because the Environmental Permitting Regulations only apply to England and Wales.

Figure 3 shows an indicative process for staged authorisation (EA & NIEA, 2009)[2]. It would involve EA regulation of the development from the start of intrusive site investigation onwards with enforceable regulatory decisions throughout that period. There would be a period of “process by agreement” before the start of intrusive site investigation when the EA would provide advice on environmental matters to the NDA and others. The indicative links between staged authorisation, nuclear site licensing and the planning process are shown in Figure 4.

[2] In Figure 3, the term “environmental permit” is used – following the terminology of the Environmental Permitting Regulations, (rather than an “authorisation” granted under RSA 93).

Figure 3 Indicative process for staged authorisation of a GDF

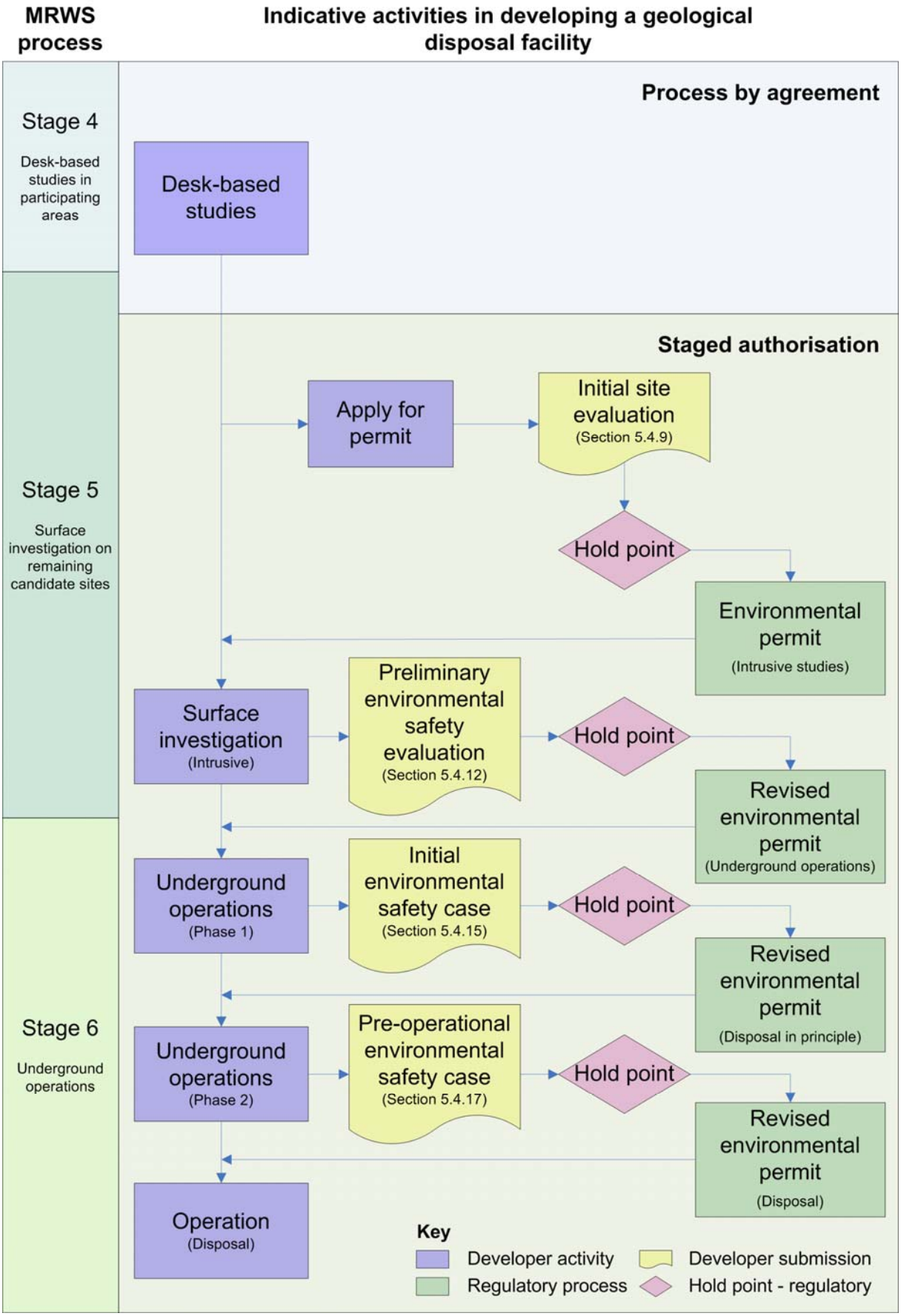
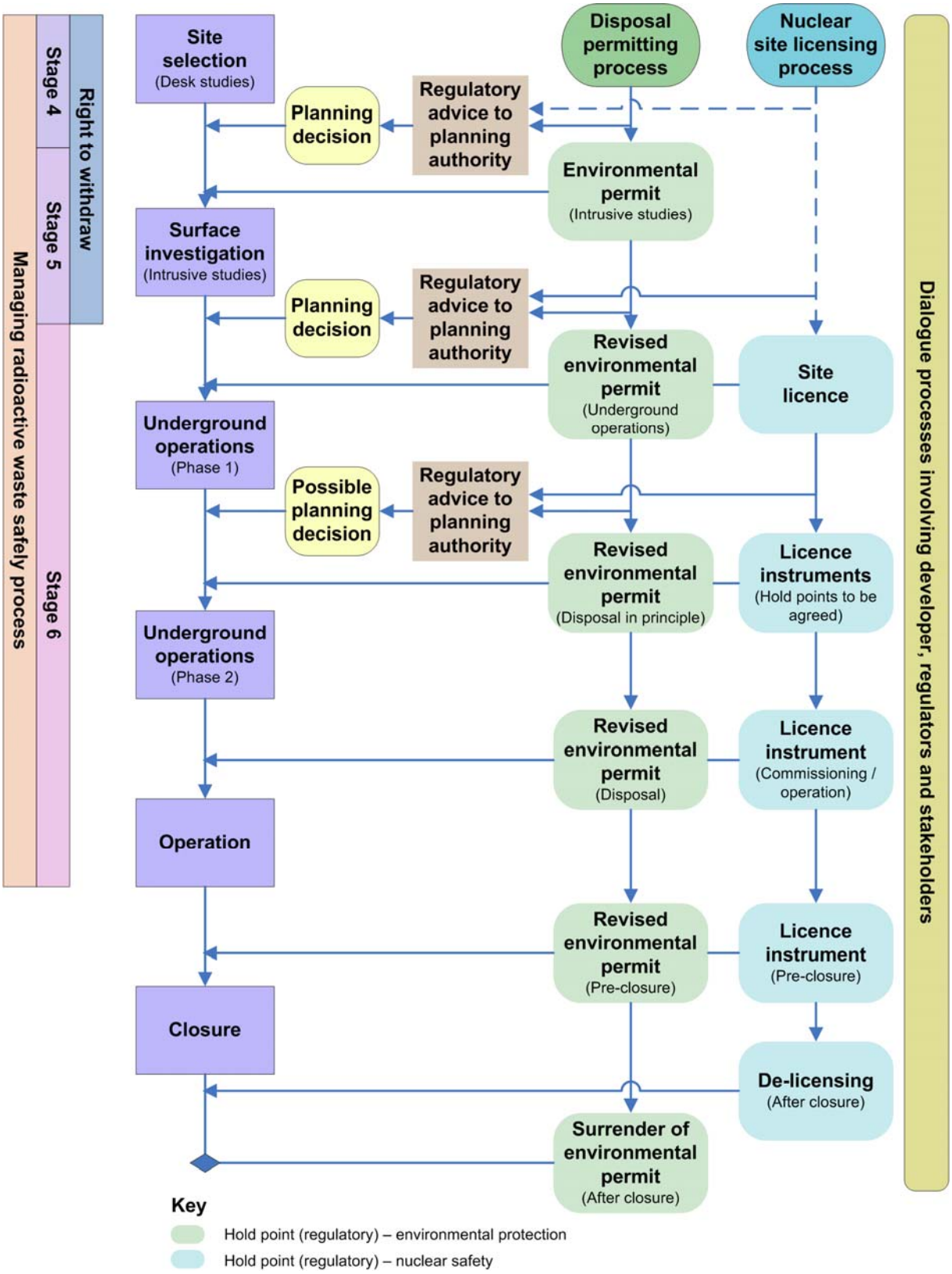


Figure 4 **Indicative links between staged authorisation, nuclear site licensing and the planning process**



If staged authorisation did not become available on an appropriate timescale, the EA would expect to enter into an extended process by agreement, which would continue until staged authorisation comes into effect. If no suitable powers were provided, the process could continue until the NDA decided to submit an application for authorisation under RSA 93 to allow radioactive waste disposal operations to start. After submission of an application, regulatory control under RSA 93 would apply (EA & NIEA, 2009).

Thus, following the desk-based studies of Stage 4, the NDA would apply for a permit to undertake intrusive surfaced-based investigations at each site that was selected for further exploration if the staged authorisation process were adopted. The application would be supported by an initial site evaluation, which would indicate how the NDA would construct the environmental safety case. If the evaluation were satisfactory, an environmental permit would be issued, with appropriate limits and conditions, allowing the NDA to proceed to intrusive investigations.

Following the intrusive investigations, the NDA would submit a preliminary environmental safety evaluation for the site at which it wanted to carry out underground operations. If this evaluation were satisfactory, the EA would issue a revised environmental permit, with appropriate limits and conditions, to allow the NDA to start underground operations, including underground excavations for investigating the characteristics of the geology (EA & NIEA, 2009).

The Planning Process
Underground work will require planning permission. *The NDA is exploring whether a single planning application covering underground-based investigations and the construction of a disposal facility could be possible. The NDA is considering the merits of a parameter-based approach where the characteristics of the facility would be defined in such a way to allow the environmental and other impacts of the proposal to be described and any appropriate mitigation measures to be identified* (Defra et al, 2008, Para 5.36).

Whether sufficient information can be obtained from surfaced-based investigations to enable this parameter-based approach to be followed will not be known until site data is (sic) available. If sufficient information can not be obtained from surface-based investigations, then it may be necessary to consider separate planning applications for underground-based investigations and facility construction (Defra et al, 2008, Para 5.37). The Environmental Permit and advice from the EA and the NII will be important inputs to the planning decision.

5.7 Stage 6

This stage covers all the underground operations, the closure of the facility and post-closure monitoring, if it is decided that this should be implemented. The right of withdrawal no longer applies and the project will follow the requirements of the regulatory arrangements and any conditions or agreements that are required by the planning process.

The Proposed EA Regulatory Process
This stage is likely to include the third and fourth hold points in the regulatory process proposed by the Environment Agency for a GDF as shown in Figure 3 (EA & NIEA, 2009).

Before the underground excavations were extended to allow waste to be emplaced, the NDA would submit an initial environmental safety case and, if this were satisfactory, the EA would issue a revised Environmental Permit allowing the NDA to

proceed. It is probably at this point that the NII would issue a nuclear site licence (see Figure 4).

Lastly, the application by the NDA to dispose of waste would be accompanied by a pre-operational environmental safety case. If this were satisfactory, a final Environmental Permit would be issued after which the facility would be subject to the same EA regulatory process that applies to other nuclear facilities. This would continue beyond the closure of the facility until the point when the NDA applies to surrender the permit and the EA agrees (see Figure 4). There would be NII hold points throughout this period and delicensing prior to the surrender of the Environmental Permit (see Figure 4).

6. Decision Making on Waste Conditioning, Packaging and Storage

At NDA sites, waste conditioning, packaging and storage decisions are taken by the SLCs but they must have approval and funding from the NDA, via the LTPs and other arrangements. For major decisions, they must also have regulatory approval, through the submission of "radioactive waste management cases" (HSE, EA and SEPA, 2007).

There are supporting arrangements for waste conditioning and packaging decisions. Waste producers are expected to obtain a Letter of Compliance (LoC) for their conditioning and packaging proposals to indicate that the waste packages can be stored, transported and disposed of. In order to prevent a conflict of interest, the RWMD LoC team is "ring-fenced" within the NDA. The effectiveness of this "ring fencing" is assured internally, among other measures, by the Repository Safety and Environment Group within the Assurance Division and externally through the scrutiny of the Nuclear Waste Assessment Team (NWAT) of the EA (CoRWM, 2008e; Lock, 2008). The regulators accept the LoC as part of the safety case submissions made to them by SLCs (HSE, EA and SEPA, 2007).

Other nuclear site licensees take their own decisions on waste conditioning, packaging and storage, and go through the same regulatory processes as SLCs. Under voluntary arrangements, the LoC system also applies to other nuclear site licensees, and to other waste producers.

As discussed in the CoRWM report on interim storage, there is good technical co-ordination between the NDA, its SLCs and other waste producers on conditioning, packaging and storage, and related R&D. However, CoRWM sees a need for additional co-ordination at the strategic level (CoRWM, 2009b).

7. Conclusions and Recommendations

As a result of undertaking this task, CoRWM is very much clearer on decision making responsibilities and processes. It is grateful to its sponsors, the NDA and the regulators for the clarification that they have provided. This experience has confirmed CoRWM's initial view that the situation is complex and that it is not well-described in publicly available documents. It is therefore recommended that Government produces a document that gives a straightforward description of decision making responsibilities and processes in the MRWS programme, and makes this document generally available via the MRWS website and other means.

Generally, the decision-making processes and responsibilities are considered to be appropriate but there are areas in the later stages of the process where clarification will be necessary in due course.

There are currently steps in the MRWS geological disposal siting process where the role of the relevant Government Departments and the Geological Disposal Implementation Board are not clear (see Sections 5.4 and 5.5, which deal with stages 3 and 4 in Figure 1 of Defra et al, 2008). We recommend that Government provides this clarity as soon as practicable.

As discussed in Section 5.1, there are cases where the NDA has been asked to carry out preparatory work to assist Government decisions in the future. CoRWM believes that care is required in such cases to avoid any suggestion that the NDA is taking part in decision-making.

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Annex 1 – Terms of Reference of the Radioactive Waste Policy Group

Purpose
The Radioactive Waste Policy Group's (RWPG) aim is coherent, efficient and effective policy development and delivery. It brings together UK Government departments, the devolved administrations, the principal regulators and other relevant bodies to identify and address radioactive waste management policy and regulatory issues and, as appropriate, radioactive materials issues, for example sealed sources.

The Group will:

"Review and make recommendations on issues which arise in relation to radioactive waste management policy and corresponding regulatory processes and arrangements across the UK"

This remit is taken to include appropriate coordination of policy and regulatory initiatives.

Membership
RWPG comprises representatives from the following:

Department of Energy and Climate Change
Scottish Government
Welsh Assembly Government
Department of Environment, Northern Ireland
Ministry of Defence
Department for Transport;
HM Treasury
Department of Health
Department of Communities & Local Government
Nuclear Decommissioning Authority
Environment Agency
Scottish Environment Protection Agency
Health & Safety Executive - Nuclear Installations Inspectorate
Health & Safety Executive - Office for Civil Nuclear Security
Health Protection Agency
Food Standards Agency.

Other organisations may be invited to attend RWPG meetings.

Responsibilities
Responsibilities of RWPG will include the following:

- To provide a forum for exchange of information and views;
- To provide guidance on issues of Government policy on radioactive waste and direction on issues of future policy development;
- To maintain an overview of radioactive waste management policy (including that of UK Government and the devolved administrations);
- To act as a sounding board to discuss emerging issues and their resolution;

- Overseeing specific UK-wide radioactive waste policy reviews and maintain an overview of others.

Individual members will make recommendations within their own organisations as appropriate on the basis of RWPG's work.

Way of operating

Key points concerning RWPG operations are:

- RWPG will be chaired by DECC;
- The Secretariat will be provided by DECC;
- RWPG will meet 3-4 times a year;
- RWPG will have pages on the DECC website to update external stakeholders of its operation;
- RWPG will have a small budget provided by DECC to support its policy review work;
- RWPG will use working groups and interact with other organisations and committees in the conduct of its work.

January 2009

Annex 2 – Terms of Reference of the Geological Disposal Implementation Board

Context

1. The Implementation Board will manage the Government and NDA arrangements for planning and delivery of a geological disposal facility as set out in the White Paper "Managing Radioactive Waste Safety: a Framework for Implementing Geological Disposal" (Cm 7386). Its role will include the provision of advice to Ministers and the preparation and publication of Government decision documents.

2. Organisations represented on the Implementation Board will be: DECC, WAG (also representing the interests of the Northern Ireland Assembly Government); HM Treasury and the NDA (as the Government's delivery body). The Board will consist of a DECC Chair and then one representative from each of these organisations. Accountabilities will be with a Senior Responsible Officer in DECC and progress will be reported to the National Climate Change and Energy Programme Board.

The work that the Implementation Board will manage

3. The work will be conducted in phases. Phase 1 of the work programme will be equivalent to Stages 1 to 3 set out in Figure 1 and Chapter 7 of the Cm 7386 White Paper. Specifically it will cover:

   - Phase 1. Work leading to local community Expression(s) of Interest through to the first Decision to Participate . This phase of work will include negotiation and oversight of Engagement Packages with local communities, oversight of initial site screening by the British Geological Survey (BGS) and initial discussion of any other issues that communities wish to raise – benefits packages, Community Siting Partnerships, Inventory, etc. It will also include monitoring arrangements for the next stage of site assessment and the way in which SEA/SA/EIA will be conducted. A plan for Stage 2 work, and the nature of the transition from Phase 1 to Phase 2 if there is Expression of Interest from a number of communities(see below), will also have to be prepared and approved by the Implementation Board during the course of Stage 1.

4. Thereafter, there will remain further phases of work to be managed, namely:

   - Phase 2. Government / Community discussions on issues such as community siting partnerships, benefits packages etc which will enable participating areas to undergo desk-based assessments , equating to Stage 4 of the work set out in the Cm 7386 White Paper. Work with communities to enable them to take the decisions whether to move to more detailed surface investigations. Work to make recommendations to ministers on how to proceed to the next stage.
   - Phase 3. Government / Community discussions on issues that will enable remaining candidate sites to undergo surface-based investigations , using non-intrusive seismic surveys and later the drilling of boreholes to various depths. This equates to Stage 5 of the work set out in the Cm 7386 White Paper. Work to allow the Board to make recommendations to ministers on how to proceed to a preferred site.
   - Phase 4. Government / Community discussions on issues that will enable Underground operations to confirm the preferred site's suitability to host a geological disposal facility that complies with safety and regulatory

requirements, equating to Stage 6 of the work set out in Figure 1 of the Cm 7386 White Paper.

5. The initial focus of the Implementation Board will be delivery of Phase 1. At this point it remains to be decided precisely how Phases 2, 3 and 4 of the programme will be defined and managed, not least because their timing will be a number of years into the future. Future management arrangements for these subsequent Phases is a matter to which the Implementation Board will decide as part of its Phase 1 work.

Implementation Board responsibilities

6. The Implementation Board will have responsibility for:

- Agreeing programme plans and documentation;
- MRWS Programme resourcing;
- Monitoring progress against the plans and agreeing any revisions needed as the programme proceeds;
- Deciding the approach to problem solving, and securing additional resources as necessary;
- Identifying, mitigating, dealing with and escalating risks and raising issues to higher management levels as necessary;
- Programme quality control.

7. The work to which these responsibilities apply includes:

- Coordination of engagement with local communities, including:
    - response to initial inquiries;
    - provision of further information/advice;
    - attending local meetings and providing presentations as requested;
    - response to Expressions of Interest and Decisions to Participate
- Management of initial BGS screening of prospective sites and decision on sites for further assessment
- Negotiation/agreements with local communities in respect of Engagement Packages and any early discussion of Community Benefit Packages
- Advising Ministers on outcomes of those discussions during development of local positions on Decisions to Participate;
- Advising Ministers on those Decisions to Participate to be carried forward to the next Phase of the Programme;
- Monitor, through the WMSG, the technical aspects of the geological disposal programme and consider the 'fit' with the rest of the programme. This includes NDA proposals for Phase 2 site assessment plans and the NDA SEA/SA/EIA assessment programme Communications planning.

Supporting work

8. The Implementation Board will commission any supporting work necessary to fulfil its role. Means of doing so will include the establishment of Working Groups, with appropriate make-up, or through the Waste Management Steering Group or the Radioactive Waste Policy Group (RWPG). Other Government departments, regulatory bodies, CoRWM or external organisations (eg the NuLeAF special interest group of the Local Government Association) may be invited to contribute to such supporting work. Needs for any wider public or stakeholder engagement will be decided as the work moves forward, bearing in mind other channels available for such engagement.

Interaction

9. The Implementation Board will interact with other Government and NDA planning groups:

    - The **Radioactive Waste Policy Group** (RWPG) - The Implementation Board will keep the RWPG informed of progress and will use RWPG as a sounding board for any issues that require a wider audience. The Implementation Board may request wider supporting work through RWPG.
    - the **Waste Management Steering Group** (WMSG) – The WMSG scrutinises all of the NDA's long term waste management planning and development programmes. It also considers, and makes proposals to ministers following advice from the Committee on Radioactive Waste Management (CoRWM) on the delivery of the NDA's long term waste management planning and delivery programmes. As such the WMSG will be concerned with much of the technical aspects of the geological disposal programme. The Implementation Board will monitor this work and ensure that there is a 'fit' with the wider programme.

10. The Implementation Board will also interact as necessary with other planning groups such as the **NDA Governance Group** and the **NDA Strategy Development and Delivery Group** (SDDG). The Implementation Board will ensure appropriate coordination of its own work with the work of these and any other relevant groups.

December 2008

Annex 3 – Terms of Reference of the Strategy Development and Delivery Group

Purpose

The Strategy Development and Delivery Group (SDDG) has been established to bring together representatives at a senior level from the NDA, Government Departments, Devolved Administrations and Regulators to address matters relating to the development and delivery of NDA Strategy.

The purpose of the Group is:

> *To address issues and monitor progress in the development and implementation of NDA Strategy, in light of existing and emerging Government and Regulatory policy, taking account of value for money and affordability.*

Membership

The SDDG comprises representatives from the following Government Departments and organisations:

- Department of Energy and Climate Change (DECC) - Chair
- Shareholder Executive
- Nuclear Decommissioning Authority
- Department for Environment Food and Rural Affairs
- Scottish Government
- Welsh Assembly Government
- Health and Safety Executive – NII
- Office for Civil Nuclear Security
- Environment Agency
- Scottish Environment Protection Agency
- Department for Transport
- HM Treasury
- Ministry of Defence

Terms of Reference

The SDDG will have the following terms of reference

- Identify strategy topics affecting NDA mission delivery.
- Agree and endorse NDA's approach to strategy development through the use of the Strategy Management System (SMS
- Identify issues relating to existing policy boundaries and highlight areas to be considered for possible change.
- Monitor NDA delivery against existing policy and strategy commitments.
- Identify strategic issues to be escalated for consideration by Government.
- Prioritise strategy development activities (preferably by reference to value framework).
- Identify/endorse Stakeholder Engagement strategies to fit the above.
- Identify risks and opportunities in strategy development and policy areas.
- Monitor and evaluate long term strategy delivery.

Ways of Working

The SDDG will act as an advisory body informing the development of NDA Strategy and reviewing progress against the delivery of strategic commitments.
This will achieved by:

- Reviewing papers and reports produced by the NDA
- Providing comments for consideration by NDA in approving particular strategies
- Taking account of the work carried out by bodies, such as the Radioactive Waste Policy Group (RWPG), that are working on issues relevant to the development of the NDA strategy.

Meetings

Meetings of the SDDG will be:-

- Chaired by DECC
- Held at approximately two-monthly intervals initially
- Organised by NDA, who will provide the secretariat
- Aligned with NDA Strategic Themes and Topics.

January 2009

Annex 4 – Terms of Reference of the Waste Management Steering Group

1.0 Introduction

1.1 On 25 October 2006 the UK Government and the devolved administrations (government) announced that in addition to its responsibilities for the safe and secure storage of civil legacy radioactive wastes, the Nuclear Decommissioning Authority (NDA) would be given additional responsibility for securing geological disposal of higher activity radioactive waste.

1.2 On 26 March 2007 government published a revised policy on the management of solid Low Level Radioactive Waste which also gives the NDA responsibilities. These new radioactive waste responsibilities will in due course be represented in a revised NDA Strategy.

1.3 NDA governance and monitoring arrangements have been reviewed and amended appropriately to reflect these changes

2.0 Rationale

2.1 The new work stream to cover the arrangements for the long term management of the UK's higher activity radioactive waste is sufficiently significant and different to the NDA's existing decommissioning and clean up activities under the Energy Act 2004 and the extension of their LLW responsibilities to warrant a separate Steering Group to oversee it.

2.2 Membership of this Steering Group will reflect the waste management responsibilities of the Department of Trade and Industry (DTI), Department for Environment, Food and Rural Affairs (Defra), Treasury (HMT), the Scottish Executive, the Welsh Assembly Government and the Department of Environment Northern Ireland (DoENI) and will not duplicate, the existing DTI and Scottish Executive Governance structure which reflects the NDA requirements of the Energy Act 2004.

2.3 Given the synergies with the arrangements for the long term management of low level radioactive waste and higher activity wastes, the terms of reference of the Steering Group extend to policy on all long-term radioactive waste management issues.

3.0 Objectives

3.1 The Waste Management Steering Group will scrutinise all of the NDA's long term waste management planning and development programmes, taking a holistic approach to radioactive waste management. This will include but not be restricted to implementation of Government policy on a repository for intermediate and high level wastes, spent fuel and such other materials as may ultimately be disposed of in such a facility.

3.2 The aim will be to provide assurance to Ministers as appropriate that Government policy on the long term management of radioactive waste is being implemented efficiently and effectively.

3.3 As part of its work, the Steering Group will consider advice from the Committee on Radioactive Waste Management (CoRWM) on the delivery of the NDA's long term waste management planning and delivery programmes

and may make proposals to Ministers on how Government, in conjunction with the NDA, should respond to such advice. The Chair and appropriate members of CoRWM may be invited to Waste Management Steering Group meetings, as necessary.

3.4 In the interest of good governance and transparency the Steering Group will ensure that notes of meetings and key decisions are provided directly to the DTI Secretariat of the NDA Governance team. Members of the Steering Group may be invited to attend the quarterly NDA Governance Committee meetings to represent the work of the steering group and its outputs.

4.0 Membership

4.1 The Waste Management Steering Group will consist of representatives from the following government departments and organisations. Membership will be subject to change as and when deemed necessary by the Group collectively. The Group will meet on a quarterly basis.

- DTI (Chair)
- Defra
- Treasury
- Scottish Executive
- Welsh Assembly Government
- Northern Ireland Assembly
- Nuclear Decommissioning Authority

October 2008