

DEVELOPING THE IMPLEMENTATION FRAMEWORK: INITIAL INVITATIONS AND LOCAL DECISION-MAKING ABOUT PARTICIPATION



Briefing Paper 4, 13 February 07

Introduction

The UK Government and devolved administrations have stated that they are “supportive of exploring how an approach based on voluntarism (that is, willingness to participate) .. could be made to work in practice”¹. They add that the details of exactly what this approach might entail need to be considered and developed in an implementation framework, which will be subject to consultation in the second half of 2007.

Government has also stated that it will: “.. develop the proposed framework in discussion with local government associations and their relevant sub-groups, for example NuLeAF, and also any individual local authority, or group of local authorities, which believe they have an interest at this stage ..”²

NuLeAF welcomes the Government’s commitment to exploring how an approach based on willingness to participate can be made to work in practice. This briefing paper has been prepared to inform discussion between Government and NuLeAF about such an approach, with particular emphasis on the process for issuing invitations and local decision-making about participation. It sets out NuLeAF’s current thinking, based on international experience³, discussion at a series of regional seminars⁴ and feedback from member authorities.

This briefing paper is the second in a series of four. The first, ‘Proposals for Siting Partnerships’, Briefing Paper 3, was submitted and discussed with Government in January 2007. Additional briefing papers are being prepared on:

- Funding Participation and Enhancing Community Well-Being (Briefing Paper 5)
- Siting, Planning Requirements and Rights of Withdrawal (Briefing Paper 6)

¹ UK Government and Devolved Administrations, ‘Response to the Report and Recommendations from the Committee of Radioactive Waste Management’, DEFRA, 25 October 2006, p3.

² UK Government and Devolved Administrations, as above, p3.

³ In particular A Bergmans and A Van Steenberge, ‘CARL Country Report: Belgium’ and M Elan and G Sundqvist, ‘CARL Country Report: Sweden’, both November 2005.

⁴ NuLeAF, ‘Managing the Nuclear Legacy – Issues for Local Government’, Regional Seminars Report, December 06.

The Scope of the Briefing Paper

NuLeAF's initial view on the issue and response to invitations to participate was outlined in a policy statement in June 2006⁵. This stated that:

Invitations to participate in a siting process for the development of a new facility should be sent to the local authorities in the areas of interest. On receipt of the invitations, the local authorities should initiate widespread discussions to identify community views about participation.

A decision to participate in the siting process should be based on an expressed willingness to do so on the part of directly affected communities. The decision whether to participate should be taken by the relevant local authority (unitary areas) or local authorities (two-tier areas), after engagement with local and neighbouring communities.

This briefing develops key aspects of this statement. In particular, it makes proposals about:

- who can decide whether to offer to participate
- steps required prior to the issue of invitations to participate
- the issuing of invitations to participate
- the process for responding to invitations
- the Government assessment of local decisions to participate.

In making proposals, the briefing focusses on what NuLeAF would wish to see in the implementation framework, and seeks to distinguish between what should be (a) required by policy and (b) a matter for local discretion.

Overview of Key Steps

This briefing covers the key steps that should follow decisions on the implementation framework through to the setting up of local Siting Partnerships.

These steps can be summarised as follows:

Steps prior to the issue of invitations to participate

- publication of the implementation framework and outline repository development plan, including a clear statement of Government decisions
- initial screening of the UK to rule out those areas that would clearly not be suitable for siting a geological repository
- raising awareness, developing understanding and encouraging exploratory discussions amongst local authorities in areas that have not been ruled out
- seeking initial discussions with local authorities that wish to put the issue of potential participation to their local communities
- local preparations for receipt of formal invitations.

⁵ NuLeAF, 'Implementing Policy on the Long Term Management of Radioactive Wastes', Policy Statement 1, June 06. This statement was informed by a study commissioned from Enviros, 'The Implementation of a National Radioactive Waste Management Programme in the UK: Implications for Local Communities and Local Authorities', June 06.

The issue of invitations to participate by Government to local authorities

Steps at a local level to respond to invitations

- organise engagement with local communities
- review the findings of local engagement
- hold discussions with Government about issues raised in local engagement
- review the Government's response
- assess the pros and cons of participation and
- reach a formal decision about participation.

Government assessment of local decisions to participate.

It is appropriate that Government (rather than the NDA as implementing organisation) makes the decisions about which offers to participate to accept. As such, Government should lead the process outlined in this briefing paper.

Who Can Decide Whether to Offer to Participate

It is proposed that the implementation framework should make it clear that the decision about whether to offer to participate in the siting process should be taken by the relevant local authority/ies after engagement with local communities, potential partners, and neighbouring authorities.

The basis for this position has been underlined by the recent White Paper⁶ on strong and prosperous communities. This highlights the importance of local government to local democracy:

Local government is a vital part of our democracy ... It provides leadership for local areas and communities; democratic accountability for a wide range of public services; and is key to effective partnership working at local level.

The leadership role and democratic accountability of local government means that it should be responsible for major *local* decisions within the siting process, including the initial decision about whether or not to offer to participate⁷.

For areas that cross local authority boundaries or have two tier local government, NuLeAF recommends that the implementation framework set out the Government's expectation that local negotiations will take place so that agreement is reached about how local authorities will take decisions about whether to participate in the siting process. Although this approach may be thought by some to suffer from not providing a definitive identity to 'community' at the outset of the siting process, it

⁶ DCLG, 'Strong and Prosperous Communities', Cm 6939-1, October 2006.

⁷ NuLeAF Briefing Paper 3 explains that by 'major local decisions', NuLeAF means those relating, for example, to: continued participation at key stages, or exercising a right of withdrawal: the local acceptability of proposals for funding participation and for community packages; the local acceptability of the sites within an area that are proposed for field investigations; and whether to accept an increased inventory of wastes in the repository should new nuclear power stations be built.

would enable democratically accountable bodies to develop an approach to decision-making appropriate to local circumstances.

NuLeAF is aware of discussion within CoRWM that 'self-defining communities' could express a willingness to participate in the siting process. Although CoRWM acknowledges the need to ensure democratic endorsement by the appropriate local authority/ies, in some of the Committee's discussion papers this is seen as a formality. For example, one paper states that local authorities "should not impede or defy the expression of community interests"⁸.

NuLeAF does not agree that democratic endorsement should be seen as a formality. Although the relevant local authority/ies should carefully consider the views of any constituent community that expressed an interest in participation, local authorities must reserve the right to take a different position based on careful review of the pros and cons, including the views of local and neighbouring communities.

Steps Required Prior to the Issue of Invitations to Participate

The implementation framework should set out the steps that will be taken prior to the issue of invitations to participate in the siting process.

NuLeAF recommends that these steps include:

- publication of the implementation framework and outline repository development plan, including a clear statement of Government decisions
- initial screening of the UK to rule out those areas that would clearly not be suitable for siting a geological repository
- raising awareness, developing understanding and encouraging exploratory discussions amongst local authorities in areas that have not been ruled out
- seeking initial discussions with local authorities that wish to put the issue of potential participation to their local communities
- local preparations for receipt of formal invitations.

Each step is considered in turn.

Clarity in Government Decision-Making

In order to assess whether or not to participate in the siting process, local authorities will wish to develop a clear understanding of Government policy, particularly relating to the implementation framework and outline repository development plan.

To develop this understanding, clarity will be required in the following areas of Government decision-making:

⁸ A Blowers and P Wilkinson, 'Identification of Communities', Document 2009, December 2006.

- institutional roles and decision-making responsibilities, including those of Government and the Devolved Administrations, the NDA, the repository contractor, the regulators and CoRWM 2⁹
- the key steps in the siting process, including integration with regulatory and planning requirements¹⁰
- the framework for Siting Partnerships, including mission, guiding principles, roles and funding arrangements¹¹
- arrangements for developing, agreeing and funding Participation and Benefits Packages¹²
- arrangements for developing and agreeing the repository concept, including the role of Siting Partnerships and local authorities¹³
- the inventory of radioactive materials to be emplaced in the geological repository and arrangements for reaching agreement about changes to that inventory¹⁴
- the outcome of the NDA's interim storage review, including provision for the possibility of delay or failure in development of the geological repository
- plans for the long-term management of radioactive materials that are not to be emplaced in the geological repository, including Low Level Wastes.

There should also be clarity about Government expectations for the steps that a local authority/ies should take to gauge the views of local communities, potential local partners and neighbouring authorities prior to reaching a decision that it wishes to participate in the siting process (see further discussion below).

Initial Screening of the UK

NuLeAF recommends that an initial screening of the UK should be undertaken nationally to rule out those areas that would not be suitable for siting a geological repository. The implementation framework should set out how this new screening process will be undertaken and by whom. The process should be undertaken in an open and transparent way, and the outcome should be published prior to the issue of invitations to participate in the siting process. This would ensure that local authorities outside potentially suitable areas are not unnecessarily involved in discussions about whether to participate¹⁵.

⁹ See, for example, the questions raised in 'MRWS – Institutional Arrangements', report to the NuLeAF Steering Group, 25 January 07.

¹⁰ See forthcoming NuLeAF Briefing Paper 6, 'Siting, Planning Requirements and Right of Withdrawal'.

¹¹ See NuLeAF Briefing Paper 3, 'Proposals for Siting Partnerships', January 2007.

¹² See forthcoming NuLeAF Briefing Paper 5, 'Funding Participation and Enhancing Community Well-Being'.

¹³ CoRWM members concluded that early backfilling and closure was preferable to an extended period of underground storage prior to closure. However this was not recommended to Government because some CoRWM members considered that the issue should be a matter for decision during the siting process, taking into account the views of potential host communities. In its response to CoRWM, Government states that it will consider what aspects of facility design could be determined by local communities when preparing the draft implementation framework.

¹⁴ NuLeAF supports CoRWM's view that the management of waste arising from a new build programme should be subject to a separate assessment process, and that there should be an additional step in the negotiation process with host communities to allow them to take a decision to accept or reject any additional waste.

¹⁵ Widespread support for this approach was expressed at the NuLeAF regional seminars, 'Managing the Nuclear Legacy – Issues for Local Government', December 2006, p4.

NuLeAF considers that it would be useful to distinguish between (a) initial screening criteria and (b) siting criteria for use in identifying potential sites within areas where decisions have been taken to participate.

NuLeAF recommends that the primary purpose of an initial screening process should be to seek to rule out those areas that contain geological formations that are clearly not suitable for repository development.

There is a range of other criteria that are probably most appropriately applied as siting criteria once local Siting Partnerships have been established. These include criteria related to:

- vulnerability of repository surface facilities to coastal erosion, sea level rises and flooding prior to repository closure¹⁶
- areas of special landscape, wildlife or cultural interest
- characteristics and scope for improvement of transport infrastructure
- land allocated for particular uses in policies and proposals in local development plans.

NuLeAF recommends that discussion of the distinction between criteria for (a) initial screening and (b) identification of potential sites take place during consultation on the draft implementation framework. That consultation should also consider Government's proposed process for undertaking initial screening.

Raising Awareness, Developing Understanding and Encouraging Exploratory Discussions

The implementation framework should make it clear that there will be a pre-invitation period of information provision, briefings and discussion. The purpose would be to raise awareness, develop understanding and encourage exploratory discussions about participation amongst local authorities in areas that have not been ruled out by the screening process.

During this period, Government should provide readily accessible public information, covering the nature of:

- radioactivity and radioactive waste
- radioactive waste management
- the basis for Government policy
- the need for long-term management facilities
- geological repositories (see below)
- potential environmental, socio-economic and other impacts of geological disposal
- the implementation framework and siting process
- the outcome of initial screening
- potential benefits to an area from hosting a geological repository.

¹⁶ The local application of such a criterion should be informed by authoritative national studies.

A broad description of geological repository concepts should cover:

- the likely size of a facility and land area needed
- broad site-specific requirements
- the expected time period for siting, construction and emplacement of wastes
- potential repository designs, including scope for the retrievability of wastes
- the expected inventory of wastes to be emplaced in a repository
- likely construction and operation workforce levels
- transport requirements, covering construction and waste emplacement.

Seeking Initial Discussions

The implementation framework should explain that this provision of information will be accompanied by a request that local authorities that wish to put the issue of potential participation to their local communities should contact Government. This would enable initial discussions to take place with Government about the process for responding to formal invitations, including arrangements for meeting the costs¹⁷.

It is recognised that potential interest might be generated by a local authority, or by local stakeholders. The implementation framework should make clear Government expectations that any potentially interested local stakeholders will discuss their views with their local authority/ies, because the local decision about whether to participate in the siting process will rest with local government. The support of the relevant local authority/ies is clearly necessary for a siting process based on the concepts of willingness to participate and partnership.

The opportunity to hold briefing sessions with potentially interested local authorities and potential partner organisations should be provided. The form of briefing session should be agreed following discussion between the relevant national bodies and local authorities.

Local Preparations for Receipt of Formal Invitations

The implementation framework should make it clear that the pre-invitation period will also include time for local discussion and negotiation between potentially interested local authorities in areas of possible repository development. The purpose would be to reach local agreement on: (a) the local process for decision-making about whether to participate (see earlier section); and (b) the local processes for community engagement and assessment about whether to participate (see below). Agreement about the local decision-making process is required in order to identify which local authority/ies will lead and/or undertake community engagement and assessment.

The Government should publish in advance the date when formal invitations to participate will be issued, and the target date for receipt of responses. There should

¹⁷ See forthcoming NuLeAF Briefing Paper 5, 'Funding Participation and Enhancing Community Well-Being'.

be sufficient time between publication of the results of initial screening and the issue of invitations to allow local authorities to:

- seek initial discussions with Government if they wish to put the issue of potential participation to their local communities;
- reach agreement about processes of local decision-making, engagement and assessment;
- plan for community engagement, assessment and decision-making; and
- prepare initial responses to media enquiries following issue of the invitations.

Issuing Invitations to Participate

The implementation framework should clarify that Government will issue formal invitations to participate in the siting process and which organisations will receive invitations.

NuLeAF recommends that invitations be sent to the Chief Executives of the local authorities in those parts of the UK that have not been ruled out as a result of the initial screening process¹⁸. As long as advance notice has been given to recipients, publicity should be given to the issue of invitations through the release of media statements by the body responsible for issuing the invitations. NuLeAF does not consider it necessary or appropriate to issue invitations to any other type of local body or individuals, including land-owners, local businesses or community groups.

The invitations should be accompanied by:

- a reminder of Government expectations for the steps that a local authority/ies should take to gauge the views of local communities, potential local partners and neighbouring authorities prior to reaching a decision to participate in the siting process (see next section);
- a guide to the information that is available to local authorities to help them assess whether to participate (see previous section);
- the offer of briefing sessions and meetings for potentially interested local authorities and partner organisations; and
- an explanation of the target date for receipt of responses to the invitation (see next section).

The Process for Responding to Invitations

The implementation framework should outline Government expectations for the steps that a local authority/ies should take on receipt of the invitation to participate in the siting process. It should also indicate the time that will be available for local authorities to reach a decision, and the arrangements for funding the steps that Government expects local authorities to take.

¹⁸ In two tier areas, invitations should be sent to county and district authorities because each tier has responsibilities relating to land use and waste management.

Programmes of Local Engagement

For local authorities that are potentially interested in participating, the expectation should be that they will organise a programme of engagement with local communities, potential partners, and neighbouring authorities, which will inform their assessment and decision about whether to participate. For local authorities that have no interest in participation, the expectation is that they will inform Government accordingly.

The implementation framework should clarify that the objectives of a programme of local engagement would be to identify:

- the level and strength of support for participation in the siting process and
- initial local views on the conditions for participation.

It is envisaged that the engagement programme would be organised by the interested local authority/ies, and that it would utilise published information about the implementation framework, outline repository development plan, broad description of the potential geological repository, and potential impacts and benefits.

The implementation framework should set out Government expectations that the local engagement programmes would include:

- engagement with the public, including deliberative events such as Citizens Panels to allow detailed discussion of the issues, and opportunities for widespread local feedback, for example, through exhibitions, questionnaires, opinion polling and web-based consultation;
- discussion with representatives from a wide range of local bodies, including potential partners in the local Siting Partnership¹⁹ that would be set up following Government endorsement of a local decision to participate; and
- discussion with neighbouring local authorities to ascertain the views of other potentially affected communities.

NuLeAF does not consider that Government should be prescriptive about the methods and techniques that local authorities use to meet these broad requirements for local engagement. It should also be noted that NuLeAF does not consider it appropriate for referenda to be organised to inform this stage of local authority decision-making about whether to participate in the siting process²⁰.

¹⁹ See, 'Proposals for Siting Partnerships', NuLeAF Briefing Paper 3, January 2007, for proposals about the nature, role and operation of Siting Partnerships.

²⁰ NuLeAF's model for local decision-making involves decisions being made by representative, accountable, democratic bodies, informed by the findings of participative initiatives, rather than by direct voting of the electorate in a referendum. NuLeAF notes that only non-binding referenda are possible in the UK, and that their infrequent use has been confined largely to constitutional issues. NuLeAF also notes that there is no international precedent for the use of referenda at this stage of a siting process for a geological repository. Where local referenda have been held, it has been much later in the siting process, after site specific feasibility studies have been undertaken.

The implementation framework should set out Government expectations that the findings from local engagement should play an important part in local authority decision-making about whether to participate in the siting process.

Initial local views on the conditions for participation may be such that the local authority/ies will wish to enter into discussion with Government about the extent to which, or way in which, those conditions could be fulfilled. The Government's response would be taken into account in local decision-making about participation, and could ultimately provide the basis for any formal agreements that underpin the establishment of Siting Partnerships or provision of a Benefits Package²¹.

Sufficient Time for Local Decision-Making

There should be sufficient time between the issue of formal invitations to participate and the target date for receipt of responses to allow local authorities to:

- organise local engagement
- review the findings of local engagement
- hold discussions with Government about fulfilling local conditions for participation
- review the Government's response
- assess the pros and cons of participation and
- reach a formal decision about participation.

International experience suggests that periods in excess of a year may be required to allow these steps to take place²².

Funding

The financial costs incurred by those local authorities that undertake the engagement and assessment steps above in order to reach well-informed decisions about whether to participate should be met nationally, regardless of whether the decision is positive or negative. This is because the costs arise from a national process to site a facility required by national policy decisions. NuLeAF considers that this funding should be provided as part of the Participation Package proposed by CoRWM (see forthcoming Briefing Paper 5).

The Government Assessment of Local Decisions to Participate

The implementation framework should outline how positive responses to the invitation to participate will be assessed.

NuLeAF anticipates that Government will take into account the following when deciding whether to accept an offer to participate in the siting process:

²¹ It is anticipated that substantive local discussions and reaching agreement about the content of a Benefits Package would take place following the establishment of a local Siting Partnership, see NuLeAF Briefing Paper 5.

²² In Sweden, the municipality of Oskarshamn reached a decision after 17 months of local deliberations and planned activities, see M Elan and G Sundqvist, 'CARL Country Report: Sweden', November 2005, p31.

- the extent to which a local decision/s to participate is based on local agreement about how local authorities in the area of interest will take decisions;
- the extent to which a local decision/s to participate is informed by effective engagement with local communities, potential partners, and neighbouring authorities;
- the extent to which local stakeholders are likely to be able to work in a spirit of partnership with national bodies and in a local Siting Partnership; and
- the acceptability of initial local views on the conditions for participation.

Government should seek to communicate its decisions to the relevant local authorities at the earliest opportunity.

Following this, it is anticipated that Siting Partnerships will be established in participating areas²³.

Summary and Overview

This Briefing Paper is intended to inform discussion between Government and NuLeAF about how an approach based on willingness to participate can be made to work in practice, with particular emphasis on the process for issuing invitations and local decision-making about participation.

The paper has made proposals about what should be included in the implementation framework on the following issues:

- who can decide whether to offer to participate (p3-4)
- steps required prior to the issue of invitations to participate (p4-8)
- issuing invitations to participate (p8)
- the process for responding to invitations (p8-10)
- the Government assessment of local decisions to participate (p10-11)

On who can decide whether to offer to participate, the paper proposes that the decision should be taken by the relevant local authority/ies after engagement with local communities, potential partners, and neighbouring authorities.

On steps required prior to issue of invitations, the paper proposes that the steps include:

- publication of the implementation framework and outline repository development plan, including a clear statement of Government decisions
- initial screening of the UK to rule out those areas that would clearly not be suitable for siting a geological repository
- raising awareness, developing understanding and encouraging exploratory discussions
- seeking initial discussions with local authorities that wish to put the issue of potential participation to their local communities

²³ See NuLeAF Briefing Paper 3, 'Proposals for Siting Partnerships', January 2007.

- local preparations for receipt of formal invitations.

On the issue of invitations, the paper proposes that invitations be sent to the Chief Executives of the local authorities in those parts of the UK that have not been ruled out as a result of the initial screening process. Publicity should accompany the issue of the invitations.

On the process for responding to invitations, the paper proposes that:

- local authorities interested in participating in the siting process should organise a programme of engagement with local communities, potential partners, and neighbouring authorities to identify the level and strength of support for participation in the siting process and initial local views on the conditions for participation;
- there should be sufficient time between the issue of invitations and the target date for receipt of responses to allow local engagement, review of the findings, discussion with Government about the conditions for participation, assessment of the pros and cons, and formal local authority decision-making about participation; and
- the costs incurred by local authorities that undertake the engagement and assessment steps should be met nationally, as part of the Participation Package proposed by CoRWM.

On the Government assessment of positive responses, the paper proposes that the implementation framework should outline how these will be assessed, including the factors that will be taken into account in reaching decisions about whether to accept an offer to participate in the siting process.