

ENERGY ACT 2004

EXPLANATORY NOTES

THE ACT

Part 1: the Civil Nuclear Industry

Summary and Background

Chapter 5: Miscellaneous Provisions Relating to Nuclear Industry

Nuclear Liability

24. [Section 76](#) gives the Secretary of State a power to amend UK legislation by order in respect of the UK's international obligations governing third party liability in the event of nuclear accidents (Paris and Brussels Conventions).

Nuclear Security

25. [Section 77](#) extends the scope of the enabling power in section 77 of the [Anti-terrorism, Crime and Security Act 2001 \(c.24\)](#) to make regulations to ensure the security of the UK's civil nuclear industry. The territorial application of this provision is the same as section 77 of the ATCS Act i.e. to the United Kingdom. Nuclear security is a reserved matter in Scotland, an excepted matter in Northern Ireland and is not a transferred matter in Wales.
26. Section 77 of the ATCS Act does not currently permit regulations to be made to ensure the security of equipment capable of being used to enrich uranium or software containing information relating to uranium enrichment (including uranium enrichment carried out overseas) held outside nuclear premises, and the security of this equipment and software when they are being held, transported or transmitted. Uranium enrichment technology is used in the civil nuclear industry and has been sought by States seeking to develop nuclear weapons.
27. Section 77 of the ATCS Act does not currently permit regulations to be made to ensure the security of sensitive nuclear information being held, transported and transferred by carriers, where such carriers are not directly involved in activities on or in relation to nuclear sites or other nuclear premises.
28. Section 77 of the ATCS Act does not currently permit regulations to be made to ensure the security of holdings of sensitive nuclear information in the United Kingdom, where (a) such information is held in relation to uranium enrichment activities outside the United Kingdom, and the transport and transmission of such information; and (b) the person holding the information is not involved in activities on or in relation to nuclear sites or other nuclear premises in the United Kingdom.

Authorisation of Government expenditure

29. As part of the restructuring of British Energy ("BE"), the Government has agreed to enter into a series of principal agreements with the company. The agreements detail

the arrangements by which British Energy and HMG will contribute to the costs of discharging BE's nuclear liabilities going forward.

30. The Secretary of State intends to give effect to most of his obligations under the agreements using his powers under Schedule 12 to the Electricity Act 1989, as amended by the [Electricity \(Miscellaneous Provisions\) Act 2003 \(c.9\)](#) ("EMPA"), and as to be amended by section 34 of the Act. He will also have available additional, free-standing powers conferred by EMPA.
31. [Section 79](#) gives the Secretary of State explicit statutory authority to incur expenditure as a result of options included in the documents. The provision is general, but goes further than the free-standing provisions in EMPA by authorising spending on two elements of the agreements not currently covered by legislation:
 - in circumstances where British Energy has sold one of its nuclear power stations to a third party, the acquisition of the power station from that third party and subsequently operating it. This would follow the exercise of an option on the part of HMG to acquire the station for this purpose; and
 - the acquisition of British Energy's shareholding in Nirex, and to incur expenditure on any consequences of such an acquisition.
32. As a matter of law, the Appropriation Acts give the Secretary of State the authority to spend money on the exercise of his functions, but as a matter of practice, the agreement with Parliament known as the Baldwin agreement and the guidance set out by the Treasury in Government Accounting have the effect that new functions involving significant and continuing expenditure should normally be identified by an Act other than the Appropriation Act.

Option to purchase BE's nuclear stations from third party

33. As part of the restructuring documentation, British Energy will grant the Secretary of State an option to acquire any of its power stations. The option may be exercised in relation to any of the nuclear power stations currently owned by British Energy. The option can be exercised at a time when British Energy, or a third party purchaser, chooses to shut them, and the reason for exercising the option would be either to prolong the operation of the station or stations where it is economically advantageous to do so, or to decommission them within the private sector.
34. The [Electricity \(Miscellaneous Provisions\) Act 2003 \(c.9\)](#) provides specific statutory authority for the Secretary of State to spend money on the acquisition of assets of British Energy and on carrying on an undertaking using such assets. However, it does not authorise expenditure on acquiring or running assets which at the time they are acquired no longer belong to a BE company. This section will provide such authority.

Option for the Secretary of State to acquire BE's shares in Nirex

35. As part of the restructuring documentation British Energy will grant an option for the Secretary of State to acquire British Energy's shares in Nirex. Nirex is a company formed jointly by British Energy, BNFL and UKAEA to manage the UK's intermediate level radioactive waste. If he exercises the option, the Secretary of State will acquire the company's shares in Nirex, its rights and benefits under loans made by the company to Nirex and British Energy's liabilities, as a Nirex shareholder, under its research and advisory contracts with Nirex.
36. This section again gives the Secretary of State specific statutory authority to incur expenditure in connection with the acquisition of any securities in Nirex or in consequence of such an acquisition.