

ENERGY ACT 2004

EXPLANATORY NOTES

SCHEDULES

Schedule 1: The Nuclear Decommissioning Authority

472. This Schedule contains detailed provisions relating to section 2.
473. [Part 1](#) of Schedule 1 contains detailed provisions dealing with
- the terms of appointment, remuneration and pensions of the Chairman and other non-executive members and the circumstances in which the Secretary of State may remove them from office;
 - the terms and conditions of the Chief Executive and other executive members; and
 - the staffing of the NDA.
474. Although paragraph 1(3) provides that a non-executive member may be reappointed on any number of occasions, this is to allow for exceptional cases. The Government intends to follow OCPA rules which provide that, save in exceptional cases, a person may only be reappointed on one occasion for a total period of service of ten years.
475. [Paragraph 4](#) sets out the constitution of the NDA during the “initial period” which is defined in paragraph 4(6). Paragraph 4(1) provides that, for the initial period, the NDA is to consist of just those members who have been appointed. Paragraph 4(2) requires the chairman to appoint a chief executive first. Paragraph 4(3) provides that after the appointment of the chief executive subsequent members may be appointed. Paragraph 4(4) provides that the quorum rules in paragraph 9(1) do not apply in respect of decisions for as long as the chairman is the only non-executive member. Paragraph 4(5) requires the chairman to keep proper records of everything that he does while he is the only non-executive member. Paragraph 4(6) provides that the initial period begins from the time the NDA is established until either seven members have been appointed or at the time specified by the Secretary of State to the NDA, whichever occurs first. The provisions on the NDA’s constitution during the initial period are designed to facilitate the start up of the NDA as soon as is practicable in order for the NDA to be ready for its first year of operation, expected to be on 1 April 2005.
476. [Part 2](#) of the Schedule deals with the proceedings of the NDA. Paragraph 7 gives it the power to establish committees for the carrying out of its functions and for advisory purposes - subject, in every case, to a committee including at least one person who is a member of the NDA. Advisory committees may include persons who are neither members of the NDA nor members of its staff provided they are not authorised to do anything on the NDA’s behalf. All other committees must be made up of members and staff of the NDA. Paragraphs 8 to 13 set out detailed requirements regarding the delegation of functions; quorums for Board meetings; rules of procedure; the recording of proceedings; and the authentication of NDA decisions.
477. Part 3 of the Schedule provides for the extension to the NDA of relevant provisions of the Public Records Act 1958, the Parliamentary Commissioner Act 1967, the House of

Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975 and the Freedom of Information Act 2000.

Schedule 2: Procedural requirements applicable to NDA's Strategy

478. [Schedule 2](#) sets out various procedural arrangements for preparing and revising the NDA's strategy, required under section 11.
479. As regards timing, paragraph 2 requires the NDA to prepare its first strategy within twelve months of section 11 coming into force and, under paragraph 3, thereafter to review its strategy at least every five years. Paragraph 3(5), however, leaves it open to the NDA to revise its strategy at any time and, in the NDA's early years at least, the expectation is that it will amend and adjust it on a more frequent basis.
480. The initial strategy, and any subsequent revision of it which significantly alters the NDA's priorities as between different installations or sites, changes its objectives for an installation or site or significantly increases the cost of giving effect to its strategy, are subject to approval by the Secretary of State (paragraph 5). As a minimum, the strategy must also be submitted for re-approval every five years (paragraph 3). This reflects the fact that, whilst the NDA is intended to have substantial management freedom and to operate at arms length from Government, Ministers must exercise strategic control over its activities and be accountable for its actions. Approval of the strategy and the annual work plan (section 13) is the means by which this strategic control is to be exercised.
481. [Paragraph 4](#) of the Schedule expressly requires the NDA, in preparing, revising or reviewing its strategy to consult the nuclear regulators; relevant local authorities; those persons with control of installations or sites for which the NDA is responsible, their employees and their Trade Union representatives; and any bodies such as site liaison committees which have been, or may be, established for the purpose of consulting local stakeholders about activities carried on at, or in connection with, a relevant installation or site. Whilst each of these must be consulted, there is no constraint on the NDA consulting other stakeholder groups or the public at large. Equally, the Schedule does not prescribe the basis on which consultation should take place – the Government's view is that it should be left open to the NDA and stakeholder groups to develop and, as necessary subsequently change arrangements which best serve their purposes. The NDA is required to have regard to all representations made to it (paragraph 4(3)). Paragraph 4(5) provides that consultation can take place in relation to a designated installation, site or facility that has been designated by a direction which has not yet come into force (see the notes for section 5(1) for more on the timing of designation directions). This takes account of the fact that when it is first established the NDA will need to start work on preparing its annual plan in readiness for its first year of operation, expected to be 1 April 2005. The designations will come into force on that date.
482. [Paragraph 5\(2\)](#) of the Schedule, read in conjunction with section 12(2)(f), requires the NDA, when submitting its strategy for approval or re-approval, to provide a report on the representations made to it by stakeholders and to explain the reasons for the recommendations contained in the strategy. Paragraph 5(3) requires the Secretary of State to consult the Scottish Ministers before approving anything relating to responsibilities in section 6(3). In addition, paragraph 5(4) requires that before approving the strategy, the Secretary of State must consult Scottish Ministers on any proposals for sites in England and Wales relating to the non-processing treatment, storage or disposal of hazardous material that would have an effect on the management of hazardous material in Scotland, or the availability of a site in England and Wales for the treatment, storage or disposal of hazardous material located in Scotland. Paragraphs 5(6) to 5(8) deal with the situation where, for whatever reason, the Secretary of State decides not to approve the strategy as recommended and, in particular, give him the power to make directions requiring the NDA to modify the strategy in respect of any of the matters specified in paragraph 5(7). The rationale for this is that those matters are so important that they must be subject to strategic control by Ministers and that,

in the event of a fundamental disagreement, their views should prevail. However, as paragraph 5(10) makes clear, in respect of other matters there will still be an onus on the NDA to produce a strategy that Ministers will approve. The NDA and the regulators must be consulted before any direction is given (paragraph 5(9)).

483. [Paragraph 6](#) of the Schedule requires the NDA to publish its strategy, as approved, in the manner which, in its opinion, is most appropriate for bringing it to the attention of stakeholders and, on the same basis, to publish a report on the representations made to it by stakeholders on what the strategy should contain. In both cases, however, publication is subject to exclusion of anything which the Secretary of State considers to be against the interests of national security or which the NDA considers would seriously and prejudicially affect the interest of an individual or particular body of persons. In determining whether to exclude any information from publication the NDA must have regard to whether the harm caused by publication is likely to outweigh the benefits.

Schedule 3: Procedural requirements applicable to NDA's annual plans

484. This Schedule is described in the notes to section 13.

Schedule 4: Supplemental taxation provisions for exempt activities

485. Under section 27, trading income from exempt activities of the NDA or a relevant site licensee is not taxed, nor can the exempt activities give rise to tax losses. Subsection (2) of that section gives effect to this Schedule, which makes further, detailed provisions for the exemption.
486. [Schedule 4](#) comprises supplemental provisions concerning the exempt activities which provide machinery to enable the exemption to work more easily in practice and safeguards to ensure that no unintended tax advantage arises from the tax exemption.
487. The aim of paragraphs 1 and 2 is to ensure that income and expenditure associated with exempt activities is kept separate for tax purposes from taxable income and expenditure and to clarify the treatment of accounting periods when companies begin or cease to carry on exempt activities. Paragraph 1 ensures that exempt activities are treated as a separate trade from non-exempt activities. Paragraph 2 ensures that accounting periods end for tax purposes when any entity becomes an NDA company, is no longer an NDA company or begins or ceases to carry on exempt activities.
488. [Paragraphs 3 and 4](#) are also concerned with ensuring expenditure and allowances associated with exempt activities do not qualify to be tax deductible. Paragraph 4 prevents capital allowances being claimed by the NDA or an NDA company in respect of assets used in exempt activities through finance leasing the assets to the NDA or an NDA company.
489. [Paragraph 5](#) ensures that where an industrial building has an identifiable part that is used by the NDA or an NDA company for exempt activities and part for a taxable trade, then no industrial buildings allowances may be claimed in computing the profits of the taxable trade in respect of the part of the building used for exempt activities.
490. [Paragraph 6](#) ensures that the purchaser does not obtain a tax benefit from the fact that the NDA or NDA company has not been able to claim industrial buildings allowances by reason of the fact it has been engaged in exempt activities. Accordingly, where an industrial building is disposed of by the NDA or an NDA company to a company which is neither the NDA nor an NDA company, the amount of qualifying expenditure in respect of which industrial allowances may be claimed by the purchaser is calculated as if the activities that the NDA or the NDA company had been engaged in were not exempt activities and all writing down allowances had been claimed by the NDA or the NDA company on the basis that the activities were not exempt activities.

Schedule 5: Supplementary provisions about nuclear transfer schemes

491. This Schedule is described in the notes to section 38.

Schedule 6: Structure etc of the transferee companies

492. This Schedule is described in the notes to section 39.

Schedule 7: Finance and accounts of transferee companies

493. This Schedule is described in the notes to section 45.

Schedule 8: Pensions

494. This Schedule is given effect by section 46 and is divided into five parts:

- Part 1 sets out definitions including the pension schemes to which it applies.
- Part 2 enables the NDA to modify, by direction, a relevant pension scheme (for example the BNFL group scheme) firstly to extend the groups of persons who can participate in the scheme to include employees and directors or other officers of an employer which has received employees by nuclear transfer scheme; and secondly to give NDA a role in administering the scheme. Modifications can only be made following consultation with the scheme trustees and employees' representatives. The NDA is not permitted to modify the schemes in such a way as to deprive members of their accrued rights. It is not the intention to use these statutory powers to alter the pensions of existing members of the BNFL Group scheme from a final salary scheme to a defined contribution scheme.
- Part 3 deals with the application of the UKAEA scheme to the employees who are transferred to a 'relevant public sector employer'. 'Relevant public sector employer' is defined in paragraph 1 of the Schedule to include UKAEA, NDA, or a 'publicly controlled company'. 'Publicly controlled company' is in turn defined in section 50, and in general terms covers companies in which the majority of the voting rights are held by a public sector body. The effect of Part 3 is that where employees of BNFL and UKAEA are transferred to a relevant public sector employer, for NDA purposes, they will be entitled to retain their membership of the scheme or their eligibility or potential eligibility to become members. In relation to a relevant public sector employer that is a publicly controlled company, its employees cease to be entitled to membership of the UKAEA scheme when such a company ceases to be publicly controlled. Paragraphs 5 to 7 give the Secretary of State powers to direct the UKAEA to amend the rules of the scheme. Paragraph 8 provides for payments to the UKAEA by relevant public sector employers in order to meet their obligations as participating employers under the rules of the scheme. In the event of the parties not being able to reach agreement, the Secretary of State may determine the payments involved.
- Part 4 deals with the position where employees are transferred for NDA purposes, whether by nuclear transfer scheme or otherwise, and they are required to leave their current pension scheme by reason of that transfer. Part 4 applies both to transfers from the public to private sector, and to transfers within the private sector, for example from one management contractor to another.

495. **Paragraph 9** sets out in detail the circumstances in which employees are protected upon transfers for NDA purposes. It includes transitional provision to ensure that employees are protected during the initial stages of restructuring. It does this by disapplying the employment condition for the first transfer of employees (as many will not have had the chance to work on NDA related matters for six months), and by ensuring that employees are protected if they are transferred for a second or third time within a period of six months from their first transfer. Paragraph 9(3)(b) also makes it clear that employees' pensions are protected under Schedule 8 when their employment is not transferred but

ownership of their employer is transferred (for example when a new site management contractor takes ownership of a site licensee company).

496. **Paragraph 10** relates to situations arising from the making of transfer schemes. Paragraph 11 relates to transfers made by other arrangements. In each case the effect is that the employees concerned are entitled to membership of an alternative scheme offering benefits which, taking into account other benefits offered by the new employer, are no less favourable than the provisions of the scheme of which the employees were originally members. In other words, if an employee is transferred on a number of occasions, and becomes a member of a number of different pension schemes as a result of those transfers, the test to be applied upon each transfer is whether the new pension scheme being offered is no less favourable (overall) than the original pension scheme of which he was a member. Where employees are transferred by virtue of a transfer scheme the Schedule places a duty on the Secretary of State, to satisfy himself (before the transfer scheme comes into force) that the new pension scheme (taken as a whole) meets this requirement. In other cases, the same duty applies to the NDA. In all cases prior consultation is required. In practice, we anticipate that the alternative pension scheme will be that established by the NDA under its powers in section 8(1)(a) ('NDA pension scheme').
497. **Paragraph 12** enables the NDA and Secretary of State to modify the NDA pension scheme in order to meet the requirements set out in previous paragraphs of Part 4. Before the Secretary of State makes a modification he must consult the NDA and employees' representatives. Before the NDA makes a modification it must consult employees' representatives and obtain the consent of the Secretary of State.
498. **Part 5** enables the UKAEA pension scheme to apply to employees of designated BNFL companies, while such companies are publicly controlled.

Schedule 9: Taxation provisions relating to nuclear transfer schemes

499. **Schedule 9**, given effect by section 47, establishes the tax provisions that will apply to transfers by way of a nuclear transfer scheme. These provisions supplement existing tax legislation. The Act provides flexibility for transfer schemes to take a variety of possible forms and Schedule 9 has been drawn up to cater for this flexibility. The main intention of Schedule 9 is to ensure that tax charges and reliefs on either party are not triggered as a result of a nuclear transfer scheme and that such schemes should, as far as possible, be tax neutral for both parties.
500. **Schedule 9** mainly deals with transfers made under nuclear transfer schemes to the NDA, an NDA company and from BNFL or from the UK Atomic Energy Authority to publicly owned companies that are not subsidiaries of the NDA. However, there are other tax provisions dealing with the transfer of the Nuclear Liabilities Investment Portfolio, stamp duty and miscellaneous supplemental provisions.

Part 1 – Transfers to the NDA or a subsidiary of the NDA

501. **Part 1** sets out the tax effects of transfers to the NDA or subsidiaries of the NDA under nuclear transfer schemes, under section 39. Such nuclear transfer schemes may be effected to bring companies involved in or assets used for decommissioning and other activities under the NDA's control, or to transfer a site licensee company to the NDA at the end of a management contract.
502. **Paragraph 1** extinguishes certain trading losses brought forward when companies become NDA companies in consequence of a section 39 scheme. This paragraph only extinguishes losses if they have arisen from trading activities that would have been exempt if carried on by the NDA. This ensures that no brought forward trading losses relating to exempt activities may subsequently be used by private companies. The purpose of this section is similar to that of section 27(1) which prevents current tax trading losses from arising from exempt activities.

503. [Paragraph 1\(2\)](#) extinguishes such losses at the time a company becomes an NDA company in accordance with such a nuclear transfer scheme. Paragraph 1(3) allows any reasonable apportionment method to be used to allocate income and expenditure and hence to allocate tax trading losses to exempt and non-exempt activities.
504. [Paragraph 2](#) has the same intention as paragraph 1 but applies where a trade is transferred to the NDA or an NDA company, as a consequence of a section 39 scheme, to extinguish brought forward trading losses associated with the activities transferred, if such activities would have been exempt if they had been carried on by the NDA.
505. [Paragraph 2\(2\)](#) extinguishes the losses at the time when a trade or part of a trade is transferred to the NDA or an NDA company in accordance with such a nuclear transfer scheme.
506. [Paragraph 2\(3\)](#) allows the NDA or an NDA company which begins to carry on a trade under such a nuclear transfer scheme access to brought forward trading losses arising from non-exempt trading activities which are transferred.
507. [Paragraph 3](#) explains that transfers of chargeable assets to the NDA or an NDA subsidiary under a nuclear transfer scheme under section 39 are to be tax neutral by treating the disposal such that neither a gain nor a loss arises for tax purposes. For the transferee, chargeable assets are deemed to be acquired at values that give neither a gain nor a loss to the transferor.
508. [Paragraph 4](#) excludes acquisition and enhancement costs from the calculation of the chargeable gain or capital loss arising on the disposal of certain chargeable assets by the NDA or an NDA subsidiary, such that the asset has a nil base cost for disposal purposes. This computational provision is to reduce the disproportionate effort and cost that the NDA would otherwise incur. Without this provision it would be necessary to maintain registers and associated base costs of publicly owned assets through potentially numerous nuclear transfer schemes and over lengthy periods of time.
509. [Paragraph 4\(1\)](#) limits the assets to which this restriction applies to those acquired under nuclear transfer schemes in accordance with section 39 or 40, which were not part of the Nuclear Liabilities Investment Portfolio. Paragraph 4(2) specifically denies relief for these acquisition and enhancement costs.
510. [Paragraph 4\(3\)](#) deals with subsequent transfers where neither a gain nor loss accrues to the NDA or its subsidiary. Paragraph 4(4) provides that paragraph 29 takes precedence so that in relation to the transfer of shares in relevant site licensee companies, the shares are treated as having been disposed of at a value that gives neither gain nor loss to the transferor.
511. The aim of paragraph 5 is to prevent tax liabilities arising in companies as a result of historic fixed asset transfers, where such liabilities arise only as a result of the implementation of nuclear transfer schemes under section 39.
512. [Paragraph 5](#) prevents a degrouping charge (as defined by the [Taxation of Chargeable Gains Act 1992 \(c.12\)](#) (the “1992 Act”)) from arising in a company transferred to the NDA or an NDA company under such a nuclear transfer scheme. Paragraph 5(2) prevents the 1992 Act from deeming the transferred company to have made a chargeable disposal of certain assets on leaving the old group. Paragraph 5(3) ensures that the deemed disposal and reacquisition is reinstated when the transferred company leaves the new group, as defined in the subparagraph.
513. [Paragraph 6](#) provides that a transfer of debts to the NDA or a subsidiary of the NDA under a section 39 nuclear transfer scheme will not give rise to a tax charge in the transferor, to the extent that the debts transferred are treated as chargeable assets. This is consistent with the general aim of ensuring tax neutrality for transfer schemes.

514. [Paragraph 6\(2\)](#) deems the NDA to have always been the creditor in respect of the debt and therefore the effect is that no disposal takes place for the purposes of the 1992 Act.
515. [Paragraph 7](#) sets out the capital allowances position of both transferor and transferee where, in consequence of a section 39 scheme, assets are transferred to the NDA or subsidiary of the NDA with a whole trade. The aim of the paragraph is to ensure continuity of treatment such that no allowances or charges arise in the transferor and the transferee is treated as having always owned the relevant assets.
516. [Paragraph 7\(1\)](#) restricts the application of paragraph 7 to transfers of trades from companies which are not subsidiaries of the NDA to the NDA or its subsidiaries, such transfers taking place under such a nuclear transfer scheme.
517. [Paragraph 7\(2\)](#) ensures that allowances are available to the NDA or its subsidiary as if the transferor company had continued to carry on that trade. Paragraph 7(3) confirms that no balancing adjustments or recognition of disposal proceeds arise to a company that transfers its trade to the NDA. Paragraph 7(4) calculates the amount of allowances available to the NDA or its subsidiary on the basis that the NDA or its subsidiary had been carrying on the trade for the same time and on the same basis as the transferor. The transferor is deemed to have transferred its assets associated with the trade at the value which ensures no balancing allowance or charge arises in that company.
518. The intention behind paragraph 8 is similar to that behind paragraph 7 in that it provides clarity as to the capital allowances position of both transferor and transferee where assets are transferred with a trade by a company which is not a subsidiary of the NDA to the NDA or one of its subsidiaries. The difference between paragraphs 7 and 8 is that paragraph 8 applies where either the transferee already carries on a trade (paragraph 8(1)) or only part of a trade is transferred (paragraph 8(2)) or both.
519. Each of paragraphs 8(1) and 8(2) provide that the provisions of paragraph 7 should apply to the trade transferred and that the trade transferred should be treated as a separate trade from that previously engaged in by the transferee and transferor respectively.
520. [Paragraph 8\(3\)](#) allows a reasonable apportionment of income, expenditure, assets and liabilities to the separate trades as necessary for the purposes of calculating the capital allowances position of the assets associated with the trade transferred.
521. [Paragraph 9](#) details the capital allowances position where assets are transferred other than as part of a trade.
522. Where plant and machinery is transferred in accordance with a nuclear transfer scheme but the transfer does not form part of a trade, such that paragraph 7 does not apply, the assets are transferred to the NDA or a subsidiary of the NDA at their book value for accounts purposes.
523. [Paragraph 10](#) provides that the legislation detailing the capital allowances position in respect of transfers between connected persons is not to apply to transfers made in accordance with nuclear transfer schemes within section 39 to the NDA or a subsidiary of the NDA.
524. [Paragraph 11](#) explains how transfers of loan relationships should be treated in the event that the NDA or a subsidiary of the NDA replaces a person as party to a loan relationship in accordance with a nuclear transfer scheme under section 39. The aim is that such transfers should be treated as tax neutral such that no tax benefit is obtained by either the transferor or the transferee as a result of the transfer.
525. Accordingly, paragraph 11(2) applies the loan relationship rules of Finance Act 1996 to the loan relationship, and treats the transferee as if it had been a party to the loan relationship since the time the transferor had been party to it.
526. [Paragraph 12](#) explains how transfers of derivative contracts should be treated in the event that the NDA or a subsidiary of the NDA replaces a person as party to a

derivative contract in accordance with a nuclear transfer scheme under section 39. As with paragraph 11, the aim is that such transfers should be treated as tax neutral such that no undue tax benefit is obtained by either the transferor or the transferee as a result of the transfer.

527. Accordingly, paragraph 12(2) applies the derivative contract rules of Schedule 26 to the Finance Act 2002 to the derivative contract, and treats the transferee as if it had been a party to the derivative contract since the time the transferor had been party to it.
528. [Paragraph 13](#) explains how the transfers of intangible assets are to be treated where transfers are made to the NDA or a subsidiary of the NDA under a section 39 nuclear transfer scheme. As with paragraphs 11 and 12 the aim is that such transfers should be treated as tax neutral with no undue tax benefit being obtained by the transferor or transferee.
529. [Paragraph 13\(1\)](#) explains that the transfer of a ‘chargeable intangible asset’ should be treated as a tax neutral transfer for the purposes of Schedule 29 to the Finance Act 2002. [Paragraph 13\(2\)](#) explains that where an intangible asset is transferred that was not a chargeable intangible asset in the hands of the transferor but falls to be treated as such by the NDA or its subsidiary after the transfer, then the acquisition value for tax purposes for the NDA is the same amount as the disposal consideration of the transferor under paragraph 3(2) of the Schedule, that is an amount causing neither a gain nor a loss to arise on the transferor.
530. [Paragraph 14](#) defers a degrouping charge that would otherwise arise as a result of the implementation of a transfer to the NDA or a subsidiary of the NDA under a section 39 nuclear transfer scheme causing a company to leave its group. The degrouping charge deferred is one which would have arisen in respect of intangible fixed assets that have previously been transferred between group companies. The aim of this paragraph is to prevent tax liabilities arising in companies due to historic transactions where such liabilities arise only as a result of the implementation of transfer schemes.
531. [Paragraph 14\(1\)](#) describes which degrouping charges are covered by the paragraph. [Paragraph 14\(2\)](#) defers the application of the degrouping legislation of paragraph 58 of Schedule 29 to the Finance Act 2002 and [paragraph 14\(3\)](#) applies this degrouping legislation on the first subsequent occasion that the degrouped company ceased to be a member of its new group of companies, ‘new group’ being defined in the subparagraph.
532. [Paragraph 15](#) ensures that where a trade or part of a trade is transferred from a BNFL company (or subsidiary of BNFL) to the NDA (or a subsidiary of the NDA) under section 39 there is tax neutrality and the transferee effectively stands in the shoes of the transferor for tax purposes. This will ensure that there will be no tax consequences where the transferor writes off sums in its books as part of the detailed transfer arrangements. The rule will apply to trading items, such as trade debtors or sums received in advance for the supply of goods or services by the transferor, or trade creditors and sums paid in advance for the provision of services to the company.

Part 2 – Other Transfers relating to BNFL or the UKAEA etc

533. [Part 2](#) of Schedule 9 applies to transfers of shares, property, rights and liabilities of BNFL, UKAEA and their wholly owned subsidiaries. However, unlike Part 1, Part 2 only applies to transfers made in accordance with a nuclear transfer scheme, which must always fall within section 39, where the transferee is a publicly owned company which is not a subsidiary of the NDA, or the UKAEA. The provisions in Part 2 are in many cases in very similar terms to those in Part 1.
534. [Paragraph 16](#) identifies the transfers which may fall within Part 2, as described above.
535. [Paragraph 17](#) deals with the application of section 343 of the Income and Corporation Taxes Act 1988 (the “Taxes Act”) to transfers where the conditions in section 343(1)

- surrounding ownership of the transferor and transferee are satisfied in respect of such a transfer.
536. The paragraph states that section 343(4) shall not apply in respect of such transfers. This means that the general restriction of the trading losses which may be transferred by reference to the excess of relevant liabilities over relevant assets is specifically not applied to such transfers.
537. The application of section 343(4) of the Taxes Act has been removed as it is not yet determined what transfers will be made under nuclear transfer schemes. It is therefore possible that nuclear provisions relating to a different trade could remain in the transferor company when a nuclear transfer scheme is enacted. This may ordinarily cause a loss restriction under section 343(4) of the Taxes Act. It is the intention of Government that the possible restriction of tax losses should not be considered in determining the methods available to effect the transfer and that tax losses correctly attaching to a trade should not be lost solely because of the arrangements of a transfer scheme.
538. [Paragraph 18](#) explains that transfers of chargeable assets within Part 2 of Schedule 9 are to be tax neutral for the transferor by treating the disposal as one where neither a gain nor a loss arises for tax purposes. This tax neutral disposal value is the base cost for acquisition purposes for the transferee.
539. The aim of this paragraph is to prevent tax liabilities arising in companies as a result of historic fixed asset transfers, where such liabilities arise only as a result of the implementation of nuclear transfer schemes.
540. [Paragraph 19](#) prevents a degrouping charge as defined by the 1992 Act from arising in a company under a nuclear transfer scheme to which Part 2 of this Schedule applies. Paragraph 19(2) prevents the 1992 Act from deeming the transferred company to have made a chargeable disposal of certain assets on leaving the old group. Paragraph 19(3) ensures that the deemed disposal and reacquisition is reinstated when the transferred company leaves the new group, 'new group' being defined in the subparagraph.
541. [Paragraph 20](#) provides that a transfer of debts under a nuclear transfer scheme to which Part 2 of this Schedule applies will not give rise to a tax charge in the transferor, to the extent that the debts transferred are treated as chargeable assets. This is consistent with the general aim of ensuring tax neutrality for transfer schemes.
542. [Paragraph 20\(2\)](#) deems the transferee to have always been the creditor in respect of the debt and therefore the effect is that no disposal takes place for the purposes of the 1992 Act.
543. [Paragraph 21](#) details the capital allowances position where assets are transferred other than as part of a trade.
544. Where plant and machinery is transferred in accordance with a nuclear transfer scheme but the transfer does not form part of a trade, assets will be transferred at their book value. This treatment mirrors the treatment of assets transferred to the NDA, as set out in paragraph 9.
545. [Paragraph 22](#) provides that the legislation detailing the capital allowances position in respect of transfers between connected persons is not to apply to transfers made in accordance with nuclear transfer schemes within Part 2.
546. [Paragraph 23](#) explains how transfers of loan relationships should be treated in the event that a transferee replaces a person as party to a loan relationship in accordance with a transfer scheme, where Part 2 of this Schedule applies. The aim of the paragraph is that such transfers should be treated as tax neutral so that no tax benefit is obtained by either the transferor or the transferee as a result of the transfer.

547. Accordingly, paragraph 23(2) applies the loan relationship rules of Finance Act 1996 to the loan relationship, and treats the transferee as if it had been a party to the loan relationship since the time the transferor had been party to it.
548. [Paragraph 24](#) explains how transfers of derivative contracts should be treated in the event that a transferee replaces a person as party to a derivative contract in accordance with a nuclear transfer scheme to which Part 2 of this Schedule applies. As with paragraph 23, the aim is that such transfers should be treated as tax neutral such that no undue tax benefit is obtained by either the transferor or the transferee as a result of the transfer.
549. Accordingly, paragraph 24(2) applies the derivative contract rules of Schedule 26 to the Finance Act 2002 to the derivative contract, and treats the transferee as if it had been a party to the derivative contract since the time the transferor had been party to it.
550. [Paragraph 25](#) explains how the transfers of intangible assets are to be treated where a transfer is made under a nuclear transfer scheme to which Part 2 of this Schedule applies. As with paragraphs 23 and 24 the aim is that such transfers should be treated as tax neutral with no undue tax benefit being obtained by the transferor or transferee.
551. [Paragraph 25\(1\)](#) explains that the transfer of a ‘chargeable intangible asset’ should be treated as a tax neutral transfer for the purposes of Schedule 29 to the Finance Act 2002. [Paragraph 25\(2\)](#) explains that where an intangible asset is transferred that was not a chargeable intangible asset in the hands of the transferor but falls to be treated as such by the transferee, then the acquisition value for tax purposes for the NDA is the same amount as the disposal consideration of the transferor under paragraph 3(2) of the Schedule, that is an amount causing neither a gain nor a loss to arise on the transferor.
552. [Paragraph 26](#) defers a degrouping charge that would otherwise arise as a result of the implementation of a nuclear transfer scheme, where the charge would arise in respect of intangible fixed assets that have previously been transferred between group companies. The aim of this paragraph is to prevent tax liabilities arising in companies due to historic transactions where such liabilities arise only as a result of the implementation of transfer schemes.
553. [Paragraph 26\(1\)](#) identifies the circumstances in which the paragraph applies. [Paragraph 26\(2\)](#) defers the application of the degrouping legislation of paragraph 58 of Schedule 29 to the Finance Act 2002 and [paragraph 26\(3\)](#) applies this degrouping legislation on the first subsequent occasion that the degrouped company ceased to be a member of its new group of companies, ‘new group’ being defined in the subparagraph.
554. [Paragraph 27](#) ensures that where a trade or part of a trade is transferred under a section 39 scheme from a BNFL company to another publicly owned company that is not an NDA subsidiary, there is tax neutrality and the transferee effectively stands in the shoes of the transferor for tax purposes. This will potentially apply to trading items such as trade debtors or sums received in advance for the supply of goods or services by the transferor, or trade creditors and sums paid in advance for the provision of services to the company. The provision is similar to that in paragraph 15 which applies in respect of transfers to the NDA or a subsidiary within Part 1 of this Schedule.

Part 3 – Transfers relating to relevant site licensees

555. [Part 3](#) ensures that certain tax provisions concerned with chargeable gains and intangible assets apply in a tax neutral way, on that occasion and subsequently, where a company becomes a relevant site licensee company, as defined in section 27 of the Act. The provisions in question relate to ‘degrouping’ adjustments (where a company leaves a group) and to the computation of the gain or loss on the transferor or transferee where shares in the ‘relevant site licensee’ are transferred.
556. [Paragraph 28\(1\)](#) sets out the scope of the paragraph. It is concerned with the case where a subsidiary of the NDA becomes a “relevant site licensee” company.

557. Paragraph 28(2) and (3) provide that the relevant site licensee is to be treated as continuing to be in its original (NDA) group for chargeable gains purposes (1992 Act), intangible assets gains and losses purposes (Schedule 29 to the Finance Act 2002) and the exemptions from degrouping charges provided in this Schedule. This means in particular that no degrouping computation would be needed either when the NDA subsidiary leaves the NDA group on becoming a relevant site licensee company or when that company resumes its membership of the NDA group on ceasing to be such a company.
558. Paragraph 28(4) provides that the definitions of groups for chargeable gains purposes (1992 Act), and intangible assets gains and losses purposes (Schedule 29 to the Finance Act 2002) are to apply for the respective purposes of the paragraph.
559. Paragraph 29 allows for the transfers of relevant site licensee companies to or from the NDA, or between one contracting group and another, to be at such a price that neither a gain nor a loss arises for the purposes of capital gains. The overall effect of paragraph 29 is that the transfer of site license companies between different owners (for instance at the beginning and end of a managing contract) is tax neutral.
560. Paragraph 30 adopts the definition of relevant site licensee in section 27.

Part 4 – Transfer of Nuclear Liabilities Investment Portfolio

561. The aim of paragraphs 31 to 33 inclusive is to ensure that should the Nuclear Liabilities Investment Portfolio be transferred to the Secretary of State then such a transfer would be tax neutral for BNFL (the current owner of the Nuclear Liabilities Investment Portfolio).
562. Paragraph 31 applies Part 4 to transfers to the Secretary of State made in accordance with a transfer scheme which is authorised under section 42 of this Act (Transfer of Nuclear Liabilities Investment Portfolio).
563. Paragraph 32 explains that for chargeable gains purposes a disposal falling within Part 4 should be treated as one for which neither a gain nor capital loss accrues to BNFL.
564. Paragraph 33 ensures that where a transfer is made in respect of this Part, BNFL is not allowed to bring debits or credits into account under either the loan relationship provisions of Chapter 2 of Part 4 of the Finance Act 1996 or the derivative contract provisions of Schedule 26 to the Finance Act 2002. The aim of this paragraph is to ensure tax neutrality in respect of this Part.

Part 5 – Stamp duty etc

565. Paragraph 34 deals with stamp duty and stamp duty reserve tax. The aim of the paragraph is to ensure that no stamp duty liability arises on transfers under nuclear transfer schemes where such transfers are made to publicly owned bodies.
566. Paragraph 34(1) explains that stamp duty is not chargeable on nuclear transfer schemes or on instruments certified by the Secretary of State to the Commissioners of the Inland Revenue that are associated with such schemes. The exemption to stamp duty only applies to the extent the scheme or transfer is not in relation to a private transfer.
567. Paragraph 34(2) explains the conditions that must be met for a scheme or instrument to be treated as being where stamp duty is not chargeable as a result of the stamped application of paragraph 34(1).
568. Paragraph 34(3) provides that, in a similar vein to paragraph 34(1), no stamp duty reserve tax should arise in respect of transfers made under schemes except to the extent the scheme is in relation to a private transfer.
569. Paragraph 34(4) provides a definition of ‘instrument’ and ‘private transfer’.

Part 6 – Supplemental provisions of Schedule 9

570. Paragraph 35 enables the NDA to be treated as a company for the purposes of the capital gains tax rules applying to groups of companies. Similarly it enables the NDA to be a company for the purposes of the intangible fixed assets rules. This confirms that the NDA is to be taxed as if it were an ordinary company – subject to the special rules that are in this Act.
571. Paragraph 36 has the effect of removing the possibility of re-basing elections being made for assets held by an entity as at 31 March 1982 to the extent a disposal is made in accordance with paragraph 3, 18, 29 or 32 of this Schedule.
572. Paragraph 37 provides a list of definitions of terms used in this Schedule.
573. The paragraph also clarifies that Schedule 9 should be construed as one with the Corporation Tax Acts and the 2001 Act in respect of capital allowances.
574. The paragraph provides that the Board of Inland Revenue is to determine whether an asset is part of BNFL's 'Nuclear Liabilities Investment Portfolio' after consulting the Secretary of State. This is for the purpose of paragraph 4(1) of the Schedule (the exclusion of Portfolio assets from the nil acquisition cost rule for capital gains). It does not apply for the purposes of section 42 of the Act. Whether an asset is part of the Portfolio for those purposes is determined under subsection (6) of section 42.

Schedule 10: The Civil Nuclear Police Authority

575. This Schedule is described in the notes to section 51.

Schedule 11: Removal and suspension of senior officers of Constabulary

576. This Schedule is described in the notes to section 53.

Schedule 12: Planning and reports about Constabulary

577. This Schedule is described in the notes to section 61.

Schedule 13: Directions by Secretary of State about Constabulary

578. This Schedule is described in the notes to section 63.

Schedule 14: Minor amendments relating to Constabulary

579. This Schedule is described in the notes to section 69.

Schedule 15: Amendments of 1993 Act

580. This Schedule is brought into effect by section 75.

Schedule 16: Applications and proposals for notices under section 95

581. Schedule 16 sets out the process for applying for a notice in regard to a safety zone under section 95. The process is essentially the same as that set out in Schedule 8 of the Electricity Act 1989 (c.29) in regard to an application for a consent under section 36 of that Act to construct, extend or operate a generating station.

Schedule 17: Conversion of existing transmission licences: licensing scheme

582. This Schedule is described in the notes to section 138.

Schedule 18: Property arrangements schemes

583. This Schedule is described in the notes to section 141.

Schedule 19: Consequential amendments relating to Chapter 1 of Part 3

584. This Schedule is brought into effect by section 143.

Schedule 20: Conduct of energy administration

585. This Schedule is described in the notes to section 159.

Schedule 21: Energy transfer schemes

586. This Schedule is described in the notes to section 159.

Schedule 22: Procedure for appeals under section 173

Application for permission to bring an appeal

587. [Paragraph 1](#) sets out the procedure for making an application for permission to appeal to the Competition Commission within 15 working days of GEMA's decision being published and gives the Commission power to grant permission subject to conditions.

Addition of persons to application

588. [Paragraph 2](#) allows an additional person to become party to an appeal (an "intervener"), for the purpose of supporting the appeal or opposing it, if they apply to do so within 20 working days of the initial application for permission to appeal or within a longer period if the Competition Commission allow, and are materially affected by the decision or represent persons who are so materially affected. An intervener may not rely on grounds of appeal which are not contained in the appellant's application for permission to bring an appeal. The Competition Commission cannot give a direction that the person become party to the appeal if it will prevent determination of the appeal within the prescribed time limits. The Competition Commission, in giving its direction that a person is to be a party to an appeal, may impose conditions on its direction. These conditions could include conditions which limit the matters to be considered on an appeal, and conditions for the purpose of expediting the determination of the appeal.

Suspension of decision

589. [Paragraph 3](#) allows the Commission to "stop the clock" on the implementation of a decision once permission to appeal has been granted. This will only be an option where an application has been made for this to happen, the applicant will incur significant costs by the decision taking effect before determination of the appeal and the balance of convenience has been considered. An application may be made by the appellant or another person with interests or functions that entitles him, or would have entitiled him, to appeal against GEMA's decision.

Time limit for representations and observations by GEMA

590. In paragraph 4 GEMA is given a period of fifteen working days from the original application or last joined application for an appeal within which to make its representations to the Competition Commission on an appeal.

Consideration and determination of appeal by group

591. [Paragraph 5](#) provides for a group of three Commission members, with one appointed as chairman, to consider and determine an appeal with decisions effective only if all three are present and two members of the group are in favour of the decision.

Timetable for determination of appeal

592. [Paragraph 6](#) requires the Commission to reach its decision within 30 working days following the last day on which GEMA could have made its representations on an

appeal though it is enabled to extend this period by a maximum of 10 working days if it is satisfied there are good reasons for doing so. Where the Commission extends the deadline it must notify every party to the appeal.

Matters to be considered on appeal

593. Paragraph 7 gives the group discretion to disregard matters raised by parties which were not included in their initial application for appeal or, in the case of GEMA, its representations.

Production of documents

594. Paragraph 8 gives the Commission power to require the production of documents or types of documents and take copies of those documents.

Oral hearings

595. Paragraph 9 gives the Commission power to hold an oral hearing and to require oral evidence under oath, in respect of (i) an application for permission to appeal, (ii) a person seeking to intervene in an appeal, (iii) a direction to suspend GEMA's decision and (iv) for the purpose of determining the appeal. The Commission may also require a person to attend an oral hearing for the purpose of giving evidence. A person who attends an oral hearing may be cross-examined by or on behalf of any party to the appeal.

Written Statements

596. Paragraph 10 gives the Commission power to require a person to produce a written statement at a specified time and place to the person considering suspending GEMA's decision or a group determining an appeal, and for that statement to be verified by a statement of truth.

Defaults in relation to evidence

597. Paragraph 11 provides an enforcement power for paragraphs 8, 9 and 10. A person can be held in contempt of court by the High Court or Court of Session for failing to comply with a notice requiring production of documents, failing to comply with a notice requiring attendance at an oral hearing or failing to comply with a notice requiring production of a written statement. A person may also be held in contempt of court if he makes a statement which is false in any material sense in a written statement, or if he provides information which is materially false in the course of providing information which is otherwise verified by a statement of truth. It also provides for altering, suppressing or destroying a document requested by the Commission to be a criminal offence.

Procedural Rules

598. Paragraph 12 allows the Competition Commission to make and publish rules for the conduct and disposal of appeals.

Costs

599. Paragraph 13 gives the group power to make an order in respect of costs incurred in connection with the appeal. Sub-paragraphs (2) and (3) of paragraph 13 require that the costs incurred by the Competition Commission in connection with the appeal shall be paid by the losing party to an appeal, allocated as the group see fit where an appeal brought by two or more appellants is dismissed. Sub-paragraph (5) of paragraph 13 allows the group to require one party to an appeal to make a payment to another in respect of the costs borne by the other party. Sub-paragraphs (6) and (7) of paragraph 13 provide that sums required to be paid by an order must be paid within 5 days and

These notes refer to the Energy Act 2004 (c.20) which received Royal Assent on 22 July 2004

sums which are outstanding after this period shall bear interest at a rate determined in the order.

The Secretary of State's power to modify time limits

600. [Paragraph 14](#) gives the Secretary of State power to amend the time limits set in Schedule 22 by order. It is envisaged this may be necessary if on review it is judged that the current time limits have proved inappropriate.

Schedule 23: Repeals

601. This Schedule is described in the notes to section 197.