



# Energy Act 2004

## 2004 CHAPTER 20

### PART 1

#### THE CIVIL NUCLEAR INDUSTRY

### CHAPTER 1

#### NUCLEAR DECOMMISSIONING

##### *Establishment of NDA*

## 1 The Nuclear Decommissioning Authority

- (1) There shall be a body corporate to be known as the Nuclear Decommissioning Authority (“the NDA”).
- (2) The NDA is not to be treated—
  - (a) except so far as necessary for the purposes of its function under section 7(2), as performing any duty or exercising any power on behalf of the Crown; or
  - (b) as enjoying any status, immunity or privilege of the Crown;and the NDA’s property is not to be regarded as property of the Crown, or as held on behalf of the Crown.

### Commencement Information

- II [S. 1](#) in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

## 2 Constitution of NDA

- (1) The NDA—
  - (a) shall consist of not fewer than seven and not more than thirteen members; and

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- (b) shall have a membership comprising both non-executive members and executive members.
- (2) The non-executive members shall be—
- (a) a chairman appointed by the Secretary of State; and
  - (b) a number of other persons appointed by the Secretary of State (after consultation with the chairman);
- and (subject to subsection (1)) it is for the Secretary of State to determine how many non-executive members there are to be in addition to the chairman.
- (3) The executive members shall be—
- (a) a person appointed by the non-executive members to be the NDA’s chief executive; and
  - (b) the other persons (if any) appointed by them (after consultation with the chief executive) to be executive members in addition to the chief executive;
- and it is for the non-executive members to determine (subject to subsection (8)) whether there are to be executive members in addition to the chief executive, and (if so) how many.
- (4) The approval of the Secretary of State is required for the appointment of the chief executive.
- (5) Before—
- (a) appointing a person to be the chairman or otherwise to be a non-executive member of the NDA, or
  - (b) approving the appointment of a person to be the chief executive,
- the Secretary of State must consult the Scottish Ministers.
- (6) Subsection (5) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (7) If there are executive members in addition to the chief executive, each must be a member of the staff of the NDA.
- (8) Where the Secretary of State so provides by a direction to the NDA, the non-executive members must secure that the number of executive members in addition to the chief executive—
- (a) is not less than the minimum set by the direction; and
  - (b) does not exceed the maximum so set;
- and the direction must not set a maximum of more than three.
- (9) The Secretary of State must exercise his powers under this section to secure, so far as practicable, that the number of executive members is at all times less than the number of non-executive members.
- (10) Schedule 1 (which contains further provision about the constitution, staffing and proceedings of the NDA) has effect; and subsections (1) to (9) have effect subject to paragraph 4 of that Schedule.

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**Commencement Information**

**I2** S. 2 in force at 27.7.2004 by S.I. 2004/1973, art. 2, Sch.

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### *Principal function of NDA*

## **3 Designated responsibilities**

- (1) The principal function of the NDA shall be to have responsibility for securing—
  - (a) the operation, pending the commencement of their decommissioning, of designated nuclear installations;
  - (b) the decommissioning of those and other designated nuclear installations;
  - (c) the cleaning-up of designated nuclear sites;
  - (d) the operation of designated facilities for treating, storing, transporting or disposing of hazardous material;
  - (e) the treatment, storage, transportation and disposal, in designated circumstances, of hazardous material; and
  - (f) the decommissioning of designated installations comprised in NDA facilities.
- (2) The responsibilities of the NDA under this section are responsibilities to be discharged by the performance of its duties under sections 15 and 16.
- (3) A designation for the purposes of this section—
  - (a) of an installation, site or facility, and
  - (b) of the circumstances in which the NDA is to have responsibility for securing the treatment, storage, transportation or disposal of matter or waste,has (subject to section 6) to be in the form of a direction given by the Secretary of State to the NDA.
- (4) A direction must not give the NDA a responsibility mentioned in this section in relation to an installation, site or facility unless the person with control of it at the time when the direction is given is—
  - (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a publicly owned company;
  - (d) the NDA itself; or
  - (e) a person who has consented to the giving of the direction.
- (5) A direction designating an installation, site or facility must specify the paragraph or paragraphs of subsection (1) for the purposes of which it is being designated.
- (6) But, except in so far as the direction containing the designation otherwise provides, the designation of a principal nuclear site for cleaning-up is to have effect for the purposes of this Chapter as including a designation, as an installation to be decommissioned, of every installation situated in or on that site.
- (7) The Secretary of State must—
  - (a) lay before Parliament a copy of every direction containing a designation;
  - (b) publish the contents of every such direction in the manner which, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it; and
  - (c) send a copy of every direction giving the NDA a responsibility in relation to an installation, site or facility to the person with control of that installation, site or facility.

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- (8) The Scottish Ministers must lay before the Scottish Parliament a copy of every direction which by virtue of section 6 is given jointly by them and the Secretary of State.
- (9) The Secretary of State may exclude—
- (a) from what he lays before Parliament and publishes under this section, and
  - (b) from what is to be laid before the Scottish Parliament by the Scottish Ministers,
- anything the publication of which he considers to be against the interests of national security.

**Commencement Information**

**I3** S. 3 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

**4 Additional responsibilities under designating directions**

- (1) Where the NDA is given a responsibility for securing the operation of an installation or facility, a direction may also give the NDA further responsibilities in relation to the management of the site where that installation or facility is situated.
- (2) Where the NDA is given a responsibility in relation to a principal nuclear site, a direction may give the NDA further responsibilities in relation to the operation or management of any one or more of the following—
- (a) research facilities situated in or on that site;
  - (b) facilities other than research facilities which are situated in or on that site and are neither nuclear installations nor NDA facilities;
  - (c) other land (whether or not adjacent to that site) which is owned or occupied, together with it, by the person with control of the principal nuclear site; and
  - (d) facilities of any description situated in or on such other land.
- (3) The NDA is not to be given further responsibilities under subsection (1) or (2) except where the Secretary of State considers it appropriate to do so—
- (a) for the purpose of facilitating the carrying out by the NDA of any of its functions; or
  - (b) for a purpose otherwise incidental to the carrying out of those functions.
- (4) Where a direction gives the NDA a responsibility for securing the treatment, storage, transportation or disposal of matter or waste, it may also give the NDA responsibility for securing the design, construction and operation of a facility for that purpose.
- (5) Subsection (4) of section 3 applies to giving the NDA a responsibility mentioned in this section as it applies to giving it a responsibility mentioned in that section.
- (6) In this section “direction” means a direction under section 3.

**Commencement Information**

**I4** S. 4 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

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## 5 Supplemental provisions of designating directions

- (1) A direction comes into force at the time which is specified in the direction or determined in accordance with provision contained in it.
- (2) A direction giving the NDA responsibilities in relation to an installation, site or facility which—
  - (a) is a nuclear installation, a principal nuclear site or a facility situated in or on a principal nuclear site, but
  - (b) is not one in relation to which the NDA is to have a financial responsibility under section 21,may require the person with control of the installation, site or facility to make payments to the Secretary of State.
- (3) A direction may also impose requirements with respect to the charges which (subject to section 21) are to be imposed by the NDA in connection with the discharge of responsibilities given to the NDA by the direction.
- (4) Subject to subsections (5) and (6), a direction may be modified or revoked by a subsequent direction.
- (5) A direction must not modify or revoke a direction relating to the responsibility of the NDA in relation to an installation, site or facility unless the person with control of the installation, site or facility is, at the time when the modification or revocation comes into force—
  - (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a publicly owned company;
  - (d) the NDA itself; or
  - (e) a person who has consented to the modification or revocation.
- (6) A direction in so far as it gives the NDA responsibility—
  - (a) for the decommissioning of an installation, or
  - (b) for the cleaning-up of a principal nuclear site,may be revoked only if the condition set out in subsection (7) is satisfied.
- (7) The condition is—
  - (a) in the case of a direction given by the Secretary of State, that he is satisfied that the NDA has discharged all its responsibilities in relation to the decommissioning or cleaning-up of the installation or site; and
  - (b) in the case of a direction given jointly by the Secretary of State and the Scottish Ministers, that he and those Ministers are so satisfied.
- (8) The Secretary of State must pay sums received by him by virtue of subsection (2) into the Consolidated Fund.
- (9) In this section “direction” means a direction under section 3.

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### Commencement Information

- I5** S. 5(1) in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1  
**I6** S. 5(2)-(9) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 6 Designations relating to Scotland

- (1) A direction under section 3 which—
- (a) gives the NDA responsibilities falling within subsection (2), or
  - (b) removes or varies any such responsibilities,
- may be given only by the Secretary of State and the Scottish Ministers, acting jointly.
- (2) The following responsibilities fall within this subsection—
- (a) responsibility for the cleaning-up of a site in Scotland which is a principal nuclear site without being a licensable site;
  - (b) responsibility for the cleaning-up of a contaminated site in Scotland;
  - (c) responsibility for the operation of facilities for treating or storing hazardous material in or on a site in Scotland which is a principal nuclear site without being a licensable site;
  - (d) responsibility for the operation in or on a nuclear site in Scotland of a facility for the disposal of hazardous material;
  - (e) responsibility, in specified circumstances, for the disposal at a site in Scotland of hazardous material;
  - (f) responsibility for the treatment or storage of hazardous material that may, in the discharge of that responsibility, be treated or stored in or on a site in Scotland which is not a licensable site;
  - (g) responsibility for the decommissioning of an installation comprised in NDA facilities that are situated in or on a site in Scotland which is a principal nuclear site without being a licensable site.
- (3) Before giving a direction under section 3 which—
- (a) gives the NDA responsibilities for the operation in or on a licensable site in Scotland of a facility for the non-processing treatment of hazardous material;
  - (b) gives it responsibilities not falling within subsection (2)(f) for the non-processing treatment or the storage of hazardous material the treatment or storage of which, in the discharge of those responsibilities, may take place in or on a site in Scotland;
  - (c) gives it responsibilities for the operation in or on a licensable site in Scotland of a facility for the storage of hazardous material; or
  - (d) removes or varies any responsibilities mentioned in paragraph (a) or (c),
- the Secretary of State must consult the Scottish Ministers.
- (4) In this section—
- “licensable site” means a site that falls within paragraph (a), (b) or (d) of the definition of a “principal nuclear site” in section 36(2);
- “non-processing treatment” means treatment that does not consist in the processing or reprocessing of spent or irradiated nuclear fuel.

### Commencement Information

I7 S. 6 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

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## Other functions of NDA

### 7 Supplemental functions

- (1) In addition to its function under section 3, the NDA shall have the function, to the extent that it considers it appropriate to do so, of—
  - (a) carrying out research into matters relating to the decommissioning of nuclear installations, the cleaning-up of nuclear sites and the other activities in relation to which it has functions;
  - (b) promoting the carrying out of research by others into those matters;
  - (c) distributing information about those matters;
  - (d) educating and training persons about those matters;
  - (e) giving encouragement and other support to activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities.
- (2) The NDA shall also have the function, to the extent that it is required to do so by the Secretary of State, of acting on his behalf in relation to agreements to which he is a party and which relate to expenditure incurred, or to be incurred, by him or by others—
  - (a) on the decommissioning of nuclear installations;
  - (b) on the cleaning-up of nuclear sites; or
  - (c) on the treatment, storage, transportation or disposal of hazardous material.
- (3) A requirement of the Secretary of State under subsection (2) may require the NDA to meet, in whole or part, the cost of discharging liabilities of his under the agreements in relation to which the NDA acts on his behalf.
- (4) The NDA's functions further include—
  - (a) to the extent that it is required to do so by the Secretary of State, giving advice to the Secretary of State or to others (whether generally or in relation to a particular installation, site or facility, or particular hazardous material) about any of the things in which the NDA requires an expertise for the purpose of carrying out its functions;
  - (b) to the extent that it is required to do so by the Scottish Ministers, giving advice to them (whether generally or in relation to a particular installation, site or facility, or particular hazardous material) about any of those things (so far as they concern Scotland); and
  - (c) giving to the Secretary of State and the Scottish Ministers such further general advice about the things in which the NDA requires an expertise for the purpose of carrying out its functions as it considers appropriate.
- (5) The references in subsection (4) to the things in which the NDA requires an expertise for the purpose of carrying out its functions include, in particular—
  - (a) the operation and decommissioning of nuclear installations;
  - (b) the cleaning-up of nuclear sites; and
  - (c) the treatment, storage, transportation and disposal of hazardous material.
- (6) It shall be the duty of the NDA to secure that the discharge of its responsibilities under section 3(1) is not adversely affected—
  - (a) by the doing of anything mentioned in subsection (1); or
  - (b) by the carrying out of its functions by virtue of subsection (4)(c).

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(7) Where—

- (a) the NDA provides advice to the Scottish Ministers in pursuance of a requirement imposed by them under this section, and
- (b) the requirement is not one imposed with the agreement of the Secretary of State,

the NDA may charge for the provision of the advice.

(8) The amount of the charge shall be such sum as may be—

- (a) agreed between the NDA and the Scottish Ministers; or
- (b) in the absence of agreement, determined by the Secretary of State.

#### **Commencement Information**

**I8** S. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **8 Special functions in relation to pensions etc.**

(1) The NDA shall have the function, to the extent that it considers it appropriate to do so, of—

- (a) establishing schemes for the payment of pensions, allowances or gratuities to or in respect of one or more different descriptions of relevant employees;
- (b) maintaining such schemes (whether or not established by the NDA); and
- (c) administering a scheme for the payment of compensation in respect of personal injuries or death caused to relevant employees or to others employed in the nuclear industry.

(2) In this section “relevant employees” means—

- (a) employees of the UKAEA;
- (b) persons the duties of whose employment with any other person relate (in whole or in part) to activities carried on for purposes connected with the carrying out by the NDA of any of its functions; or
- (c) a person employed in the nuclear industry who is of such a description as may be designated for the purposes of this subsection by the Secretary of State.

(3) Before making a designation for the purposes of subsection (2)(c), the Secretary of State must consult the NDA.

#### **Commencement Information**

**I9** S. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *General duties and powers of NDA*

## **9 General duties when carrying out functions**

(1) It shall be the duty of the NDA, in carrying out its functions, to have particular regard to each of the following—

- (a) relevant Government policy;



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- (b) the need to safeguard the environment;
  - (c) the need to protect persons from risks to their health and safety from activities involving the use, treatment, storage, transportation or disposal of hazardous material; and
  - (d) the need to preserve nuclear security.
- (2) It shall also be the duty of the NDA, in carrying out its functions—
- (a) to promote, and to ensure, the maintenance and development in the United Kingdom of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites;
  - (b) to promote effective competition for contracts to provide it with the services it must secure in order to discharge its responsibilities;
  - (c) to secure the adoption of what it considers to be good practice by the persons with control of designated installations, designated sites and designated facilities; and
  - (d) subject to subsection (1) and to paragraphs (a) to (c) of this subsection, to secure value for money in all its dealings with others.
- (3) In the carrying out of its functions with respect to—
- (a) the operation of the installations and facilities designated as installations or facilities whose operation is to be secured by the NDA, and
  - (b) the management of designated sites,
- the NDA shall have the further duty to act in the manner that it considers is most beneficial to the public.
- (4) In the case of each designated installation, designated site or designated facility, it shall be the duty of the NDA, in carrying out its function by virtue of section 7(1)(e)—
- (a) to have regard, in particular, to the extent to which the person with control of the installation, site or facility was doing anything falling within subsection (5) prior to its designation; and
  - (b) to consider what obligations in relation to the doing of anything falling within that subsection should be imposed on any person with whom the NDA is proposing, in connection with the discharge of any of its responsibilities in relation to the installation, site or facility, to enter into a contract for that person to provide services.
- (5) What falls within this subsection is anything that is done for the purpose of giving encouragement and other support to—
- (a) activities benefiting the social or economic life of communities living near the installation, site or facility; or
  - (b) activities producing other environmental benefits for those communities.
- (6) Where the NDA is proposing, in connection with the discharge of any of its responsibilities in relation to a designated installation, designated site or designated facility, to enter into a contract with any person for him to provide any services, it shall be the duty of the NDA, before entering into that contract—
- (a) to require that person to produce his proposed strategy for the procurement of the goods and services that he will need to procure for the purpose of carrying out his obligations under the contract; and
  - (b) to consider the likely effect of the implementation of that strategy on the economic life of communities living near the installation, site or facility.

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- (7) In this section “relevant Government policy” means all current policies which—
- (a) relate to the decommissioning of nuclear installations, the cleaning-up of nuclear sites or other activities in relation to which the NDA has functions; and
  - (b) have been published by or on behalf of Her Majesty’s Government in the United Kingdom or a devolved administration, have been notified to the NDA by the Secretary of State or have been notified both to the NDA and to the Secretary of State by a devolved administration.
- (8) In subsection (7) “devolved administration” means the Scottish Ministers, the National Assembly for Wales or a department in Northern Ireland.
- (9) In this Chapter “nuclear security” means the security of each of the following—
- (a) nuclear installations and nuclear sites;
  - (b) hazardous material;
  - (c) apparatus and software used or stored in or on a nuclear installation or nuclear site;
  - (d) apparatus and software used in connection with the treatment, storage, transportation or disposal of hazardous material;
  - (e) sensitive nuclear information.
- (10) In subsection (9) “sensitive nuclear information” means—
- (a) information relating to a treatment of uranium that increases the proportion of the isotope 235 contained in the uranium;
  - (b) information capable of being used in connection with such a treatment of uranium;
  - (c) information relating to activities carried out in, on or in relation to—
    - (i) nuclear installations or nuclear sites, or
    - (ii) hazardous material,
 which the NDA has been notified by the Secretary of State is information that needs to be protected in the interests of national security; and
  - (d) information about nuclear security.

#### **Commencement Information**

**I10** S. 9 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## **10 Powers for carrying out functions**

- (1) The NDA shall have power, for the purpose of carrying out its functions, to do all such things as appear to it to be likely to facilitate the carrying out of its functions, or to be incidental to carrying them out.
- (2) The powers of the NDA include, in particular—
  - (a) power to operate electricity generating stations;
  - (b) power to apply for and hold nuclear site licences, registrations under section 7 of the 1993 Act and authorisations under sections 13 and 14 of that Act;
  - (c) power to make grants or loans to persons undertaking activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities;

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- (d) power to make grants or loans to persons carrying out research into matters relating to the decommissioning of nuclear installations, the cleaning-up of nuclear sites or other activities in relation to which the NDA has functions;
  - (e) power to use its facilities, and facilities on designated sites, for the carrying out of research on behalf of others into any matter whatever;
  - (f) power to use those facilities for the carrying on of any activities, in addition to such research, that it considers appropriate for generating funds for application towards the carrying out of its functions;
  - (g) power to delegate to the UKAEA the maintenance of any such scheme as is referred to in section 8(1)(a) and (b);
  - (h) power itself to do anything that the NDA has a function of securing others to do;
  - (i) power to enter into contracts for others to secure the things that it has a function of securing;
  - (j) power to enter into contracts for others to do anything else that it may do for the purpose of, or in connection with, the carrying out of its functions;
  - (k) power to acquire or establish subsidiaries and to carry out its functions through subsidiaries.
- (3) The NDA may impose charges in respect of the things that it does or secures in the discharge of its responsibilities—
- (a) on persons with control of installations, sites and facilities in the case of which it does not have a financial responsibility under section 21; and
  - (b) on other persons for whom it does or secures the doing of anything for which it does not have a financial responsibility under that section.
- (4) Charges imposed under subsection (3) must not be imposed except—
- (a) in accordance with a direction under section 3; or
  - (b) with the approval of the Secretary of State.

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**Commencement Information**

**III** S. 10 in force at 27.7.2004 by [S.I. 2004/1973](#), art. 2, [Sch.](#)

*Strategies, plans and reports*

## **11 Strategy for carrying out functions**

- (1) It shall be the duty of the NDA—
- (a) to prepare its strategy for carrying out its functions; and
  - (b) from time to time to revise that strategy.
- (2) On the NDA being given a new responsibility for securing the decommissioning or cleaning-up of an installation or site, it must consider—
- (a) whether the objectives and policy already contained in its current strategy apply in the case of that installation or site in a manner that it considers appropriate; and
  - (b) if it considers that they do not, what revision of its strategy is required.

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- (3) Schedule 2 (which makes provision about the preparation and revision of the NDA's strategy, about consultation and about the approval and publication of the strategy) has effect.

#### Commencement Information

**I12** S. 11 in force at 31.3.2005 by S.I. 2005/442, art. 2(2), Sch. 2

## 12 Contents of strategy

- (1) The strategy prepared under section 11 must include both—
- (a) the NDA's strategy for decommissioning and cleaning up the installations and sites designated as installations or sites to be decommissioned or cleaned up; and
  - (b) its strategy for the operation of the installations and facilities designated as installations or facilities whose operation it is to secure.
- (2) The strategy must set out—
- (a) the priorities the NDA has adopted with respect to the discharge of its responsibilities;
  - (b) how it proposes to ensure the maintenance and development in the United Kingdom of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites;
  - (c) how it proposes to promote effective competition for contracts to provide it with the services it must secure in order to discharge its responsibilities;
  - (d) its proposals for ensuring the adoption of what it considers to be good practice by the persons with control of designated installations, designated sites and designated facilities;
  - (e) how it proposes to give encouragement or other support to activities that benefit the social or economic life of communities living near designated installations, designated sites or designated facilities or that produce other environmental benefits for such communities; and
  - (f) an explanation of how and why it arrived at the decisions and proposals which are set out in the strategy.
- (3) The strategy must also set out the steps that the NDA proposes to take—
- (a) for giving appropriate publicity to its responsibilities and strategy;
  - (b) for explaining them both to persons having a particular interest in matters relating to the carrying out by the NDA of its functions and to the general public;
  - (c) for ensuring that the NDA is kept informed at all times of the opinions about such matters of persons having such a particular interest; and
  - (d) for facilitating the communication by such persons of their opinions to the NDA.
- (4) The strategy required by subsection (1)(a) must contain—
- (a) objectives describing what the NDA intends decommissioning or cleaning-up to achieve in the case of different installations and sites; and
  - (b) the NDA's policy as to the means by which it intends those objectives to be achieved.

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- (5) In the case of a site which is to be cleaned up, those objectives must include, in particular, a statement of the condition to which the site needs to be restored.
- (6) In setting out its policy as to the means of achieving the objectives mentioned in subsection (4), the NDA must describe—
  - (a) the procedure it proposes to adopt for ensuring the preparation, and revision from time to time, of plans for the identification and carrying out of the decommissioning or cleaning-up work that is or continues to be needed in the case of each designated installation or designated site;
  - (b) the manner in which it proposes to secure that the work identified by such plans is carried out in accordance with them;
  - (c) an outline of the work that has been identified as needed in the case of each designated installation or designated site for which plans have been prepared;
  - (d) the period over which that work is to be carried out in the case of each installation or site; and
  - (e) the expenses it expects to incur in respect of the carrying out of the decommissioning and cleaning-up work for which it has a responsibility.
- (7) The strategy required by subsection (1)(b) must set out—
  - (a) the expenditure that the NDA expects to incur on the running costs of installations and facilities whose operation it has a responsibility to secure, and on the management of the sites where they are located;
  - (b) capital expenditure that the NDA expects to incur in connection with the discharge of its responsibilities in relation to those installations and facilities, and with the management of those sites; and
  - (c) the income that it considers it is likely to secure from the operation of those installations and facilities and from the management of those sites.
- (8) An objective or policy set out in the NDA's strategy may be framed in one or more of the following ways—
  - (a) by reference to a particular installation or site;
  - (b) by reference to different descriptions of installation or site;
  - (c) so as to become applicable to an installation or site of a particular description on the NDA being given responsibility for an installation or site of that description.
- (9) In this section references, in relation to the preparation of a strategy, to a site, installation or facility designated for any purpose include references to a site, installation or facility designated by a direction which is not yet in force.

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**Commencement Information**

**I13** S. 12 in force at 31.3.2005 by S.I. 2005/442, art. 2(2), Sch. 2

## 13 Annual plans

- (1) The NDA must, for each financial year, prepare a plan—
  - (a) for the carrying out, during that year, of work towards decommissioning the installations designated as installations to be decommissioned;

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- (b) for the carrying out, during that year, of work towards cleaning up the sites designated as sites to be cleaned up;
  - (c) for the operation, during that year, of the installations and facilities designated as installations or facilities whose operation is to be secured by the NDA; and
  - (d) for the carrying out during that year of its other functions.
- (2) The plan must be prepared and, not less than three months before the commencement of the financial year to which it relates, submitted for approval—
- (a) in a case where it contains anything relating to responsibilities of the NDA falling within section 6(2), to the Secretary of State and the Scottish Ministers; and
  - (b) in any other case, to the Secretary of State.
- (3) The plan for a financial year, so far as it relates to decommissioning and cleaning-up, must set out—
- (a) a summary of the decommissioning and cleaning-up work which the NDA is intending should be carried out during that year;
  - (b) the arrangements that have been made, or are to be made, for securing that agreements for the carrying out of that work are entered into;
  - (c) the agreements (if any) that have already been entered into for that purpose or under which that work is to be carried out;
  - (d) an estimate of the expenditure that will be incurred by the NDA during that year in respect of decommissioning or cleaning-up work carried out during that year or previously or in respect of decommissioning and cleaning-up work to be carried out in subsequent years;
  - (e) any proposals to which it intends to give effect during that year that relate to, or will affect, the management of installations or sites designated as installations or sites to be decommissioned or cleaned up; and
  - (f) the extent to which its plans for the year contribute to the achievement of the objectives set out in its strategy.
- (4) The plan for a financial year, so far as it relates to the operation of installations and facilities, must set out—
- (a) an estimate of the expenditure that will be incurred during that year on the running costs of the installations and facilities and on the management of the sites where they are located;
  - (b) an estimate of the capital expenditure that will be incurred during that year in connection with the discharge of the NDA's responsibilities in relation to those installations and facilities and with the management of those sites;
  - (c) an estimate of the income it is likely to secure during that year from the operation of the installations and facilities and from the management of those sites; and
  - (d) any proposals to which the NDA intends to give effect during that year that relate to or will affect the operation of the installations or facilities, or the management of the sites where they are located.
- (5) The plan for a financial year, so far as it relates to the NDA's other functions, must—
- (a) set out all the activities of significance that the NDA proposes to carry on during that year in the carrying out of those other functions; and
  - (b) an estimate of the expenditure that will be incurred in the carrying out of those other functions.

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- (6) The plan for a financial year must also set out any other matters that the Secretary of State directs the NDA to include in its plan for that year.
- (7) In this section references, in relation to the preparation of a plan for a financial year, to a site, installation or facility designated for any purpose include references to a site, installation or facility designated by a direction which—
  - (a) is not yet in force; but
  - (b) is to come into force during that financial year.
- (8) Schedule 3 (which makes provision about consultation and about the approval and publication of the NDA's annual plan) has effect.

#### Commencement Information

**I14** S. 13 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

## 14 Annual reports

- (1) As soon as reasonably practicable after the end of each financial year, the NDA must prepare and send to the Secretary of State a report on—
  - (a) the discharge of its responsibilities during that year; and
  - (b) the carrying out of its other functions.
- (2) If during the year to which the report relates the NDA has had responsibilities which—
  - (a) fall within subsection (2) of section 6, or
  - (b) are mentioned in subsection (3) of that section,it must also send a copy of that report to the Scottish Ministers.
- (3) The report must contain—
  - (a) a description of what has been done, during the year to which it relates, towards achieving the NDA's objectives, as set out in the approved strategy in force during that year;
  - (b) a general description of the work carried out during that year for the purpose of decommissioning the installations designated as installations to be decommissioned;
  - (c) a general description of the work carried out during that year for the purpose of cleaning up the sites designated as sites to be cleaned up;
  - (d) a report on every change occurring during that year in the identity of persons with control of designated installations, designated sites and designated facilities;
  - (e) a report of every significant change during that year to the contractual arrangements of the NDA that are in force with respect to the carrying out (whether or not during that year) of decommissioning or cleaning-up work;
  - (f) a report on the extent to which the NDA has implemented its plan for that year;
  - (g) a report of the NDA's dealings during that year with the Health and Safety Executive, the Environment Agency and the Scottish Environment Protection Agency;
  - (h) a report containing an assessment of the performance in relation to safety and environmental matters of the persons (other than the NDA itself) who have control of designated installations, designated sites and designated facilities;

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- (i) a report of the NDA's dealings during that year with such persons with responsibilities in relation to nuclear security as have been nominated for the purposes of this subsection by the Secretary of State; and
  - (j) any other matters which the NDA is directed by the Secretary of State to include in that report.
- (4) Before giving a direction for the purposes of subsection (3)(j) the Secretary of State must consult the Scottish Ministers.
- (5) The report must deal separately with—
- (a) activities relating to the decommissioning of installations or the cleaning-up of sites; and
  - (b) the NDA's other activities.
- (6) The Secretary of State must lay a copy of every report received by him under this section before Parliament.
- (7) The Secretary of State must also arrange for a copy of the report to be published in the manner which, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (8) The Scottish Ministers must lay a copy of every report received by them under this section before the Scottish Parliament.
- (9) The Secretary of State may exclude—
- (a) from what he lays before Parliament or arranges to be published under this section, and
  - (b) from what is to be laid before the Scottish Parliament by the Scottish Ministers,
- anything falling within subsection (10).
- (10) The following falls within this subsection—
- (a) anything the publication of which the Secretary of State considers to be against the interests of national security;
  - (b) anything relating to the private affairs of an individual the publication of which the Secretary of State considers would seriously and prejudicially affect the interests of that individual; and
  - (c) anything of a commercial nature relating specifically to the affairs of a particular body of persons the publication of which the Secretary of State considers would seriously and prejudicially affect the interests of that body.

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**Commencement Information**

**I15** S. 14 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Implementation of strategies and plans*

**15 Duty to decommission and clean up installations and sites**

- (1) This section applies where the NDA has a responsibility for securing the decommissioning of an installation or the cleaning-up of a site.



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- (2) It shall be the duty of the NDA to take all such steps as it considers appropriate—
  - (a) for securing the implementation in the case of that installation or site of the NDA's approved strategy for decommissioning and cleaning-up;
  - (b) for the achievement of the objectives set out in that strategy that are applicable to that installation or site; and
  - (c) for giving effect in each financial year to its approved plan for that year, so far as it relates to the decommissioning of that installation or the cleaning-up of that site.
- (3) In the case of a designated site which is a contaminated site, that duty has effect subject to such general and specific directions relating to the manner in which the NDA is to discharge its responsibilities in relation to that site as may be given to it—
  - (a) in the case of a site in Scotland, by the Secretary of State and the Scottish Ministers, acting jointly; and
  - (b) in any other case, by the Secretary of State.
- (4) The NDA must comply with all such directions.

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**Commencement Information**

**I16** S. 15 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 16 Duties to operate installations and to provide treatment etc.

- (1) This section applies where the NDA has a responsibility for securing—
  - (a) the operation of a nuclear installation;
  - (b) the operation of a facility for treating, storing, transporting or disposing of hazardous material;
  - (c) the operation of any other facility;
  - (d) the treatment, storage, transportation or disposal, in designated circumstances, of hazardous material; or
  - (e) the management of any land not comprised in a site designated as a site to be cleaned up.
- (2) That responsibility is an obligation to secure that—
  - (a) the installation or facility is operated,
  - (b) the hazardous material is treated, stored, transported or disposed of, or
  - (c) the land is managed,in accordance with general and specific directions.
- (3) The power to give directions under subsection (2) is exercisable—
  - (a) in relation to any matter connected with responsibilities of the NDA falling within section 6(2), by the Secretary of State and the Scottish Ministers, acting jointly; and
  - (b) in relation to any other matter, by the Secretary of State.
- (4) In discharging that responsibility the NDA must also act—
  - (a) in accordance with the NDA's approved strategy for the operation of designated installations and designated facilities; and

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- (b) in each financial year, in accordance with the NDA's approved plan for that year.

**Commencement Information**

**I17** S. 16 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**17 Duty to use installations etc. for purposes of NDA**

- (1) This section applies—
- (a) in the case of every designated nuclear installation and every designated installation comprised in an NDA facility;
  - (b) in the case of every designated site which is a principal nuclear site; and
  - (c) in the case of every designated facility situated in or on a principal nuclear site.
- (2) The person with control of the installation, site or facility must secure that neither the installation, site or facility nor any interest or right in relation to it is used or disposed of except for purposes which—
- (a) facilitate the discharge of the NDA's responsibilities in relation to designated installations, designated sites and designated facilities; and
  - (b) secure that there is no contravention, in relation to the discharge of those responsibilities, of any obligations imposed by or under any enactment on the person with control of the installation, site or facility.
- (3) Subsection (2) does not prevent the use or disposal of an installation, site or facility where the NDA has consented to that use or disposal.
- (4) Where the NDA has an interest in the installation, site or facility, the person with control of it shall have the right, as against the NDA, to use it for the purposes authorised by subsection (2) and to put it to any use to which the NDA has consented.
- (5) Except—
- (a) where the NDA otherwise directs, or
  - (b) where the person with control of the installation, site or facility is, has been or will be subject to charges by the NDA in respect of the discharge of its responsibilities in relation to that installation, site or facility,
- that person must account for, and pay, to the NDA all sums and other benefits received by him in respect of the use or disposal by him of an interest or right in relation to the installation, site or facility.
- (6) A reference in this section to facilitating the discharge of the NDA's responsibilities in relation to an installation, site or facility includes a reference to doing anything which is required or authorised by or for the purposes of—
- (a) an agreement between the NDA and the person with control of the installation, site or facility; or
  - (b) an agreement between the NDA and a body corporate of which that person is a subsidiary.
- (7) Nothing in subsection (5) prohibits the inclusion in such an agreement of provision for sums and benefits mentioned in that subsection to be accounted for and paid to the NDA in a case falling within paragraph (b) of that subsection.

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- (8) A reference in this section to an interest or right in relation to an installation or site includes a reference to any interest or right in relation to—
- (a) anything located in or on the installation or site;
  - (b) a facility operated from the installation or site;
  - (c) a process carried on in or on the installation or site; or
  - (d) information or documents relating to the installation or site or to anything mentioned in paragraphs (a) to (c).
- (9) References in this section to the disposal of an interest in a site include references to—
- (a) the granting of an estate or interest in the site, or of a licence to use it; or
  - (b) entering into an agreement to grant such an estate, interest or licence;
- and references to sums received in respect of such a disposal include references to sums that are paid periodically (by way of rent or otherwise) by a tenant or licensee or by a party to such an agreement.

#### Commencement Information

**I18** S. 17 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 18 Directions by NDA to the person with control

- (1) This section applies in every case where one of the following is designated—
- (a) a nuclear installation or an installation comprised in an NDA facility;
  - (b) a principal nuclear site; or
  - (c) a facility situated in or on a principal nuclear site.
- (2) It shall be the duty of the person with control of the installation, site or facility—
- (a) to prepare such plans for the decommissioning or operation of the installation, for the cleaning-up or management of the site or for the operation of the facility as the NDA may direct;
  - (b) to prepare such plans for the cleaning-up of any related sites as the NDA may direct;
  - (c) to submit his plans to the NDA for approval;
  - (d) to comply with all such further directions falling within subsection (3) as the NDA may give him from time to time with respect to the installation, site or facility; and
  - (e) to comply with such directions as the NDA may give him for the purpose of securing or facilitating the discharge by the NDA of such of its responsibilities by virtue of section 3(1)(e) or 4(1), (2) or (4) or any direction under section 16(2) as—
    - (i) were conferred on it by reference to the site, installation or facility; or
    - (ii) fall to be discharged in relation to it, or to anything in or on it.
- (3) The directions that may be given by the NDA are—
- (a) directions (in the case of an installation or site) requiring the carrying out, pending the preparation and approval of plans required by the NDA, of specified decommissioning or cleaning-up work in or on the installation or site or related sites;

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- (b) directions requiring the installation, site or facility to be operated or managed, pending the preparation and approval of such plans, in the specified manner;
  - (c) directions to modify in the specified manner, and to resubmit, a plan submitted to the NDA for approval, or approved by it, under this section;
  - (d) directions (in the case of an installation or site) requiring the carrying out, pending the preparation and approval of modifications of a plan, of specified decommissioning or cleaning-up work in or on the installation or site or related sites;
  - (e) directions requiring the implementation of a plan that the NDA has approved;
  - (f) directions requiring specified transactions to be entered into, and other specified steps to be taken, for the purposes of or in connection with the implementation of such a plan;
  - (g) directions requiring the provision to the NDA of all the information that it requires in order—
    - (i) to discharge its responsibilities in relation to the installation, site or facility and in relation to related sites; or
    - (ii) to enter into an agreement for the purpose of discharging those responsibilities.
- (4) It shall be the duty of the person holding the majority of the voting rights in a company with control of the installation, site or facility to comply with such directions as may be given to it by the NDA for the purpose of securing that the company with control of the installation, site or facility complies with its obligations under this section.
- (5) Directions must not be given by the NDA under this section except for the purpose—
- (a) of giving effect to its plan under section 13 for a particular financial year; or
  - (b) of otherwise giving effect to its strategy under section 11 or achieving the objectives set out in that strategy.
- (6) A person required to prepare plans for the purposes of this section must comply with the directions of the NDA as to—
- (a) the persons with whom, and
  - (b) the manner in which,
- he must consult before preparing the plans, or before submitting them to the NDA for approval.
- (7) A direction under this section cannot authorise a contravention in relation to an installation, site or facility of any obligation to which the person with control of it is subject by or under an enactment.
- (8) In this section “related site”, in relation to a designated installation, designated site or designated facility, means a site the designation of which specifies, in accordance with section 19, that it is to be treated, by reference to that installation, site or facility, as a related site for the purposes of this section.

**Commencement Information**

**I19** S. 18 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 19 Designation as a related site for the purposes of s. 18

- (1) A direction designating a contaminated site—
  - (a) may specify that the site is to be treated for the purposes of section 18 as a related site; and
  - (b) if it does so, must specify the installation, site or facility by reference to which the Secretary of State is satisfied as mentioned in subsection (2)(a).
- (2) A direction must not specify that a site is to be treated as a related site unless—
  - (a) the Secretary of State is satisfied that it has become contaminated (whether radioactively or chemically) as a result of nuclear activities in or on a particular installation, site or facility;
  - (b) that installation, site or facility was at the time of the contamination, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (c) the installation, site or facility is also designated (whether by that direction or as a consequence of a previous direction); and
  - (d) the person with control of that installation, site or facility—
    - (i) is a Crown appointee, the UKAEA, a publicly owned company or the NDA itself; or
    - (ii) has consented to the specification of the installation, site or facility for the purposes of subsection (1)(b).
- (3) On the giving by the Secretary of State of a direction specifying that a site is to be treated as a related site, he must send a copy of the direction to every person with control of an installation, site or facility by reference to which it is to be so treated.
- (4) For the purposes of this section something is contaminated as a result of nuclear activities in or on a particular installation, site or facility if the contamination (whenever occurring), or any of it, is the direct or indirect result of one or more of the following—
  - (a) activities carried on in or on that installation, site or facility;
  - (b) the storage or disposal of any matter or substance in or on that installation, site or facility;
  - (c) an incident occurring in or on that installation, site or facility;
  - (d) the discharge of anything from that installation, site or facility;
  - (e) the transportation of hazardous material to or from that installation, site or facility;
  - (f) an incident affecting hazardous material being transported to or from that installation, site or facility.

### Commencement Information

**I20** S. 19 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 20 Duty to comply with directions under s. 18

- (1) The duty of a person to whom a direction is given under section 18 to comply with that direction is a duty owed to the NDA, and to no one else.
- (2) That duty is to be enforceable by the NDA in civil proceedings—

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- (a) for an injunction or interdict;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.
- (3) That duty is subject to the obligation of the NDA to discharge its financial responsibilities under section 21.
- (4) A person with control of an installation, site or facility is not to be subject to that duty to the extent that he is relieved of it by the provisions of an agreement—
- (a) between the NDA and that person; or
  - (b) between the NDA and a body corporate of which that person is a subsidiary.
- (5) The Secretary of State may by order provide, in the case of an installation, site or facility the person with control of which is a Crown appointee, that the Crown appointee is not to be subject, to the extent specified in the order, to the duty to comply with directions under section 18.
- (6) An order for the purposes of subsection (5) is subject to the negative resolution procedure.

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**Commencement Information**

**I21** S. 20 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Financial provisions*

**21 Financial responsibilities of NDA**

- (1) The NDA's responsibility for securing—
- (a) the decommissioning or operation of an installation or facility to which this section applies, or
  - (b) the cleaning-up of a site to which this section applies, or of a related site,
- includes the financial responsibility for the decommissioning or operation of the installation or facility, or for the cleaning-up.
- (2) This section applies to an installation, site or facility which becomes a designated installation, site or facility at a time when the person with control of it is—
- (a) a Crown appointee;
  - (b) the UKAEA;
  - (c) a wholly-owned subsidiary of the UKAEA;
  - (d) any other publicly owned company which was so owned on 4th July 2002; or
  - (e) a wholly-owned subsidiary of such a company.
- (3) Where—
- (a) the NDA has financial responsibility for decommissioning, operating or cleaning up an installation, site or facility, and
  - (b) a person other than the NDA is the person with control of it,

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that other person is not to be, or to be capable of becoming, liable to meet any of the costs of doing the things that are required to be secured by the NDA in the discharge of its responsibilities in relation to that installation, site or facility.

- (4) Accordingly, where the NDA has the financial responsibility in the case of an installation, site or facility—
- (a) it must not impose charges on the person with control of the installation, site or facility in respect of anything mentioned in subsection (3);
  - (b) it must meet the costs of the doing by that person of anything that he is authorised or required to do by virtue of section 17;
  - (c) it must also meet the costs of the performance by him of his duty to comply with directions under section 18; and
  - (d) that person is not to be required for any purpose to make, or to continue to make, financial provision for meeting costs which fall, by virtue of its financial responsibility, to be met by the NDA.
- (5) Nothing in so much of this section as—
- (a) restricts the extent to which a person is, or may become, liable to meet any costs in relation to a site, installation or facility, or
  - (b) requires any costs in relation to an installation, site or facility to be reimbursed or otherwise met by the NDA,
- is to be construed as restricting the extent to which the person with control of the installation, site or facility may be or become subject, in relation to a person other than the NDA, to the liability or obligation in respect of which the costs arise.
- (6) It shall be the duty of the NDA for the purpose of discharging its financial responsibilities to make all such arrangements as it thinks fit for securing that the person with control of the installation, site or facility is able to meet, as they become due, all his liabilities to persons other than the NDA in respect of matters for which the NDA has financial responsibility or that those liabilities are otherwise discharged.
- (7) It shall also be the duty of the NDA to make all such arrangements as it thinks fit for securing that amounts paid under this section to that person include such sums (if any) as the NDA considers it appropriate to pay by way of incentives to that person to discharge his duty to comply with directions under section 18 in the manner that the NDA thinks most effective.
- (8) The NDA is to be taken to have discharged its responsibility for meeting costs under this section if it is satisfied that those costs—
- (a) have been met by another person directly or indirectly out of money provided by Parliament; or
  - (b) are to be so met.
- (9) The preceding provisions of this section have effect in relation to an installation, site or facility subject to the terms of—
- (a) any agreement between the NDA and the person with control of the installation, site or facility; or
  - (b) any agreement between the NDA and a body corporate of which that person is a subsidiary.
- (10) The NDA's financial responsibilities under this section are in addition to its financial responsibilities apart from this section.

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(11) In this section “related site” has the same meaning as in section 18.

**Commencement Information**

**I22** S. 21 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**22 Expenditure and receipts of NDA**

- (1) The Secretary of State may make grants to the NDA.
- (2) Grants made under this section are to be on such terms as the Secretary of State may determine.
- (3) The NDA must pay to the Secretary of State all sums received by it otherwise than under subsection (1).
- (4) The Secretary of State must pay sums received by him under subsection (3) into the Consolidated Fund.
- (5) In determining—
  - (a) whether to make a grant under this section to the NDA, and
  - (b) the amount of such a grant,
 the Secretary of State must have regard, in particular, to the extent to which he considers that the NDA should exercise its power to make grants or loans of the kind mentioned in section 10(2)(c) in order to mitigate the effects of the cessation (whether before or after designation) of the operation of a designated installation.

**Commencement Information**

**I23** S. 22 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

**23 Borrowing by the NDA**

- (1) The NDA has no power to borrow money except in accordance with this section.
- (2) The NDA may borrow from the Secretary of State, and the Secretary of State may lend to the NDA, sums in sterling that it requires for or in connection with the carrying out of its functions.
- (3) Where a loan is made to the NDA by the Secretary of State—
  - (a) the loan must be repaid to him at such times and by such methods as he may determine; and
  - (b) interest on the loan must be paid to him at such rates and at such times as he may determine;
 and nothing in section 22(3) requires the repayment of sums received by way of such a loan otherwise than in accordance with a determination under this subsection.
- (4) The NDA may also borrow temporarily (by overdraft or otherwise) from persons other than the Secretary of State sums in sterling that it requires for or in connection with the carrying out of its functions.
- (5) The consent of the Secretary of State is required for borrowing under subsection (4).



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- (6) The approval of the Treasury is required—
  - (a) for a loan to the NDA by the Secretary of State;
  - (b) for a determination by the Secretary of State under subsection (3); and
  - (c) for a consent by the Secretary of State to any borrowing under subsection (4).
- (7) The powers conferred by this section are subject to section 24.

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**Commencement Information**

**I24** S. 23 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 24 Limit on NDA borrowing

- (1) The NDA may not borrow if the effect would be—
  - (a) to take the aggregate amount mentioned in subsection (2) over its borrowing limit; or
  - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (2) That amount is the aggregate of—
  - (a) amounts outstanding from the NDA in respect of the principal of sums borrowed by the NDA; and
  - (b) the amount of every outstanding liability of the NDA that is a liability to which it is subject by virtue of a nuclear transfer scheme and is a liability in respect of the principal of a sum borrowed by another person before the transfer took effect.
- (3) The NDA's borrowing limit is £2,000 million.
- (4) The Secretary of State may by order increase the NDA's borrowing limit.
- (5) An order under subsection (4) shall not be made unless a draft of the order has been—
  - (a) laid before Parliament; and
  - (b) approved by a resolution of the House of Commons.
- (6) The reference in this section to a nuclear transfer scheme includes a reference to a modification agreement (within the meaning of Schedule 5) in relation to such a scheme.

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**Commencement Information**

**I25** S. 24 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 25 Government guarantees for NDA borrowing

- (1) The Secretary of State may guarantee—
  - (a) the repayment of the principal of any sum borrowed by the NDA from a person other than the Secretary of State;
  - (b) the payment of interest on such a sum; and

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- (c) the discharge of any other financial obligation of the NDA in connection with the borrowing of such a sum.
- (2) The Secretary of State may give a guarantee under this section in such manner, and on such terms, as he thinks fit.
- (3) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (4) If sums are paid out by the Secretary of State under a guarantee given under this section, the NDA must pay him—
  - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
  - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (5) Payments to the Secretary of State under subsection (4) must be made at such times, and in such manner, as he may from time to time direct.
- (6) Where a sum has been paid out by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before Parliament—
  - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
  - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (7) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (6) unless—
  - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (4); and
  - (b) the NDA is not at any time during that year subject to a liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (8) The approval of the Treasury is required—
  - (a) for the giving of a guarantee under this section; and
  - (b) for the giving by the Secretary of State of a direction under subsection (4) or (5).
- (9) The Secretary of State must pay sums received by him by virtue of subsection (4) into the Consolidated Fund.

#### **Commencement Information**

**I26** S. 25 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **26 Accounts of NDA**

- (1) The NDA must—
  - (a) keep proper accounts and proper accounting records; and
  - (b) in respect of each of its accounting years, prepare a statement of its accounts.
- (2) A statement of accounts prepared under this section must give a true and fair view of—
  - (a) the income and expenditure of the NDA for the accounting year in question; and

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- (b) its state of affairs.
- (3) Such a statement of accounts must comply with every requirement which has been notified by the Secretary of State to the NDA.
- (4) Those requirements may include, in particular, requirements relating to—
  - (a) the information to be contained in the statement;
  - (b) the manner in which that information is to be presented; or
  - (c) the methods and principles according to which the statement is to be prepared.
- (5) The approval of the Treasury is required for the imposition of a requirement under subsection (3).
- (6) The accounts of the NDA relating to each of its accounting years, including the statement of accounts prepared for the year under this section, must be audited by the Comptroller and Auditor General.
- (7) The Comptroller and Auditor General must send a copy of his report on what is audited to the NDA.
- (8) The NDA must send to the Secretary of State and to the Scottish Ministers, in respect of each of its accounting years—
  - (a) a copy of the accounts for that year that are required to be audited under this section; and
  - (b) a copy of the Comptroller and Auditor General’s report on those accounts.
- (9) The NDA must comply with any directions given to it by the Secretary of State about the times by which it must have complied with its obligations under subsections (1) (b), (6) and (8).
- (10) The Secretary of State must lay a copy of whatever is sent to him under subsection (8) before Parliament.
- (11) The Scottish Ministers must lay a copy of whatever is sent to them under subsection (8) before the Scottish Parliament.
- (12) In this section—
  - “accounting records” includes all books, papers and other records of the NDA relating to—
    - (a) the accounts which it is required to keep; or
    - (b) matters dealt with in those accounts;
  - “accounting year”, in relation to the NDA, means—
    - (a) the NDA’s first accounting year; or
    - (b) a financial year after the end of the NDA’s first accounting year;
  - “the NDA’s first accounting year” means—
    - (a) where the NDA is established at the beginning of a financial year, that financial year; and
    - (b) in any other case, the period which begins with the day on which the NDA is established and ends—
      - (i) if no direction is given under sub-paragraph (ii), with 31st March in the financial year current on that day; and
      - (ii) if the Secretary of State so directs, with 31st March at the end of the following financial year.

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### Commencement Information

**I27** S. 26 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 27 Tax exemption for NDA activities

- (1) For the purposes of corporation tax—
  - (a) trading income arising or accruing to the NDA or an NDA company from the carrying on of exempt activities shall be disregarded in computing the total profits of the NDA or that company; and
  - (b) trading losses incurred by the NDA or an NDA company in the carrying on of exempt activities shall be disregarded in determining the amounts that may be set off under section 393 or 393A of the Income and Corporation Taxes Act 1988 (c. 1) (trading losses) or surrendered as trading losses for the purposes of section 403 of that Act (group relief).
- (2) Schedule 4 (which makes further provision for the purposes of the exemption granted by this section) has effect.
- (3) Activities are exempt for the purposes of this section and Schedule 4 if they—
  - (a) are activities carried on in connection with anything mentioned in section 3(1); and
  - (b) are specified for the purposes of this section in regulations made by the Treasury.
- (4) In this section and Schedule 4 “NDA company” means—
  - (a) a company the whole of the ordinary share capital in which is owned directly or indirectly by the NDA; or
  - (b) a company that is a relevant site licensee.
- (5) A company is a relevant site licensee for the purposes of subsection (4) if—
  - (a) it is not a company falling within paragraph (a) of that subsection;
  - (b) it holds a nuclear site licence for a site the whole or part of which is either a designated site or a site in or on which there is a designated installation or designated facility;
  - (c) in a case where there is in force a management contract relating to the whole or a part of the site to which that licence relates, or to an installation or facility in or on that site, the parties to the contract include either—
    - (i) the company in question; or
    - (ii) a company which owns directly or indirectly at least 90 per cent of the ordinary share capital of that company; and
  - (d) such further conditions that are required by regulations made by the Treasury to be satisfied have been satisfied.
- (6) The concurrence of the Secretary of State is required for the making of any regulations under this section by the Treasury.
- (7) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (8) In this section—

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“management contract” means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities;

“owned directly or indirectly” has the same meaning as in section 838 of the Income and Corporation Taxes Act 1988 (c. 1) (subsidiaries), and “owns directly or indirectly” is to be construed accordingly;

“trading income”, in relation to the NDA or an NDA company, means (subject to subsection (9)) income which falls or (apart from this section) would fall to be included—

- (a) in respect of a trade, and
- (b) as chargeable to tax under Case I of Schedule D,

in the total profits for the purposes of corporation tax of the NDA or that company;

“trading losses”, in relation to the NDA or an NDA company, means losses incurred in a trade in respect of which the NDA or that company is or (apart from this section) would be within the charge to corporation tax under Case I of Schedule D.

- (9) For the purposes of this section income consisting in—
- (a) anything giving rise to a credit that would fall to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships), or
  - (b) a credit falling to be brought into account under Schedule 26 to the Finance Act 2002 (c. 23) (derivative contracts),

is to be treated as trading income accruing to the NDA or an NDA company from the carrying on of exempt activities to the extent only that it would fall (apart from this section) to be taken into account as trading income from a trade consisting in the carrying on of such activities by the NDA or that company.

- (10) This section and Schedule 4 are to be construed as one with the Corporation Tax Acts.

#### Commencement Information

**I28** S. 27 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 28 Taxation of NDA activities chargeable under Case VI of Schedule D

- (1) For the purposes of the Corporation Tax Acts so much of any activity of the NDA as—
- (a) is an activity the profits and gains from which would (apart from this section) be chargeable to tax under Case VI of Schedule D, and
  - (b) is not excluded from the operation of this section by subsection (2),
- shall be treated as an activity carried on by it as part of a trade in respect of which it is within the charge to tax under Case I of Schedule D.
- (2) Any activity is excluded from the operation of this section if—
- (a) it is carried on by the NDA otherwise than in connection with something mentioned in section 3(1)(a), (d) or (e) of this Act; and
  - (b) the profits and gains from it would, in the NDA’s case, be chargeable to tax under Case VI of Schedule D by virtue of an enactment other than just section 18 of the Income and Corporation Taxes Act 1988 (c. 1).

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- (3) All activities treated under this section as carried on by the NDA as part of a trade—
  - (a) shall be treated as carried on as part of the same trade; and
  - (b) may be treated as carried on as part of another trade carried on by the NDA.
- (4) Subsection (3) is subject to any other provision made by or under the Corporation Tax Acts that requires an activity to be treated as carried on as part of a separate trade (with or without any other activity).
- (5) This section is to be construed as one with the Corporation Tax Acts.

#### Commencement Information

**I29** S. 28 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 29 Disregard for tax purposes of cancellation etc. of provisions

- (1) This section applies where—
  - (a) a relevant provision is recognised in the accounts of a relevant company in accordance with generally accepted accounting practice;
  - (b) that provision relates to decommissioning or cleaning-up which the NDA acquires responsibility for securing by virtue of a direction under section 3; and
  - (c) that responsibility includes the financial responsibility under section 21.
- (2) In computing the profits, gains or losses of the company for the purposes of corporation tax, no amount shall be brought into account in respect of a credit or debit to which subsection (3) applies.
- (3) This subsection applies to a credit or debit if—
  - (a) it arises on the occurrence of an event mentioned in subsection (4); and
  - (b) it relates to the effect of that event on the relevant provision or the subject matter of the provision.
- (4) The events referred to in subsection (3) are—
  - (a) the coming into force of the direction mentioned in subsection (1)(b); and
  - (b) a transfer of property, rights or liabilities of the company to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by section 39.
- (5) In this section—
 

“BNFL company” means BNFL or a wholly-owned subsidiary of BNFL;

“relevant company” means a BNFL company that is publicly owned;

“relevant provision” means a provision for liabilities or charges as defined in paragraph 89 of Schedule 4 to the Companies Act 1985 (c. 6).
- (6) This section is to be construed as one with the Corporation Tax Acts.

#### Commencement Information

**I30** S. 29 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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### **30 Disregard for tax purposes of provisions recognised by NDA**

- (1) This section applies where—
  - (a) by virtue of a direction under section 3 the NDA acquires the responsibility for securing the cleaning-up of a site falling within subsection (2), or the decommissioning of an installation or facility in or on such a site;
  - (b) that responsibility includes the financial responsibility under section 21; and
  - (c) on the coming into force of the direction mentioned in paragraph (a), the NDA recognises in its accounts, in accordance with generally accepted accounting practice, a relevant provision that relates to that responsibility.
- (2) A site falls within this subsection if—
  - (a) at the time the direction mentioned in subsection (1)(a) comes into force there is a nuclear site licence in force in relation to the site; and
  - (b) the holder of that licence at that time is a BNFL company that is publicly owned.
- (3) In computing the profits, gains or losses of the NDA for the purposes of corporation tax, no amount shall be brought into account in connection with the recognition of the relevant provision in the accounts of the NDA.
- (4) But subsection (3) shall not affect the amount (if any) to be brought into account in computing the profits, gains or losses of the NDA in connection with an adjustment at a time after the first recognition of the relevant provision in the accounts of the NDA.
- (5) In this section—

“BNFL company” means BNFL or a wholly-owned subsidiary of BNFL;  
“relevant provision” means a provision for liabilities or charges as defined in paragraph 89 of Schedule 4 to the Companies Act 1985.
- (6) This section is to be construed as one with the Corporation Tax Acts.

#### **Commencement Information**

**I31** S. 30 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

### *Nuclear Decommissioning Funding Account*

### **31 Establishment and maintenance of the Account**

- (1) For the purpose of ensuring transparency as respects the funding of the carrying out of the NDA’s functions, it shall be the duty of the Secretary of State to establish and maintain an account (to be known as the “Nuclear Decommissioning Funding Account”).
- (2) The Account, when first established, is to have an opening balance of such amount as the Secretary of State may determine.
- (3) Every amount paid to the NDA by way of grant under section 22(1) must be shown in the Account as a debit.
- (4) The following amounts are to be shown in the Account as credits—

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- (a) every amount received by the Secretary of State in pursuance of a requirement under section 5(2);
  - (b) every amount received by the NDA that is required to be paid by it to the Secretary of State under section 22(3);
  - (c) such amount in respect of each financial year as the Secretary of State may determine; and
  - (d) amounts representing interest, at such rate and in respect of such periods as the Secretary of State may determine, on outstanding credit balances of the Account.
- (5) The Secretary of State—
- (a) may make a single determination for the purposes of subsection (4)(c) in relation to more than one financial year;
  - (b) must make every determination for those purposes in accordance with the policy most recently published under subsection (6);
  - (c) must revise a determination made for those purposes if he considers it necessary to do so in order to take account of any revision of the policy in accordance with which it was made, or last revised; and
  - (d) must publish every determination made for those purposes, and every revision of such a determination, in such manner as, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (6) The Secretary of State—
- (a) must prepare, and may from time to time revise, a statement of his policy with respect to the determination of amounts for the purposes of subsection (4)(c); and
  - (b) must publish that statement, and every revision of it, in such manner as, in his opinion, is most appropriate for bringing it to the attention of persons likely to be affected by it.
- (7) The policy contained in the statement under subsection (6) must—
- (a) set out the basis on which determinations for the purposes of subsection (4)(c) are to be made;
  - (b) secure that amounts credited to the Account in accordance with subsection (4)(c) are at least enough to prevent the credit balance of the Account falling at any time below such level as the Secretary of State determines to be appropriate; and
  - (c) set out the basis on which the Secretary of State's determination for the purposes of paragraph (b) has been made.
- (8) The time at which an amount is to be debited or credited to the Account in accordance with this section is to be the time determined by the Secretary of State.
- (9) The consent of the Treasury is required for every determination by the Secretary of State for the purposes of this section.

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**Commencement Information**

**I32** S. 31 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1



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## 32 Examination of the Account

- (1) As soon as practicable after the end of each relevant financial year, the Secretary of State must prepare a statement of the Nuclear Decommissioning Funding Account.
- (2) The statement must show—
  - (a) the credits and debits made to the account during the period for which it is prepared; and
  - (b) the determinations made or revised during that period for the purposes of section 31(4)(c).
- (3) The period for which each statement is to be prepared is the period which—
  - (a) begins—
    - (i) in the case of the first statement, with the establishment of the Account; and
    - (ii) in any other case, immediately after the end of the period for which the previous statement was prepared; and
  - (b) ends with the last day of the last relevant financial year to end before the statement's preparation.
- (4) A statement prepared under this section must be sent to the Comptroller and Auditor General before the 30th September in the financial year in which it is prepared.
- (5) The Comptroller and Auditor General must, before 31st December in the financial year in which he receives a statement under this section—
  - (a) examine and report on it; and
  - (b) lay copies of it, and of his report on it, before Parliament.
- (6) In this section “relevant financial year” means a financial year in the course of which the Secretary of State has made or revised a determination for the purposes of section 31(4)(c).

### Commencement Information

**I33** S. 32 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *Supplementary provisions of Chapter 1 of Part 1*

## 33 Validity of transactions

- (1) A person who enters into a transaction with the NDA is not required to see or to enquire whether the transaction constitutes or involves—
  - (a) conduct by the NDA which is for the purposes of, or conducive or incidental to, the carrying out of its functions;
  - (b) a contravention of section 7(6) or 9; or
  - (c) a contravention of a direction given by the Secretary of State.
- (2) A transaction entered into by the NDA is not invalidated because the transaction constitutes or involves—
  - (a) conduct by the NDA which is neither for the purposes of, nor conducive or incidental to, the carrying out of its functions;

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- (b) a contravention of section 7(6) or 9; or
- (c) a contravention of a direction given by the Secretary of State.

**Commencement Information**

**I34** S. 33 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**34 Amendment of Schedule 12 to the 1989 Act**

- (1) In sub-paragraph (1) of paragraph 1 of Schedule 12 to the 1989 Act (financial assistance by the Secretary of State in respect of nuclear liabilities), for paragraph (c) and the word “or” immediately preceding it substitute—

- “(ba) the cleaning-up of a principal nuclear site; or
- (c) the decommissioning of a nuclear installation.”

- (2) After sub-paragraph (4) of paragraph 1 of that Schedule insert—

“(5) In this paragraph “cleaning-up”, “decommissioning”, “nuclear installation” and “principal nuclear site” have the same meanings as in Chapter 1 of Part 1 of the Energy Act 2004.”

- (3) After paragraph 3 of that Schedule insert—

“3A The Secretary of State shall not—

- (a) make any grant or loan under this Schedule for the purpose of meeting any expenditure, or
- (b) give any guarantee in respect of borrowing undertaken for the purpose of meeting any expenditure,

if the expenditure is expenditure on anything for which the Nuclear Decommissioning Authority has a financial responsibility under section 21 of the Energy Act 2004.”

**Commencement Information**

**I35** S. 34 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**35 Power to modify Chapter 1 of Part 1**

- (1) The Secretary of State may by order modify the following provisions of this Chapter—

- (a) section 2 and Schedule 1;
- (b) sections 11 and 12 and Schedule 2; and
- (c) section 13 and Schedule 3.

- (2) Before making an order under this section the Secretary of State must consult the Scottish Ministers.

- (3) The consent of the Scottish Ministers is required for the making of an order under this section that modifies any of those Ministers' functions under this Chapter.

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- (4) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

**Commencement Information**

**I36** S. 35 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**36 Meaning of “nuclear site” etc. and “person with control”**

- (1) In this Chapter “nuclear site” means a principal nuclear site or a contaminated site.
- (2) In this Chapter—
- “contaminated site” means the whole or a part of a site which is not a principal nuclear site but—
- (a) has been and remains contaminated (whether radioactively or chemically) as a result of nuclear activities; or
  - (b) is the location of hazardous material;
- “principal nuclear site” means the whole or a part of a site of any of the following descriptions—
- (a) a site in respect of which a nuclear site licence is or is required to be in force;
  - (b) a site in respect of which such a licence would be required to be in force if the licensing requirements of the 1965 Act applied to the Crown;
  - (c) a site not falling within paragraph (a) or (b) in or on which there is an NDA facility;
  - (d) a site on which there is an installation used for practical research into the production of energy by the fusion of atomic nuclei;
  - (e) a site which has been a site falling within paragraphs (a) to (d) but which, without being such a site, remains contaminated (whether radioactively or chemically) as a result of nuclear activities carried on while it was such a site or before it became one.
- (3) References in this Chapter to the person with control of an installation, site or facility are references—
- (a) in the case of—
    - (i) a site in relation to which a nuclear site licence is held by a person whose period of responsibility (within the meaning of the 1965 Act) is still current, or
    - (ii) a nuclear installation in or on such a site,to that person;
  - (b) in the case of an installation or site which—
    - (i) is an installation in or on a site occupied by or on behalf of the Crown or is itself such a site, and
    - (ii) is an installation or site in the case of which there is a person appointed by an order made by the Secretary of State to be the person with control,to that person;
  - (c) in the case of a facility which—

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- (i) is not an installation to which paragraph (a) or (b) applies; but
  - (ii) is operated on a single site to which one of those paragraphs does apply,  
to the person with control of the site;
  - (d) in the case of an installation or facility which—
    - (i) is not an installation or facility to which paragraph (a), (b) or (c) applies; but
    - (ii) is operated on a single site by a person who (without being the owner of the site) is in occupation of it,  
to the occupier of the site;
  - (e) in the case of a facility which is operated otherwise than on a single site, to the operator of the facility;
  - (f) in the case of anything in or under the territorial sea adjacent to the United Kingdom, to the Secretary of State;
  - (g) in the case of a site to which none of the preceding paragraphs applies, to the owner of the site;
  - (h) in the case of an installation or facility to which none of those paragraphs applies, to the occupier of the site where the installation or facility is located.
- (4) An order for the purposes of subsection (3)(b) is subject to the negative resolution procedure.
- (5) For the purposes of this section something is contaminated as a result of nuclear activities if the contamination (whenever occurring), or any of it, is the direct or indirect result of one or more of the following—
- (a) activities carried on in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (b) the storage or disposal of any matter or substance in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (c) an incident occurring in or on an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (d) the discharge of anything from an installation, site or facility which was at the time, or subsequently became, a nuclear installation, a principal nuclear site or an NDA facility;
  - (e) the transportation of hazardous material to or from a principal nuclear site or an installation or facility in or on such a site;
  - (f) an incident affecting hazardous material being transported to or from a principal nuclear site or an installation or facility in or on such a site.

#### Commencement Information

**I37** S. 36 in force at 24.8.2004 for specified purposes by S.I. 2004/2184, art. 2(1), Sch. 1

**I38** S. 36 in force at 5.10.2004 in so far as not already in force by S.I. 2004/2575, art. 2(1), Sch. 1

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## 37 General interpretation of Chapter 1 of Part 1

(1) In this Chapter—

“apparatus” includes machinery, equipment, appliances, tanks, containers, pipes and conduits;

“cleaning-up” and “decommissioning”, in relation to a site or installation, includes—

(a) the treatment, storage, transportation and disposal of hazardous material and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes; and

(b) the construction of buildings and other structures to be used in connection with the cleaning-up or decommissioning of the site or installation;

“contaminated site” has the meaning given by section 36(2);

“control”, in relation to an installation, site or facility, is to be construed in accordance with section 36(3);

“Crown appointee”, in relation to an installation, site or facility, means—

(a) a Minister of the Crown; or

(b) a person for the time being holding an appointment under section 36(3)  
(b) as the person with control of it;

“designated”, in relation to an installation, site or facility, is to be construed in accordance with subsection (2);

“facility” includes a business or other undertaking and installations, vehicles or other property comprised in or used for the purposes of a business or other undertaking;

“hazardous material” means—

(a) nuclear matter;

(b) radioactive waste; and

(c) any other article or substance that has been and remains contaminated (whether radioactively or chemically) as a result (within the meaning of section 36) of nuclear activities;

“installation” includes buildings, structures and apparatus (whether or not fixed to land);

“NDA facility” means a facility which—

(a) is being or has been used for or in connection with the storage, disposal or treatment of hazardous material; and

(b) is a facility for the operation of which the NDA has or has had a responsibility;

“nuclear installation” means—

(a) an installation which is situated in or on a principal nuclear site but is not comprised in an NDA facility;

(b) pipes, conduits and other apparatus which are not situated in or on a principal nuclear site but are connected to an installation falling within paragraph (a);

“nuclear security” has the meaning given by section 9(9);

“nuclear site” has the meaning given by section 36(1);

“principal nuclear site” has the meaning given by section 36(2);

“publicly owned”, in relation to a company, is to be construed in accordance with subsection (3);

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“site” includes—

- (a) land within the United Kingdom;
- (b) an area of territorial waters adjacent to the United Kingdom;
- (c) the seabed and subsoil in any such area;

“treat”, in relation to any matter or substance, includes processing and reprocessing (including any use as a material in a process for the manufacture of nuclear fuel), and cognate expressions are to be construed accordingly;

“vehicle” includes vessel;

“voting rights” is to be construed in accordance with subsection (5).

- (2) An installation, site or facility is designated for the purposes of this Chapter if—
  - (a) it is designated by a direction under section 3; or
  - (b) the NDA otherwise has responsibilities in relation to it by virtue of such a direction.
- (3) For the purposes of this Chapter a body corporate is a publicly owned company if it is a company limited by shares and that company is one in which—
  - (a) a person specified in subsection (4) holds all the shares; or
  - (b) two or more persons so specified, taken together, hold all the shares.
- (4) The persons mentioned in subsection (3) are—
  - (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) the NDA;
  - (d) the UKAEA;
  - (e) a publicly owned company; or
  - (f) a nominee of a person falling within paragraphs (a) to (e).
- (5) Section 736A of the Companies Act 1985 (c. 6) (meaning of “voting rights” etc.) applies for construing references in this Chapter to holding voting rights in a company as it applies for construing section 736(1)(a) of that Act.
- (6) Sections 17 to 20 bind the Crown.
- (7) In this section—
  - “company” has the same meaning as in the Companies Act 1985;
  - “nuclear matter” means material which—
    - (a) is nuclear matter within the meaning of the 1965 Act; or
    - (b) would be such matter if it did not fall within an exception prescribed by regulations under that Act;
  - “radioactive waste” has the same meaning as in the 1993 Act.

#### Commencement Information

**I39** S. 37 in force at 24.8.2004 for specified purposes by [S.I. 2004/2184](#), [art. 2\(1\)](#), [Sch. 1](#)

**I40** S. 37 in force at 5.10.2004 in so far as not already in force by [S.I. 2004/2575](#), [art. 2\(1\)](#), [Sch. 1](#)

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## CHAPTER 2

### TRANSFERS RELATING TO NUCLEAR UNDERTAKINGS

*Transfer by scheme of property etc.*

#### 38 Nuclear transfer schemes

- (1) The Secretary of State may make a scheme providing for one or more transfers authorised by this Chapter (a “nuclear transfer scheme”).
- (2) Nothing in this Chapter authorises the transfer in accordance with a nuclear transfer scheme of a nuclear site licence.
- (3) Before making—
  - (a) a nuclear transfer scheme which transfers property, rights or liabilities to or from the NDA or a subsidiary of the NDA, or
  - (b) a nuclear transfer scheme not falling within paragraph (a) which he is proposing to make for purposes connected with the carrying out of the NDA’s functions,the Secretary of State must consult the NDA.
- (4) Before making a nuclear transfer scheme which transfers property, rights or liabilities to any person—
  - (a) from BNFL, or
  - (b) from a wholly-owned subsidiary of BNFL,the Secretary of State must consult BNFL.
- (5) Before making a nuclear transfer scheme that transfers property, rights or liabilities to any person—
  - (a) from the UKAEA, or
  - (b) from a wholly-owned subsidiary of the UKAEA,the Secretary of State must consult the UKAEA.
- (6) The consent of the Treasury is required for the making of a nuclear transfer scheme.
- (7) A nuclear transfer scheme shall come into force at such time as the Secretary of State may appoint, whether in the scheme or subsequently.
- (8) Schedule 5 (which makes further provision about nuclear transfer schemes) has effect.

#### Commencement Information

**I41** S. 38 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 39 Transfers of publicly owned assets

- (1) A nuclear transfer scheme may provide for a transfer to—
  - (a) a publicly owned company,
  - (b) the NDA, or
  - (c) a consenting person,

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of property, rights and liabilities falling within subsection (2) that are set out in the scheme.

- (2) The property, rights and liabilities that may be transferred are—
- (a) securities of BNFL;
  - (b) securities of a company falling within subsection (3);
  - (c) property, rights and liabilities of BNFL or the UKAEA;
  - (d) property, rights and liabilities of a company falling within subsection (3);
  - (e) property, rights and liabilities of a wholly-owned subsidiary of BNFL, of the UKAEA or of a company falling within that subsection.
- (3) A company falls within this subsection if—
- (a) it is a nuclear company that is publicly owned; or
  - (b) it is a company designated for the purposes of this section by an order made by the Secretary of State.
- (4) The Secretary of State may designate a company for the purposes of this section only if it is a publicly owned company to which—
- (a) securities of BNFL,
  - (b) property, rights or liabilities of BNFL, or
  - (c) property, rights or liabilities of a wholly-owned subsidiary of BNFL,
- were transferred (whether in accordance with a nuclear transfer scheme or otherwise) at a time when both the company and BNFL were publicly owned.
- (5) The Secretary of State must lay a copy of every order under subsection (3) before Parliament.
- (6) Nothing in this section authorises—
- (a) a transfer of securities of BNFL, or
  - (b) a transfer of property, rights or liabilities of BNFL or of a wholly-owned subsidiary of BNFL,
- at a time when BNFL is no longer publicly owned.
- (7) Nothing in this section authorises—
- (a) a transfer of securities of a company designated for the purposes of this section, or
  - (b) a transfer of property, rights or liabilities of such a company or of a wholly-owned subsidiary of such a company,
- at a time when the company is no longer publicly owned.
- (8) Schedule 6 (which makes provision about the structure etc. of publicly owned companies to which transfers are made that are authorised by this section) has effect.
- (9) For the purposes of this section a person is a consenting person, in relation to a nuclear transfer scheme, if he has consented to the provisions of the scheme so far as they relate to him.

**Commencement Information**

**I42** S. 39 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1



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#### 40 Transfers with the consent of the transferor

- (1) A nuclear transfer scheme may provide for a transfer to—
  - (a) a publicly owned company, or
  - (b) the NDA,of property, rights and liabilities falling within subsection (3) that are set out in the scheme.
- (2) But property, rights and liabilities may be transferred by virtue of this section only if the person who is entitled or subject to them has consented to their transfer in accordance with a nuclear transfer scheme.
- (3) The property, rights and liabilities that may be transferred are—
  - (a) securities of a nuclear company that is not publicly owned;
  - (b) property and rights of such a company in or in relation to a nuclear site or an installation in or on such a site; or
  - (c) property, rights and liabilities to which such a company is entitled or subject—
    - (i) in respect of such a site or installation;
    - (ii) in connection with or by reference to activities carried on in or on such a site or installation; or
    - (iii) for purposes connected with that site or installation or with any such activities.
- (4) In subsection (3) references to the property, rights and liabilities of a company, or to which a company is entitled or subject, include references to the property, rights and liabilities of any of its wholly-owned subsidiaries.

#### Commencement Information

**I43** S. 40 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 41 Recovery of property from private ownership

- (1) This section applies in the case of a nuclear company (“the transferred company”) all the shares in which were transferred for the purposes of a management contract to the contractor or to a subsidiary of the contractor where—
  - (a) the contractor is in breach of that contract; or
  - (b) that contract has come to an end, whether by the expiry of the period for which it was in force or otherwise.
- (2) A nuclear transfer scheme may provide for the transfer to—
  - (a) a publicly owned company,
  - (b) the NDA, or
  - (c) a consenting contractor,of the property, rights and liabilities falling within subsection (3) that are set out in the scheme.
- (3) The property, rights and liabilities that may be transferred are—
  - (a) securities of the transferred company (whether transferred as mentioned in subsection (1) or issued afterwards);

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- (b) property, rights and liabilities to which the transferred company was entitled or subject immediately before the transfer so mentioned;
  - (c) property, rights and liabilities transferred for the purposes of the management contract, to the contractor, to a subsidiary of the contractor or to the transferred company or a wholly-owned subsidiary of the transferred company;
  - (d) property, rights and liabilities to which the transferred company or a wholly-owned subsidiary of the transferred company first became entitled or subject while that contract was in force.
- (4) Subsection (3) does not apply to property, rights or liabilities to the extent that they have been excluded from that subsection by—
- (a) provision contained in an agreement between the NDA and the person entitled to or subject to them; or
  - (b) provision contained in a nuclear transfer scheme by virtue of which the property, rights and liabilities or the shares mentioned in subsection (1) were vested in any person.
- (5) A transfer is authorised by this section notwithstanding that what is transferred has ceased, before the transfer, to be the property or a right or liability—
- (a) of a person to whom anything was transferred for the purposes of the management contract mentioned in subsection (1);
  - (b) of the transferred company or of a wholly-owned subsidiary of that company; or
  - (c) in the case of securities issued after the transfer mentioned in that subsection, of the person to whom they were issued.
- (6) Nothing in this section authorises the transfer of property, rights or liabilities from a company at a time when it is publicly owned.
- (7) For the purposes of this section a person is a consenting contractor, in relation to a nuclear transfer scheme, if—
- (a) he is a contractor under a management contract other than the one that has been broken or come to an end; and
  - (b) he has consented to the provisions of the scheme so far as they relate to him.
- (8) In this section—
- “contractor”, in relation to a management contract, means a party to the contract who is not the NDA;
  - “management contract” means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities; and
  - “transferred”, in relation to shares, property, rights or liabilities, means transferred in accordance with a nuclear transfer scheme.

**Commencement Information**

**I44** S. 41 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 42 Transfer of Nuclear Liabilities Investment Portfolio

- (1) A nuclear transfer scheme may provide for the transfer from BNFL to the Secretary of State of—
  - (a) the Nuclear Liabilities Investment Portfolio; or
  - (b) so much of that Portfolio as may be specified in the scheme.
- (2) Nothing in this section authorises a transfer at a time when BNFL is no longer publicly owned.
- (3) Where cash is transferred to the Secretary of State by a transfer authorised by this section, he must pay it into the Consolidated Fund.
- (4) Where the Secretary of State receives—
  - (a) sums by way of income on property or rights transferred to him by a transfer authorised by this section, or
  - (b) sums in respect of the disposal of any such property or rights,he must pay those sums into the Consolidated Fund.
- (5) The Secretary of State must comply with every direction given to him by the Treasury with respect to—
  - (a) the disposal of property or rights transferred to him by a transfer authorised by this section; or
  - (b) the exercise of any other right attached to, or arising in respect of, such property;and (in a case where there is no applicable direction) the Secretary of State must not dispose of or exercise any property or rights with respect to which he may be given a direction except with the consent of the Treasury.
- (6) In this section “the Nuclear Liabilities Investment Portfolio” means property and rights to which BNFL is entitled and which appear to the Secretary of State, from BNFL’s published accounts, to represent assets held by BNFL for the purpose of being able to meet costs or liabilities for which the NDA has a financial responsibility under Chapter 1 of this Part.

### Commencement Information

**I45** S. 42 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## *Extinguishment of undertakings and tax losses*

## 43 Undertakings given by the Secretary of State

- (1) This section applies where—
  - (a) the Secretary of State has given an undertaking to a publicly owned company to make payments to that company or a subsidiary of that company; and
  - (b) it appears to him that (apart from section 21(8)) the financial responsibilities of the NDA under Chapter 1 of this Part would make it unnecessary for those amounts to be paid.

*Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are not valid for this point in time.*

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- (2) The Secretary of State may extinguish the undertaking, and every liability of his that has arisen under the undertaking, with effect from such date as he may notify to the other parties to it.
- (3) Nothing in this section authorises the extinguishment of an undertaking at a time when the company to whom payments would fall to be made under the undertaking is not publicly owned.
- (4) The extinguishment of an undertaking under this section shall neither require nor enable any sum to be brought into account in any person's case for the purposes of corporation tax.
- (5) In this section "undertaking" includes any agreement in which an undertaking to make payments is contained.

#### Commencement Information

**I46** S. 43 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 44 Extinguishment of BNFL losses for tax purposes

- (1) In relation to accounting periods beginning on or after the trigger date, all the relevant losses of every BNFL company arising before that date shall be treated for the purposes of corporation tax as extinguished.
- (2) The following are relevant losses of a BNFL company for the purposes of this section—
  - (a) losses incurred by the company in a trade;
  - (b) losses incurred by the company in a transaction a profit or gain from which would have been chargeable to tax under Case VI of Schedule D;
  - (c) excesses to be carried forward in the company's case under [F1section 75(9)] of the Income and Corporation Taxes Act 1988 (c. 1);
  - (d) Schedule A losses (within the meaning of section 392A of that Act) incurred by the company;
  - (e) losses to be carried forward in the company's case under section 392B(1) of that Act;
  - (f) any tax loss of the company falling within section 400(2)(d) of that Act;
  - (g) allowable losses (within the meaning of section 8 of the Taxation of Chargeable Gains Act 1992 (c. 12)) that have accrued to the company;
  - (h) deficits of the kind mentioned in subsection (1) of section 83 of the Finance Act 1996 (c. 8) to the extent that they are to be carried forward in the company's case under subsection (3A) of that section;
  - (i) excesses of the kind mentioned in section 260 of the Capital Allowances Act 2001 (c. 2) in relation to the company;
  - (j) losses of the kind mentioned in paragraph 35(1) of Schedule 29 to the Finance Act 2002 (c. 23) incurred by the company;
  - (k) unrelieved surplus advance corporation tax of the company (within the meaning of section 32 of the Finance Act 1998 (c. 36)).
- (3) This section applies to the relevant losses of a BNFL company only if it is publicly owned on the day before the trigger date.

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(4) In this section—

“BNFL company” means—

- (a) BNFL;
- (b) a company that is a 75 per cent subsidiary of BNFL at a time during the qualifying period; or
- (c) a company (other than BNFL) that is a 75 per cent subsidiary of a BNFL parent company at a time during the qualifying period;

“BNFL parent company” means a company of which BNFL is a 75 per cent subsidiary;

“qualifying period” means the period beginning with 16th March 2004 and ending with the trigger date;

“trigger date” means whichever is the earlier of the following—

- (a) the date of the first occasion on which section 21 operates so as to confer financial responsibilities on the NDA in relation to an installation, site or facility the person with control of which is a BNFL company that is publicly owned; and
- (b) the date of the first occasion on which a transfer takes effect which is a transfer to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by section 39 of property, rights or liabilities of a BNFL company.

(5) This section is to be construed as one with the Corporation Tax Acts.

**Textual Amendments**

- F1** Words in s. 44(2)(c) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendments of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), **Sch. para. 72(2)**

**Commencement Information**

- I47** S. 44 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), **Sch. 1**

*Provisions relating to transfers*

**45 Further provision applying to transferee companies**

- (1) Schedule 7 (which makes provision about the finances and accounts of publicly controlled companies to which property, rights and liabilities are transferred) has effect.
- (2) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (other disqualifying offices), insert (at the appropriate place)— “ Director of a publicly controlled company (within the meaning of Chapter 2 of Part 1 of the Energy Act 2004) to which transfers have been made in accordance with provisions of nuclear transfer schemes authorised by that Chapter. ”;

and the corresponding amendment shall also be made in Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25).

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#### Commencement Information

**I48** S. 45 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 46 Pensions

Schedule 8 (which makes provision about pensions in connection with transfers affecting nuclear undertakings) has effect.

#### Commencement Information

**I49** S. 46 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 47 Taxation

Schedule 9 (which makes taxation provision in relation to nuclear transfer schemes) has effect.

#### Commencement Information

**I50** S. 47 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 48 Supplementary powers of the Secretary of State, the NDA and the UKAEA

- (1) The Secretary of State shall have power to enter into agreements for the purpose of accepting or imposing such contractual obligations as he thinks fit with respect to—
  - (a) nuclear transfer schemes and proposals for such schemes;
  - (b) anything connected with such a scheme or proposal; or
  - (c) the exercise of powers conferred on the Secretary of State or any other person by or under this Chapter.
- (2) The NDA and the UKAEA shall each have power to enter into agreements for the purpose of accepting or imposing such contractual obligations as it or they think fit with respect to—
  - (a) nuclear transfer schemes and proposals for such schemes;
  - (b) anything connected with such a scheme or proposal; or
  - (c) the exercise of powers conferred on it or them, or any other person, by or under this Chapter.
- (3) The NDA and the UKAEA shall also each have power to do anything else which, in its or their opinion, is appropriate for facilitating—
  - (a) a transfer which is or is proposed to be effected in accordance with a nuclear transfer scheme; or
  - (b) any other transfer of property, rights or liabilities of the NDA or (as the case may be) the UKAEA which is or is proposed to be effected for purposes connected with the carrying out by any person of any functions conferred on that person by or under this Part.

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- (4) Agreements entered into in exercise of the powers conferred by subsection (1) or (2) may, in particular, include provision for the making of payments (whether by way of consideration or otherwise)—
- (a) to the Secretary of State, or
  - (b) to the NDA or the UKAEA,
- in respect of anything transferred or created in accordance with a nuclear transfer scheme.
- (5) The consent of the Treasury is required for the Secretary of State or the UKAEA to enter into an agreement in exercise of those powers.
- (6) The consent of the Secretary of State is also required for the UKAEA to enter into an agreement in exercise of those powers.
- (7) Before making any disposal of securities of a company in a case in which—
- (a) the disposal is made in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the NDA,
  - (b) those arrangements are not arrangements to which the Secretary of State has consented under subsection (6), and
  - (c) in the opinion of the UKAEA, the disposal is one which they would not have power to make but for section 1(2) of the Atomic Energy (Miscellaneous Provisions) Act 1981 (c. 48) (disposal otherwise inconsistent with UKAEA functions),
- the UKAEA must consult the Secretary of State.
- (8) Subsection (4) of section 1 of the Atomic Energy (Miscellaneous Provisions) Act 1981 (which limits the cases in which the UKAEA may make share disposals that are inconsistent with its functions) shall not apply—
- (a) to anything done by the UKAEA in exercise of powers conferred on them by or under this Chapter; or
  - (b) to any disposal of securities in accordance with arrangements entered into by the UKAEA for purposes connected with the carrying out of its functions by the NDA.
- (9) Sums received by the Secretary of State in pursuance of an agreement under this section must be paid into the Consolidated Fund.
- (10) The powers conferred on the Secretary of State, the NDA and the UKAEA by this section—
- (a) are in addition to their powers apart from this section; and
  - (b) are to be disregarded in determining the extent of those powers.

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**Commencement Information**

**I51** S. 48 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Status: Point in time view as at 31/03/2005. This version of this part contains provisions that are not valid for this point in time.*

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### *Supplementary provisions of Chapter 2 of Part 1*

#### **49 Duty to assist the Secretary of State**

- (1) This section applies where the Secretary of State proposes to make a nuclear transfer scheme.
- (2) The transferor shall have the duty, within such period as the Secretary of State may allow—
  - (a) to provide the Secretary of State, and
  - (b) to secure, so far as practicable, that its subsidiaries provide the Secretary of State,
 with all such information and other assistance as the Secretary of State may require for the purposes of, or in connection with, the making of the scheme.
- (3) The duties of the transferor under this section are duties owed to the Secretary of State.
- (4) Those duties are to be enforceable by the Secretary of State in civil proceedings—
  - (a) for an injunction;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36); or
  - (c) for any other appropriate remedy or relief.
- (5) In this section “the transferor”, in relation to a nuclear transfer scheme, means a person from whom it is proposed that property, rights or liabilities are transferred by the scheme.

#### **Commencement Information**

**I52** S. 49 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

#### **50 Interpretation of Chapter 2 of Part 1**

- (1) In this Chapter —
 

“nuclear company” means a body corporate with control of a designated installation, designated site or designated facility;

“publicly controlled” is to be construed in accordance with subsection (3).
- (2) Expressions used in this Chapter and in Chapter 1 of this Part have the same meanings in this Chapter as in that Chapter.
- (3) For the purposes of this Chapter a body corporate is a publicly controlled company if it is a company limited by shares that is either publicly owned or is otherwise a company in which—
  - (a) a person specified in subsection (4) holds a majority of the voting rights; or
  - (b) two or more persons so specified, taken together, hold a majority of the voting rights.
- (4) The persons mentioned in subsection (3) are—
  - (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) the NDA;



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- (d) the UKAEA;
  - (e) a publicly owned company; or
  - (f) a nominee of a person falling within paragraphs (a) to (e).
- (5) In this section “company” has the same meaning as in the Companies Act 1985 (c. 6).

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**Commencement Information**

**I53** S. 50 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## CHAPTER 3

### CIVIL NUCLEAR CONSTABULARY

#### *Civil Nuclear Police Authority*

#### **51 The Civil Nuclear Police Authority**

- (1) There shall be a body corporate to be known as the Civil Nuclear Police Authority (“the Police Authority”).
- (2) Schedule 10 (which makes further provision about the Police Authority) has effect.

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**Commencement Information**

**I54** [S. 51\(1\)](#) in force at 1.3.2005 by [S.I. 2005/442](#), art. 2(1), [Sch. 1](#)

**I55** [S. 51\(2\)](#) in force at 1.3.2005 for specified purposes by [S.I. 2005/442](#), art. 2(1), [Sch. 1](#)

#### *Civil Nuclear Constabulary*

#### **52 The Civil Nuclear Constabulary**

- (1) It shall be the function of the Police Authority to secure the maintenance of an efficient and effective constabulary, to be known as the Civil Nuclear Constabulary (“the Constabulary”).
- (2) The primary function of the Constabulary is—
  - (a) the protection of licensed nuclear sites which are not used wholly or mainly for defence purposes; and
  - (b) safeguarding nuclear material in Great Britain and elsewhere.
- (3) The Police Authority may allocate to the Constabulary the function of carrying on such other activities relating to, or connected with, the security of—
  - (a) nuclear material, or
  - (b) sites where such material is being, has been or is to be used, processed or stored,as the Police Authority thinks fit.

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- (4) The Constabulary shall have the function of carrying on such other activities as may be allocated to it by the Police Authority in accordance with directions given to that Authority for the purposes of this section by the Secretary of State.
- (5) The Secretary of State may give the Police Authority directions restricting the exercise of its powers under subsection (3).
- (6) Subject to the provisions of this Chapter, the Police Authority may do anything which appears to it to be likely to facilitate the carrying out of its functions, or to be incidental to carrying them out.
- (7) Nothing in this section limits what a member of the Constabulary may do in the exercise of the powers and privileges conferred on him by section 56.

**Commencement Information**

**I56** S. 52(1)(6) in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

**53 Chief constable and other senior officers**

- (1) The Police Authority—
  - (a) must appoint a chief constable of the Constabulary and a deputy chief constable of the Constabulary; and
  - (b) may appoint one or more assistant chief constables of the Constabulary.
- (2) Before appointing the deputy chief constable or an assistant chief constable, the Police Authority must consult the chief constable.
- (3) The chief constable, the deputy chief constable and every assistant chief constable are to be members of the Constabulary.
- (4) The approval of the Secretary of State is required for the making of an appointment under this section.
- (5) Schedule 11 (which makes provision about the removal and suspension of the chief constable and other senior officers) has effect.

**Commencement Information**

**I57** S. 53(1)(2)(4)(5) in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 01/04/2005

**54 Functions of senior officers**

- (1) In carrying out his functions in any financial year, the chief constable must have regard to—
  - (a) the annual policing plan for that year issued by the Police Authority under paragraph 2 of Schedule 12; and
  - (b) the three-year strategy plan most recently issued by the Police Authority under paragraph 3 of that Schedule for a period that includes that year.

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- (2) The deputy chief constable may perform a function of the chief constable—
  - (a) while the chief constable is unable to act or unavailable;
  - (b) during a vacancy in the office of chief constable; or
  - (c) with the consent of the chief constable.
- (3) A consent for the purposes of subsection (2)(c) may be either general or specific.
- (4) The Police Authority may authorise an assistant chief constable to perform a function of the chief constable—
  - (a) while both the chief constable and the deputy chief constable are unable to act or unavailable; or
  - (b) while the offices of chief constable and deputy chief constable are both vacant.
- (5) At any one time, only one person may be authorised to act under subsection (4).
- (6) No person shall be entitled by virtue of subsection (2)(a) or (b) or an authorisation under subsection (4) to act for a continuous period exceeding three months, except with the consent of the Secretary of State.

VALID FROM 01/04/2005

## **55 Members of the Constabulary**

- (1) The Police Authority may appoint persons to be members of the Constabulary.
- (2) Members of the Constabulary are to be employees of the Police Authority and (apart from the chief constable himself) under the direction and control of the chief constable.
- (3) A person appointed as a member of the Constabulary must, on appointment—
  - (a) be attested as a constable by making the required declaration before a justice of the peace in England and Wales; or
  - (b) make the required declaration before a sheriff or a justice of the peace in Scotland.
- (4) The required declaration is—
  - (a) in the case of a declaration before a justice of the peace in England and Wales, the declaration required by section 29 of the Police Act 1996 (c. 16) in the case of a member of a police force maintained under that Act; and
  - (b) in the case of a declaration before a sheriff or a justice of the peace in Scotland, a declaration faithfully to execute the duties of the office of a member of the Civil Nuclear Constabulary.

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VALID FROM 01/04/2005

### *Jurisdiction and powers of Constabulary*

#### **56 Jurisdiction of Constabulary**

- (1) A member of the Constabulary shall have the powers and privileges of a constable—
  - (a) at every place comprised in a relevant nuclear site; and
  - (b) everywhere within 5 kilometres of such a place.
- (2) A member of the Constabulary shall have the powers and privileges of a constable at every trans-shipment site where it appears to him expedient to be in order to safeguard nuclear material while it is at the site.
- (3) A member of the Constabulary shall have the powers and privileges of a constable at every other place where it appears to him expedient to be in order to safeguard nuclear material which is in transit.
- (4) A member of the Constabulary shall have the powers and privileges of a constable at every place where it appears to him expedient to be in order to pursue or to detain a person whom he reasonably believes—
  - (a) to have unlawfully removed or interfered with nuclear material being safeguarded by members of the Constabulary; or
  - (b) to have attempted to do so.
- (5) A member of the Constabulary shall have the powers and privileges of a constable throughout Great Britain for purposes connected with—
  - (a) a place mentioned in subsections (1) to (4);
  - (b) anything that he or another member of the Constabulary is proposing to do, or has done, at such a place; or
  - (c) anything which he reasonably believes to have been done, or to be likely to be done, by another person at or in relation to such a place.
- (6) This section has effect in United Kingdom waters adjacent to Great Britain as it has effect in Great Britain, but as if references to the powers and privileges of a constable were references to the powers and privileges of a constable in the nearest part of Great Britain.
- (7) In this section—
 

“detain”, in relation to a person, includes transferring him to the custody of another or to a place where he may be held in custody;

“relevant nuclear site” means a licensed nuclear site other than a designated defence site;

“trans-shipment site” means a place which a member of the Constabulary reasonably believes to be—

  - (a) a place where a consignment of nuclear material in transit is trans-shipped or stored; or
  - (b) a place to which a consignment of nuclear material may be brought to be trans-shipped or stored while it is in transit;

“United Kingdom waters” means waters within the seaward limits of the territorial sea;

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and nuclear material is “in transit” for the purposes of this section if it is being carried (or is being trans-shipped or stored incidentally to carriage) before its delivery at its final destination.

- (8) In subsection (7) “designated defence site” means a site designated by order made by the Secretary of State as a site which appears to him to be used wholly or mainly for defence purposes.
- (9) An order under subsection (8) must be laid before Parliament after being made.
- (10) Where an order designating a site for the purposes of section 76(2) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (jurisdiction of Atomic Energy Authority special constables) is in force immediately before the commencement of this section, that order shall have effect after the commencement of this section as an order made under and for the purposes of subsection (8).

## 57 Stop and search under Terrorism Act 2000

- (1) The Terrorism Act 2000 (c. 11) is amended as follows.
- (2) In section 44 (authorisation to stop and search in connection with terrorism)—
- (a) after subsection (4B) insert—
- “(4BA) In a case in which the specified area or place is a place in which members of the Civil Nuclear Constabulary have the powers and privileges of a constable, an authorisation may also be given by a member of that Constabulary who is of at least the rank of assistant chief constable.”;
- (b) in subsection (4C), after paragraph (b) insert “or
- (c) a member of the Civil Nuclear Constabulary,”.
- (3) In section 46 (duration of authorisation), after subsection (2) insert—
- “(2A) An authorisation under section 44(4BA) does not have effect except in relation to times when the specified area or place is a place where members of the Civil Nuclear Constabulary have the powers and privileges of a constable.”

VALID FROM 01/04/2005

### *Administration of Constabulary*

## 58 Government, administration and conditions of service

- (1) Where—
- (a) the Police Authority makes provision about the government, administration or conditions of service of the Constabulary or its members, and
- (b) the provision relates to matters which are the subject of regulations under section 50 of the Police Act 1996 (c. 16) (regulations about the government, administration and conditions of service of police forces),

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the provision made by the Police Authority may differ from those regulations only so far as necessary to take account of differences relating to the structure and circumstances of the Constabulary.

- (2) Before making provision about the government, administration or conditions of service of the Constabulary or its members, the Police Authority must consult—
- (a) the chief constable;
  - (b) the Civil Nuclear Police Federation; and
  - (c) if the proposed provision relates to members of a rank-related association, that association.

## 59 Members of Constabulary serving with other forces

- (1) This section applies where a member of the Constabulary serves with a relevant force under arrangements made between the chief officer of that force and the chief constable.
- (2) The member of the Constabulary—
- (a) shall be under the direction and control of the chief officer of the relevant force; and
  - (b) shall have the same powers and privileges as a member of that force.
- (3) In this section—
- “chief officer” means—
- (a) a chief officer of police of a police force for a police area in Great Britain;
  - (b) the Chief Constable of the Police Service of Northern Ireland;
  - (c) the Director General of the National Criminal Intelligence Service;
  - (d) the Director General of the National Crime Squad;
  - (e) the chief constable of the British Transport Police Force; or
  - (f) the chief constable of the Ministry of Defence Police;
- “relevant force” means—
- (a) a police force for a police area in Great Britain;
  - (b) the Police Service of Northern Ireland;
  - (c) the National Criminal Intelligence Service;
  - (d) the National Crime Squad;
  - (e) the British Transport Police Force; or
  - (f) the Ministry of Defence Police.

## 60 Charges

- (1) A person falling within subsection (2) must pay to the Police Authority such charges (if any) in respect of services provided by the Constabulary as are—
- (a) agreed between that person and the Police Authority; or
  - (b) in the absence of agreement, determined by the Secretary of State.
- (2) A person falls within this subsection if—
- (a) he is the owner or occupier of a site in respect of which services are provided by the Constabulary;

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- (b) he is a person with an interest in, or with custody or control of, nuclear material in respect of which services are so provided; or
  - (c) he is a person not falling within paragraph (a) or (b) who is the recipient of services provided by the Constabulary.
- (3) The Secretary of State may pay to the Police Authority such sums as are—
- (a) agreed between him and that Authority, or
  - (b) in the absence of agreement, determined by the Secretary of State,
- in respect of services provided by the Constabulary to such persons as he may determine.
- (4) The services in respect of which charges or sums may be imposed or paid under this section include—
- (a) services which it is the duty of the Constabulary to provide; and
  - (b) services which it is the duty of the person charged to have provided.

*Supervision and inspection etc.*

VALID FROM 01/04/2005

## **61 Planning and reports**

Schedule 12 (which makes provision about planning and reporting) has effect.

VALID FROM 01/04/2005

## **62 Inspection**

- (1) Her Majesty's Inspectors of Constabulary must inspect the Constabulary from time to time.
- (2) Her Majesty's Inspectors of Constabulary must also inspect the Constabulary if requested to do so by the Secretary of State either—
- (a) generally; or
  - (b) in respect of a particular matter.
- (3) Before carrying out an inspection under this section wholly or partly in Scotland, Her Majesty's Inspectors of Constabulary must consult the Scottish inspectors—
- (a) in the case of any inspection by virtue of subsection (1) or (2)(a), about the scope and conduct in Scotland of the proposed inspection; and
  - (b) in any other case, about its conduct in Scotland.
- (4) Following an inspection under this section, Her Majesty's Inspectors of Constabulary must report to the Secretary of State on the efficiency and effectiveness of the Constabulary either—
- (a) generally; or
  - (b) in the case of an inspection under subsection (2)(b), in respect of the matter to which the inspection related.

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- (5) A report under subsection (4) must be in such form as the Secretary of State may direct.
- (6) The Secretary of State must arrange for every report which he receives under subsection (4) to be published in such manner as appears to him to be appropriate.
- (7) The Secretary of State may exclude from publication under subsection (6) any part of a report if, in his opinion, the publication of that part—
  - (a) would be against the interests of national security; or
  - (b) might jeopardise the safety of any person.
- (8) The Secretary of State must send a copy of the published report—
  - (a) to the Police Authority; and
  - (b) to the chief constable.
- (9) The Police Authority must pay to the Secretary of State such amounts as he may determine in respect of an inspection carried out under this section.
- (10) The Secretary of State must pay sums received by him under subsection (9) into the Consolidated Fund.
- (11) In this section “the Scottish inspectors” means the inspectors of constabulary appointed under section 33(1) of the Police (Scotland) Act 1967 (c. 77).

### 63 Supervision by Secretary of State

- (1) The Police Authority must comply with directions given by the Secretary of State under Schedule 13.
- (2) The Secretary of State must exercise his powers under this Chapter in such manner, and to such extent, as appears to him best calculated to promote the efficiency and effectiveness of the Constabulary.
- (3) The Police Authority must pay to the Secretary of State such amounts as he may determine in respect of things done by him for or in relation to the Authority or its employees in connection with matters relating to security.
- (4) The Secretary of State must pay sums received by him under subsection (3) into the Consolidated Fund.

#### Commencement Information

**I58** S. 63 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1



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VALID FROM 01/04/2005

*Rights etc. of members of the Constabulary*

**64 Civil Nuclear Police Federation**

- (1) The Secretary of State may approve a body (whether corporate or unincorporate) as the body approved to carry out the functions conferred by this section.
- (2) The body approved by the Secretary of State shall be known as the Civil Nuclear Police Federation.
- (3) The function of the Civil Nuclear Police Federation shall be to represent members of the Constabulary (other than senior officers) in all matters affecting their welfare and efficiency.
- (4) Those matters do not include—
  - (a) the promotion in rank of particular individuals; or
  - (b) (except to the extent provided in subsection (5)) discipline matters affecting particular individuals.
- (5) The Civil Nuclear Police Federation may represent a member of the Constabulary (other than a senior officer)—
  - (a) at disciplinary proceedings conducted in accordance with arrangements made by the Police Authority; or
  - (b) on an appeal under any such arrangements from a decision in such proceedings.
- (6) But representation under subsection (5) must comply with any restrictions imposed by section 66.
- (7) Except so far as otherwise authorised by the Secretary of State, the Civil Nuclear Police Federation must be entirely independent of, and unassociated with, bodies and other persons who are without appropriate police connections.
- (8) But it may employ in an administrative or advisory capacity persons who are without appropriate police connections.
- (9) An authorisation for the purposes of subsection (7)—
  - (a) may be given either conditionally or unconditionally; and
  - (b) may be varied or revoked at any time.
- (10) Only the following have appropriate police connections for the purposes of this section—
  - (a) persons within the service of the Constabulary, of the Ministry of Defence Police, of the British Transport Police Force, of a police force for a police area in Great Britain or of the Police Service of Northern Ireland;
  - (b) persons not falling within paragraph (a) who are members of or employed by the Police Authority;
  - (c) a federation referred to in section 59 of the Police Act 1996 (c. 16), section 3 of the Ministry of Defence Police Act 1987 (c. 4) or section 39 of the Railways and Transport Safety Act 2003 (c. 20) (police federations);

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- (d) the Police Association for Northern Ireland;
- (e) a rank-related association;
- (f) a body recognised under, and for the purposes specified in, section 64(5) of the Police Act 1996 or section 35(4) of the Police (Northern Ireland) Act 1998 (c. 32) (recognition of other bodies for trade union purposes).

## **65 Rank-related associations**

- (1) The Secretary of State may approve one or more bodies (whether corporate or unincorporate) as bodies approved to carry out the functions conferred by this section.
- (2) A body approved by the Secretary of State under this section shall be known as a rank-related association.
- (3) The function of a rank-related association shall be to represent, in all matters affecting their welfare and efficiency, members of the Constabulary who—
  - (a) are not members of the Civil Nuclear Police Federation or of another rank-related association; and
  - (b) hold such ranks as may be specified in the approval given for the purposes of this section by the Secretary of State.
- (4) Those matters do not include—
  - (a) the promotion in rank of particular individuals; or
  - (b) (except to the extent provided in subsection (5)) discipline matters affecting particular individuals.
- (5) A rank-related association may represent a member of the association—
  - (a) at disciplinary proceedings conducted in accordance with arrangements made by the Police Authority; or
  - (b) on an appeal under any such arrangements from a decision in such proceedings.
- (6) But representation under subsection (5) must comply with any restrictions imposed by section 66.
- (7) Except so far as otherwise authorised by the Secretary of State, a rank-related association must be entirely independent of, and unassociated with, bodies and other persons who are without appropriate police connections.
- (8) But it may employ in an administrative or advisory capacity persons who are without appropriate police connections.
- (9) An authorisation for the purposes of subsection (7)—
  - (a) may be given either conditionally or unconditionally; and
  - (b) may be varied or revoked at any time.
- (10) In relation to a rank-related association, only the following have appropriate police connections for the purposes of this section—
  - (a) persons within the service of the Constabulary, of the Ministry of Defence Police, of the British Transport Police Force, of a police force for a police area in Great Britain or of the Police Service of Northern Ireland;

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- (b) persons not falling within paragraph (a) who are members of or employed by the Police Authority;
- (c) the Civil Nuclear Police Federation;
- (d) another rank-related association;
- (e) a federation referred to in section 59 of the Police Act 1996 (c. 16), section 3 of the Ministry of Defence Police Act 1987 (c. 4) or section 39 of the Railways and Transport Safety Act 2003 (c. 20) (police federations);
- (f) the Police Association for Northern Ireland;
- (g) a body recognised under, and for the purposes specified in, section 64(5) of the Police Act 1996 or section 35(4) of the Police (Northern Ireland) Act 1998 (c. 32) (recognition of other bodies for trade union purposes).

## **66 Representation at certain disciplinary proceedings**

- (1) This section applies where disciplinary proceedings conducted in accordance with arrangements made by the Police Authority may lead to a member of the Constabulary who is not a senior officer being—
  - (a) dismissed;
  - (b) required to resign; or
  - (c) reduced in rank.
- (2) The member of the Constabulary must be given an opportunity to elect to be legally represented—
  - (a) in those proceedings; and
  - (b) on any appeal under the arrangements.
- (3) If he so elects, he may be represented, at his option, by counsel or by a solicitor.
- (4) The member of the Constabulary, if he is not legally represented, may be represented in the proceedings or on an appeal only by a person who is—
  - (a) a member of the Constabulary;
  - (b) a member of a police force maintained under the Police Act 1996 (c. 16);
  - (c) a constable of a police force maintained under the Police (Scotland) Act 1967 (c. 77);
  - (d) a constable of the British Transport Police Force; or
  - (e) a member of the Ministry of Defence Police.

## **67 Trade union membership**

- (1) A member of the Constabulary must not be a member of—
  - (a) a trade union; or
  - (b) an association whose objects are or include controlling or influencing the pay, pensions or conditions of service of members of the Constabulary.
- (2) Subsection (1) does not prevent a member of the Constabulary—
  - (a) from being a member of the Civil Nuclear Police Federation;
  - (b) from being a member of a rank-related association; or
  - (c) with the consent of the chief constable, from continuing to be a member of a trade union to which he belonged before becoming a member of the Constabulary.

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- (3) In this section “trade union” has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).

*Supplementary provisions of Chapter 3 of Part 1*

VALID FROM 01/04/2005

**68 Application of offences etc. applying to constables**

- (1) The references in section 89(1) and (2) of the Police Act 1996 and section 41(1) and (2) of the Police (Scotland) Act 1967 (assaults on constables) to a constable in the execution of his duty shall have effect as if they included references to a member of the Constabulary who—
- (a) is exercising any of the powers or privileges conferred on him by section 56; or
  - (b) is otherwise performing his duties under the direction and control of the chief constable or as an employee of the Police Authority.
- (2) Section 90 of the Police Act 1996 (impersonation of member of a police force) shall have effect as if the references to a member of a police force included references to a member of the Constabulary.
- (3) In section 91 of the Police Act 1996 (causing disaffection), for subsection (2) substitute—
- “(2) This section applies in the case of—
- (a) special constables appointed for a police area,
  - (b) members of the Civil Nuclear Constabulary, and
  - (c) members of the British Transport Police Force,
- as it applies in the case of members of a police force.”
- (4) In section 42 of the Police (Scotland) Act 1967 (c. 77) (causing disaffection), after subsection (2) insert—
- “(3) In this section—
- (a) references to the constables of any police force include references to the members of the Civil Nuclear Constabulary; and
  - (b) references to a constable include references to a member of that Constabulary.”
- (5) In section 43 of the Police (Scotland) Act 1967 (impersonation of police)—
- (a) in subsection (1)(b) (wearing a police uniform without permission), after “without” insert “ being a member of the Civil Nuclear Constabulary or having ”; and
  - (b) in subsection (3), after “police authority” insert “ or by the Civil Nuclear Police Authority ”.
- (6) After subsection (3) of that section insert—
- “(3A) In its application to articles of the uniform of the Civil Nuclear Constabulary, subsection (1)(b) has effect as if for the words “or having the permission of

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the police authority for the police area in which he is” there were substituted the words “ and in circumstances where it gives him an appearance so nearly resembling that of a constable as to be calculated to deceive ”.

(3B) For the purposes of this section—

- (a) “constable” includes a member of the Civil Nuclear Constabulary; and
- (b) any reference to “police” includes a reference to that Constabulary.”

(7) In any enactment—

- (a) references to a person’s being in the custody of a constable, or to his being detained in the charge of a constable, include references to his being detained by a member of the Constabulary in the exercise of any of the powers or privileges conferred on him by section 56; and
- (b) references to a person’s accompanying a constable include references to his accompanying a member of the Constabulary.

## 69 Minor amendments relating to the Constabulary

- (1) Schedule 14 (which contains minor amendments relating to the Constabulary) has effect.
- (2) The Secretary of State may by order make such modifications of subordinate legislation as appear to him to be appropriate in consequence of any provision of this Chapter.
- (3) Orders under subsection (2) are subject to the negative resolution procedure.

### Commencement Information

- I59** S. 69(1) in force at 1.3.2005 for specified purposes by S.I. 2005/442, art. 2(1), Sch. 1  
**I60** S. 69(2)(3) in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 01/04/2005

## 70 Nuclear transfer scheme for UKAEA Constabulary

- (1) The Secretary of State must make a nuclear transfer scheme providing for the transfer to the Police Authority of—
  - (a) the employees of the UKAEA who are members of the UKAEA Constabulary;
  - (b) such other persons employed by the UKAEA for purposes connected with that Constabulary as he considers appropriate;
  - (c) such property held by the UKAEA for purposes connected with the activities of members of the UKAEA Constabulary as he considers appropriate; and
  - (d) such rights and liabilities of the UKAEA relating to any of those activities, or to any such property, as he considers appropriate.
- (2) The nuclear transfer scheme that provides for the transfer of members of the UKAEA Constabulary to the Police Authority must provide for the transfer to

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the Police Authority, at the same time, of everyone who immediately before that time is employed by the UKAEA exclusively for purposes connected with that Constabulary.

- (3) Chapter 2 of this Part shall have effect as if the nuclear transfer scheme required by this section were a scheme authorised by section 39 but did not require the consent of the Police Authority to any of its provisions.
- (4) From the date on which the nuclear transfer scheme required by this section comes into force, the members of the UKAEA Constabulary who are transferred by the scheme shall hold office as members of the Constabulary as if they had—
  - (a) been appointed by the Police Authority in accordance with section 55; and
  - (b) on appointment made the declaration required by that section.
- (5) In this section “members of the UKAEA Constabulary”, in relation to a nuclear transfer scheme, means persons who, on the date on which the scheme comes into force, are special constables appointed on the nomination of the UKAEA under section 3 of the Special Constables Act 1923 (c. 11).

## 71 Interpretation of Chapter 3 of Part 1

- (1) In this Chapter—
  - “chief constable” means the chief constable of the Constabulary;
  - “the Civil Nuclear Police Federation” is to be construed in accordance with section 64(2);
  - “the Constabulary” means the Civil Nuclear Constabulary;
  - “licensed nuclear site” means a site in respect of which a nuclear site licence is or is required to be in force;
  - “nuclear material” means—
    - (a) any fissile material in the form of—
      - (i) uranium metal, alloy or chemical compound; or
      - (ii) plutonium metal, alloy or chemical compound;
    - (b) any other fissile material prescribed by regulations made by the Secretary of State;
  - “the Police Authority” means the Civil Nuclear Police Authority;
  - “rank-related association” is to be construed in accordance with section 65(2);
  - “senior officer” means the chief constable or the deputy chief constable or an assistant chief constable of the Constabulary.
- (2) References in this Chapter to the functions of the Police Authority include references to securing that the functions of the Constabulary are carried out.
- (3) Any power of the Secretary of State under this Chapter to give directions—
  - (a) restricting the exercise by the Police Authority of its powers,
  - (b) requiring functions to be carried out or objectives to be met by the Constabulary or the Police Authority, or
  - (c) imposing obligations on the Police Authority or any of its members or employees,
 includes power to impose restrictions, confer functions, require objectives to be met or impose obligations at or in relation to places outside Great Britain.

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- (4) Regulations under subsection (1) are subject to the negative resolution procedure.
- (5) Where regulations under subsection (7) of section 76 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (jurisdiction of Atomic Energy Authority special constables) prescribing material to be treated as nuclear material for the purposes of that section are in force immediately before the commencement of this section, those regulations shall have effect after the commencement of this section as regulations made under and for the purposes of subsection (1).

#### Commencement Information

**I61** S. 71 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

## CHAPTER 4

### AUTHORISATIONS RELATING TO RADIOACTIVE WASTE

#### 72 Transfer of authorisations

After section 16 of the 1993 Act (grant of authorisations) insert—

##### “16A Transfer of authorisations

- (1) This section applies where—
  - (a) a person (“the transferor”) holds an authorisation granted under section 13 in respect of the disposal of radioactive waste on or from premises situated on a nuclear site; and
  - (b) an application is made under this section for a transfer (in whole or in part) of that authorisation to another person (“the transferee”).
- (2) An application under this section is one which—
  - (a) is made to the authorising authority jointly by the transferor and the transferee;
  - (b) is accompanied by the appropriate amount; and
  - (c) in the case of an application for a transfer relating to part only of the premises, identifies the part in question.
- (3) The appropriate amount for the purposes of subsection (2) is—
  - (a) if the application is made to the appropriate Agency, the amount of the charge (if any) that is prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; and
  - (b) if it is made to the chief inspector, the prescribed fee.
- (4) The authorising authority must, on receipt of the application (but subject to directions under section 25 and to subsection (6)), send a copy of the application to every local authority in whose area radioactive waste may be disposed of under the authorisation to which the application relates.

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- (5) Before granting the application, the authorising authority must (subject to subsection (6)) consult everyone whom it would have been required to consult under section 16(4A) and (5) if—
- (a) the transferee had applied for the grant of the authorisation that he would hold were the application to be granted; and
  - (b) in the case of a partial transfer, the transferor had applied for the grant (in place of his existing authorisation) of the authorisation he would hold in those circumstances.
- (6) The authorising authority may proceed with the application without—
- (a) sending a copy of the application to a local authority mentioned in subsection (4), or
  - (b) consulting an authority or body mentioned in section 16(5) about the proposed transfer,
- if it appears to the authorising authority that arrangements for the disposal of radioactive waste are unlikely to be changed, as a result of the transfer, in a way that would be of interest to that authority or body.
- (7) The authorising authority may grant the application if, and only if, it is satisfied—
- (a) that the transferee has or will have operational control over the disposals to which the transferred authorisation will relate;
  - (b) that he is able and willing to ensure compliance with the limitations and conditions of the authorisation that he will hold if the application is granted; and
  - (c) that no other grounds exist on which it would be reasonable to refuse to grant the application.
- (8) Where the authorising authority grants the application, it must—
- (a) fix the date from which the transfer applied for is to have effect;
  - (b) furnish the transferee with a certificate containing all material particulars of the authorisation he holds as a result of the transfer;
  - (c) in the case of a partial transfer, furnish the transferor with a similar certificate as respects the authorisation he holds as a result of the transfer; and
  - (d) subject to directions under section 25, send a copy of the certificate furnished to the transferee, and of any certificate furnished to the transferor—
    - (i) to every local authority in whose area radioactive waste may be disposed of under the authorisation to which the certificate relates; and
    - (ii) to every person consulted about the transfer under so much of subsection (5) as requires consultation in accordance with section 16(5).
- (9) The time fixed as the time from which the transfer is to have effect must be not less than twenty-eight days after the day (if any) on which the authorising authority, when it fixes that time, expects copies of the certificates mentioned in paragraph (d) of subsection (8) to be sent out in accordance with that paragraph.



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- (10) Subsection (9) does not apply if, in the opinion of the authorising authority, it is necessary for the transfer to have immediate effect or otherwise to be expedited.
- (11) In this section “authorising authority”—
- (a) in relation to an authorisation having effect in Great Britain, means the appropriate Agency; and
  - (b) in relation to an authorisation having effect in Northern Ireland, means the chief inspector.”

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**Commencement Information**

**I62** S. 72 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

### 73 Applications for variation of authorisations

In section 17 of the 1993 Act (revocation and variation of authorisations), after subsection (2) insert—

“(2ZA) The powers of the appropriate Agency and of the chief inspector under this section are exercisable with or without the making of an application by the person holding the authorisation.

(2ZB) But where an application for the variation of an authorisation is made by that person, it must be accompanied—

- (a) in the case of an application made to the appropriate Agency, by the charge (if any) that is prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; and
- (b) in the case of an application to the chief inspector, by the prescribed fee.”

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**Commencement Information**

**I63** S. 73 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

### 74 Periodic reviews of authorisations

After section 17 of the 1993 Act insert—

**“17A Review of authorisations**

- (1) The authorising authority—
- (a) must carry out periodic reviews of the limitations and conditions attached to each authorisation under section 13 or 14; and
  - (b) may, at any other time, carry out any such additional review of the limitations and conditions attached to an authorisation under either of those sections as it thinks fit.
- (2) In this section—
- “the authorising authority”—

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- (a) in relation to an authorisation having effect in Great Britain, means the appropriate Agency; and
  - (b) in relation to an authorisation having effect in Northern Ireland, means the chief inspector;
- “periodic reviews”, in relation to an authorisation, means reviews at such regular intervals as the authorising authority thinks fit in the case of that authorisation.”

**Commencement Information**

**I64** S. 74 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

**75 Consequential amendments of the 1993 Act**

Schedule 15 (which contains further amendments of the 1993 Act in connection with the provision made by sections 72 to 74) has effect.

**Commencement Information**

**I65** S. 75 in force at 27.7.2004 by [S.I. 2004/1973](#), [art. 2](#), [Sch.](#)

**CHAPTER 5**

MISCELLANEOUS PROVISIONS RELATING TO NUCLEAR INDUSTRY

**76 Amendments for giving effect to international obligations**

- (1) The Secretary of State may by order make the modifications of the enactments to which this section applies that he considers appropriate for the purpose—
  - (a) of facilitating the ratification by Her Majesty’s Government in the United Kingdom of an international Protocol (whether entered into before or after the passing of this Act) that relates to liability for nuclear damage; or
  - (b) of exercising an option under such a Protocol, or of facilitating the exercise of such an option.
- (2) The enactments to which this section applies are—
  - (a) the 1965 Act; and
  - (b) any other enactment having effect in relation to a matter to which such a Protocol relates.
- (3) The following are the only international Protocols which are to be taken for the purposes of this section to be Protocols relating to liability for nuclear damage—
  - (a) the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21st September 1988; and
  - (b) any Protocol amending the Paris Convention or the Brussels Supplementary Convention.
- (4) In this section—

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“the Brussels Supplementary Convention” means the Supplementary Convention on Third Party Liability in the Field of Nuclear Energy of 31st January 1963; and

“the Paris Convention” means the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960.

- (5) The reference in subsection (1) to exercising an option under a Protocol is a reference to making provision the making of which, in connection with the matters to which the Protocol relates, is allowed by that Protocol.
- (6) The power under this section to modify enactments includes power to modify enactments conferring power to make subordinate legislation.
- (7) The power to make an order containing provision authorised by this section is subject to the affirmative resolution procedure.

#### Commencement Information

**I66** S. 76 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 77 Regulation of equipment, software and information

- (1) Section 77 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (regulation of security of civil nuclear industry) is amended as follows.
- (2) In subsection (1) (matters about which security regulations may be made), after paragraph (c) insert—
  - “(ca) equipment or software in the United Kingdom which—
    - (i) is capable of being used in, or in connection with, the enrichment of uranium; and
    - (ii) is in the possession or control of a person involved in uranium enrichment activities;”.
- (3) For paragraph (d) of that subsection substitute—
  - “(d) sensitive nuclear information which is in the possession or control in the United Kingdom of—
    - (i) a person who is involved in activities on or in relation to a nuclear site or nuclear premises or who is proposing or likely to become so involved;
    - (ii) a person involved in uranium enrichment activities; or
    - (iii) a person who is storing, transporting or transmitting the information for or on behalf of a person falling within subparagraph (i) or (ii);”.
- (4) After subsection (6) insert—
  - “(6A) References in this section to a person involved in uranium enrichment activities are references to a person who is or is proposing to become involved in any of the following activities (whether in the United Kingdom or elsewhere)—
    - (a) the enrichment of uranium;

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- (b) activities carried on with a view to, or in connection with, the enrichment of uranium;
  - (c) the production, storage, transport or transmission of equipment or software for or on behalf of persons involved in uranium enrichment activities; or
  - (d) activities that make it reasonable to assume that he will become involved in something mentioned in paragraphs (a) to (c).”
- (5) In subsection (7) (interpretation of section)—
- (a) after “this section—” insert—
    - ““enrichment of uranium” means a treatment of uranium that increases the proportion of isotope 235 contained in the uranium;
    - “equipment” includes equipment that has not been assembled and its components;”
  - (b) in paragraph (a) of the definition of “sensitive nuclear information”, for the words from “any treatment” to “contained in the” substitute “ the enrichment of ”.

#### Commencement Information

**I67** S. 77 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 78 Application of the 1965 Act to Northern Ireland

- (1) Sections 3(1A) and (6A), 4(3A) and 5(1A) of the 1965 Act (which require certain consultations in relation to nuclear site licences) shall extend to Northern Ireland.
- (2) Section 27 of that Act (application of that Act to Northern Ireland) is amended as follows.
- (3) For subsection (1) substitute—
  - “(1) In the application of this Act to Northern Ireland—
    - (a) a reference to the Minister shall be construed as a reference to the Secretary of State;
    - (b) sections 3(1A) and (6A), 4(3A) and 5(1A) shall have effect as if—
      - (i) for “appropriate Agency”, wherever occurring, there were substituted “ Department of the Environment in Northern Ireland ”;
      - (ii) for “Great Britain”, wherever occurring, there were substituted “ Northern Ireland ”;
      - (iii) for “Health and Safety Executive”, wherever occurring, there were substituted “ Minister ”;
    - (c) section 3(3) shall have effect as if for paragraphs (b) and (c) there were substituted—
      - “(ca) the Fisheries Conservancy Board for Northern Ireland; and.””
- (4) Subsections (2) and (3) shall cease to have effect.

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- (5) In subsection (5), for paragraphs (a) to (c) substitute—
- “(a) by the Minister; or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.”
- (6) Subsection (6) shall cease to have effect.

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**Commencement Information**

**I68** S. 78 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 79 Expenditure on nuclear related matters

- (1) There may be paid, out of money provided by Parliament, any expenditure incurred by the Secretary of State, with the consent of the Treasury, under or as a result of—
- (a) any option under which he or his nominee may acquire an undertaking or property from a British Energy company; or
  - (b) any agreement entered into for the purpose of giving effect to the provisions of such an option, or of continuing or modifying their effect.
- (2) In this section “British Energy company” has the same meaning as in section 1 of the Electricity (Miscellaneous Provisions) Act 2003 (c. 9).

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**Commencement Information**

**I69** S. 79 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 80 Additional functions of UKAEA

- (1) The functions of the UKAEA shall include—
- (a) power to carry on such activities as they consider appropriate in connection with anything that the NDA has a responsibility for securing under this Part;
  - (b) power to enter into such arrangements with the NDA or any other person as they consider appropriate for that purpose; and
  - (c) power for that purpose to develop and commercially to exploit an expertise in relation to things in which the NDA requires an expertise for the purpose of carrying out its functions.
- (2) In the case of responsibilities of the NDA in relation to an installation, site or facility it is immaterial for the purposes of subsection (1) that the UKAEA is not, for the purposes of Chapter 1 of this Part, the person with control of it.
- (3) The functions of the UKAEA shall also include —
- (a) power to manage and commercially to exploit any land or other property of theirs that is no longer required by them for or in connection with the carrying out of their other functions; and
  - (b) power to carry on a business of providing services for the administration of—
    - (i) nuclear pension schemes; and
    - (ii) such public service pension schemes as may be approved by the Secretary of State for the purposes of this subsection.

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**Status:** Point in time view as at 31/03/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Energy Act 2004, Part 1 is up to date with all changes known to be in force on or before 09 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (4) The UKAEA has power, for the purpose of carrying out its functions (whether conferred by this section or otherwise) to do all such things as appear to them to be likely to facilitate the exercise or performance of their powers and duties, or to be incidental to doing so.
- (5) The ways in which the UKAEA may carry out those functions include (by virtue of subsection (4)) carrying them out through subsidiaries and carrying them out in association with, or through arrangements with, other persons.
- (6) Subsection (5) of section 7 (things in which the NDA requires an expertise) has effect for the purposes of this section as it has effect for the purposes of subsection (4) of that section.
- (7) In this section—
  - “nuclear pension scheme” means a scheme that is a nuclear pension scheme for the purposes of Schedule 8; and
  - “public service pension scheme” means a public service pension scheme within the meaning of the Pension Schemes Act 1993 (c. 48) (see section 1) or the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (see section 1).

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**Commencement Information**

**I70** S. 80 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**Status:**

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