



RESEARCH PAPER 04/37  
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# The Nuclear Decommissioning Authority: Part 2 of the *Energy Bill* [HL]

**Bill 93 2003-04**

Part 2 of the *Energy Bill* [HL], Bill 93 2003-04, seeks to establish the Nuclear Decommissioning Agency charged with managing public sector civil nuclear waste; and would also create a new Civil Nuclear Police Authority to oversee a reconstituted nuclear constabulary.

Part 2 of the Bill applies to England. Various aspects apply to other parts of the UK.

Donna Gore

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## Summary of main points

The public sector bears extensive civil nuclear liabilities, comprising nuclear sites and facilities developed to support Government research programmes, and the Magnox reactors, the first generation of nuclear power stations. These are already funded by the taxpayer and the great majority are currently the responsibilities of British Nuclear Fuels plc (BNFL) and the United Kingdom Atomic Energy Authority (UKAEA).

The scale of the liabilities, estimated at £48bn (undiscounted) over the next century, led the Government to reconsider their management and propose the establishment of the Liabilities Management Authority (LMA), later renamed the Nuclear Decommissioning Authority (NDA).

This paper traces the development of the policy and related issues from its inception through the White Paper on the initial proposals, the *Draft Nuclear Sites and Radioactive Substances Bill*, which was the original legislative vehicle, its scrutiny by the Trade and Industry Select Committee, and finally its inclusion as part of the *Energy Bill*. The Bill began its parliamentary passage in the Lords, the stages of which are outlined in the paper.

The establishment of the NDA runs in tandem with Government plans to develop a policy for a publicly acceptable, long-term disposal option for radioactive waste, the majority of which is currently stored above ground. The location of a site is a very contentious issue. At present it is envisaged that policy formulation will be completed in 2006, with any necessary legislation to follow in 2007. Implementation, which may involve excavating an underground repository, could then take decades.

The Bill also creates a new Civil Nuclear Police Authority to oversee a reconstituted nuclear constabulary which is currently the UKAEA Constabulary.



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## I Introduction

The public sector bears extensive civil nuclear liabilities, known as ‘the legacy’. These comprise nuclear sites and facilities developed between the 1940s and 1960s to support Government research programmes, and the Magnox reactors, the first generation of nuclear power stations.

These historic civil nuclear liabilities are already funded by the taxpayer and the great majority are currently the responsibilities of British Nuclear Fuels plc (BNFL) and the United Kingdom Atomic Energy Authority (UKAEA). This represents about 85% of the total UK nuclear liabilities. Those installations managed by BNFL include the Magnox<sup>1</sup> stations: Wylfa, Oldbury, Sizewell A, Dungeness A, Hinkley Point A, Bradwell, Hunterston A, Trawsfydd, Berkeley and Chapelcross. Those managed by UKAEA include: Dounreay, Windscale, Harwell and Winfrith.

When the nuclear power industry was privatised in 1996 the newer Advanced Gas Cooled Reactors (AGRs) and the one Pressurised Water Reactor (PWR) at Sizewell were sold off and placed under the control of British Energy plc while the older Magnox stations were retained under Government control and operated on its behalf by BNFL. The liabilities in the form of radioactive wastes that need treatment and plants that require decommissioning remained with their respective assets.

It is proposed that the Nuclear Decommissioning Authority (NDA), formerly called the Liabilities Management Authority (LMA), will manage the clean up of these nuclear liabilities. It is anticipated that it will be operational by April 2005 and will provide direct employment for 50-100 people at its headquarters in West Cumbria although it is likely to generate more employment in the area.<sup>2</sup>

The cost of cleaning up the historic nuclear liabilities is estimated at £1 billion per year for the next decade, and about £48 billion (undiscounted) in total over the next century.<sup>3</sup>

## II BNFL

BNFL is an international nuclear energy business with core operations based around reprocessing of spent fuel from nuclear reactors, nuclear decommissioning and clean-up. BNFL grew out of the reorganisation of the United Kingdom Atomic Energy Authority (UKAEA) in 1971. As already mentioned it manages the Magnox stations.

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<sup>1</sup> Magnox nuclear reactors were named after the magnesium alloy cladding of the fuel pins. These were the first generation of civil nuclear power stations built in the UK and are, therefore, the oldest and the nearest to being decommissioned.

<sup>2</sup> DTI press notice P/2003/213, *West Cumbria Chosen for Site of New Nuclear Clean Up Authority*, 31 March 2003.

<sup>3</sup> Managing the Nuclear Legacy-A Strategy for Action, DTI, 4 July 2002, Cm 5552  
<http://www.dti.gov.uk/energy/nuclear/environment/liabilities/index.shtml>

Several years ago when the Government was considering introducing a public-private partnership into BNFL's business, a fundamental review of the company's strategy led to the board of the company reconsidering and reshaping its approach. Part of this was a sharper focus on the liabilities, much of which resulted from the early years of the nuclear programme. The following summary regarding the liabilities was made in 2001:

Under (the board's) direction, the company has, over the past 18 months, been reviewing its approach to tackling the most hazardous wastes at its sites. It agreed an approach to handling highly active waste with the HSE<sup>4</sup> in February this year. It has also developed a new strategy for processing its intermediate-level wastes, which the board endorsed today. Under the new strategy, which the company has discussed in outline with all its regulators, it is proposed that the wastes will be removed from existing, ageing stores as soon as is reasonably practicable and will be treated and packaged to enable them to be stored safely for decades.<sup>5</sup>

This led BNFL to estimate that it needed an extra £1.9 billion to meet its liabilities which exceeded the value of its assets:

On 31 March 2001, the company's accounts were already dominated by its provision for nuclear liabilities. As a result of the increase in provisions for liabilities, the current estimated value of the company's total liabilities now exceeds the value of its total assets by some £1.7 billion.<sup>6</sup>

A breakdown of BNFL's increasing annual decommissioning expenditure since 1993-94 was set out in answer to a parliamentary question:

**Norman Baker:** To ask the Secretary of State for Trade and Industry what has been the cost to BNFL of decommissioning nuclear plants for which it has responsibility. [28740]

**Ms Hewitt** [*holding answer 22 January 2002*]: BNFL's annual report and accounts state that decommissioning expenditure charged against provisions since financial year 1993-94 was as follows:

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<sup>4</sup> Health and Safety Executive

<sup>5</sup> HC Deb 28 November 2001, c 993

<sup>6</sup> *ibid*

	£ million
2001	82
2000	76
1999	80
1998	10
1997	1
1996	1
1995	1
1994	7

Prior to this date no decommissioning expenditure charged against provisions was disclosed in BNFL's annual report and accounts. Information on any such expenditure is not readily available and would require disproportionate time and cost to bring together.<sup>7</sup>

The company continued to operate because it had a strong cash-flow position. This was outlined in its annual report<sup>8</sup> published in July 2001, which made it clear that the company has more than sufficient resources to meet its liabilities that are due for at least the next 10 years.

### III UKAEA

The UKAEA was incorporated as a statutory corporation in 1954 and pioneered the development of nuclear energy in the UK. Currently, it is responsible for managing the decommissioning of the nuclear reactors and other radioactive facilities used for the UK's nuclear research and development programme, and for the UK's input to the European fusion research programme. UKAEA is a non-departmental public body, funded mainly by its lead department the Department of Trade and Industry.

In parallel to the BNFL review, a quinquennial review of the operation of UKAEA was also undertaken. As part of this the Government considered its position under current arrangements to carry out its responsibilities for the safe discharge of nuclear liabilities from UKAEA.<sup>9</sup>

The DTI pays an annual grant to UKAEA of several hundred million pounds to finance decommissioning and the management of nuclear waste. Figures for five years up to 2002 were given in answer to a parliamentary question:

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<sup>7</sup> HC Deb 24 January 2002, c 1056W

<sup>8</sup> *For today, for tomorrow: annual report & accounts 2001*, BNFL, 2001

<sup>9</sup> Quinquennial review of the UKAEA, DTI, 2001, Dep 2001/1650, also at <http://www2.dti.gov.uk/energy/ukaareview/index.htm>

**Mr. Cousins:** To ask the Secretary of State for Trade and Industry what expenditure she incurred on the decommissioning, management and clean-up of nuclear materials, equipment and facilities in each year since 1997; and how much she expects to spend in this financial year. [37247]

**Mr. Wilson:** Expenditure on the Department's decommissioning and radioactive waste management programme is incurred by way of grant to the UK Atomic Energy Authority.

	£ million
	<i>UKAEA nuclear decommissioning</i>
1997-98	162.2
1998-99	256.9
1999-2000	183.5
2000-01	219.9
2001-02 <sup>(78)</sup>	262.5

<sup>(78)</sup> Planned

*Note:*

All figures in cash of year <sup>10</sup>

#### IV The Liabilities Management Authority

The scale of the nuclear liabilities at BNFL and UKAEA led the Government to reconsider the arrangements for managing public sector civil nuclear liabilities, especially the historic liabilities resulting from the development of nuclear power under Government control:

Responsibility for the management of the legacy currently rests with two public sector bodies: BNFL and the United Kingdom Atomic Energy Authority. In undiscounted terms, BNFL's 2001 accounts estimated the total liabilities for which it was responsible at £35 billion, £28 billion of which was linked to those historic liabilities. In addition, the UKAEA, for its part, has management responsibility for more than £7 billion of liabilities. I should stress that those liabilities do not represent a financial obligation owed to creditors.<sup>11</sup>

On 28 November 2001 the Secretary of State for Trade and Industry, Patricia Hewitt, announced that the Government had decided to make two fundamental changes to the present arrangements.<sup>12</sup> She emphasised that her priority was that the nuclear legacy is dealt with safely, securely, cost-effectively and in a way that ensures protection of the environment. Nuclear decommissioning would require the same focus, intensity and innovation as the original nuclear development programme.

<sup>10</sup> HC Deb 25 February 2002 c 863W

<sup>11</sup> HC Deb 28 November 2001 c 990

<sup>12</sup> HC Deb 28 November 2001 cc 990-1005

Ms Hewitt proposed to set up a Liabilities Management Authority (LMA), later renamed the Nuclear Decommissioning Authority, to be responsible for the Government's civil nuclear liabilities from both BNFL and UKAEA:

I see the Liabilities Management Authority as providing the driving force and incentives to get on with the job of systematically and progressively reducing the hazard posed by legacy facilities and wastes. It will have a specific remit to develop an overall UK strategy for decommissioning and clean-up.

The LMA will work in partnership with site licensees--at the outset, the UKAEA and BNFL--as well as the safety, security and environmental regulators, to achieve the most effective and safe means of discharging the liabilities. It will look to deepen the level and breadth of expertise in nuclear clean-up in the UK and to foster competition as a means of achieving that. Consistent with the need to ensure the highest safety, security and environmental standards, it will look to optimise the use of those skills by developing the opportunities for liabilities management, including the management of licensed nuclear sites.

The LMA will look to develop a strong supply chain, and a skills base capable of sustaining the clean-up programme over the long time scale that is required. In doing so, it will build on the existing industry work force whose scientific, professional and engineering skills are widely and rightly recognised. It will operate in an open and transparent fashion.<sup>13</sup>

The LMA would not be a plc or an executive agency, but a statutory non-departmental public body accountable to ministers and Parliament. Expenditure by the LMA was expected to be approximately £1 billion annually over the next 10-15 years.<sup>14</sup>

The funds currently held by BNFL to meet the cost of the liabilities would be transferred with other assets to the LMA and ring-fenced.

In response to a question Ms Hewitt gave the following reassurance about the status and independence of the LMA:

The intention is that the LMA will act on behalf of Government but that it will operate at arm's length from Government. We will exercise strategic control, but the running and development of the LMA will be down to its board and management team, which will be independent of the companies with which it will contract. A framework agreement will define the authority's aims, objectives and responsibilities, and its relationship with Government. We will have more to say about that in the White Paper.<sup>15,16</sup>

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<sup>13</sup> HC Deb 28 November 2001 c 991

<sup>14</sup> HC Deb 17 December 2001 c 26W

<sup>15</sup> HC Deb 28 November 2001 c1002

<sup>16</sup> Information about the White Paper is presented later in this paper.

No action would be taken to appoint a director or board members until the founding legislation (see later) had been scrutinised by Parliament and had passed Second Reading in the House of Commons.<sup>17</sup> Information about the appointment of the head of the LMA and the specific terms of reference were contained in an answer to a parliamentary question:

### **Liabilities Management Authority**

**Mr. Gibb:** To ask the Secretary of State for Trade and Industry when she will appoint the head of the Liabilities Management Authority. [20974]

**Mr. Wilson:** The Liabilities Management Authority will be established by a Bill which will be brought forward in due course. The LMA's head will be appointed in accordance with the Code and Guidance issued by the Office of the Commissioner for Public Appointments following the LMA's establishment.

**Mr. Gibb:** To ask the Secretary of State for Trade and Industry if she will publish the terms of reference for the Liabilities Management Authority. [20454]

**Mr. Wilson:** The Liabilities Management Authority will be responsible for Government's interest in the discharge of public sector civil nuclear liabilities. It will provide the driving force and incentives to get on with the job of systematically and progressively reducing the hazard posed by legacy facilities and wastes. It will have a specific remit to develop an overall UK strategy for decommissioning and clean-up.<sup>18</sup>

Ms Hewitt also announced that the Government intended to take over responsibility for most of BNFL's nuclear liabilities. In the past it had accepted about half. The most notable of those to be taken over are Sellafield and the Magnox sites. Sellafield alone, including the MOX<sup>19</sup> and THORP<sup>20</sup> plants, will account for two thirds of the LMA's liabilities. The overall effect on the public purse will, however, be neutral:

Secondly, to enable the LMA to exercise its role across the whole public sector civil nuclear liabilities portfolio, the Government now propose to take on responsibility for most of BNFL's nuclear liabilities and the associated assets. (...) Most of BNFL's liabilities represent the legacy of nuclear development programmes carried out before its establishment in 1971 and the operation of the Magnox stations in the public sector throughout the period. BNFL has currently earmarked funds for the majority of its liabilities. Our current intention is that those assets will be transferred to the Government when we take on responsibility

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<sup>17</sup> HC Deb 25 February 2002, c 859W

<sup>18</sup> HC Deb 10 December 2001 c 657W

<sup>19</sup> Mixed Oxide Plant

<sup>20</sup> Thermal Oxide Reprocessing Plant

for the liabilities. Responsibility for the assets and liabilities associated with BNFL's commercial fuel, reactor services and international clean-up businesses will remain with the company.

Expenditure on public sector civil nuclear liabilities already forms part of the Government's expenditure plans and covers non-discretionary public sector activities that Government will have to continue to finance one way or another. In other words, today's announcement will have no impact on the Chancellor's two fiscal rules. The aggregate effect on the overall public sector balance sheet will be neutral. Indeed, the new structure offers the prospect of a lower burden on the taxpayer.

## V The Liabilities Management Unit

The DTI created the Liabilities Management Unit (LMU) to strengthen its existing capacity to oversee work on the nuclear legacy prior to the establishment of the LMA.<sup>21</sup>

During the establishment of the LMU, officials from the DTI discussed working relationships with BNFL.<sup>22</sup> After it was established the LMU worked closely with the BNFL Assets, Liabilities Fund and Administration (ALFA) Group which was set up to act as an 'internal customer' with the aim of preparing BNFL to act as a contractor.<sup>23</sup> One of the LMU's roles is to monitor BNFL's performance as a liabilities manager and the ALFA Group is its main contact point.<sup>24</sup>

Between 1 April and 30 September 2002, £4.26m was spent on setting up and running the LMU. The full cost for the financial year 02-03 was expected to be about £10.9m with similar expenditure expected in the run up to the establishment of the LMA.<sup>25</sup>

## VI The White Paper

The establishment of the LMA and the transfer of assets and liabilities from BNFL and the UKAEA requires primary legislation. A White Paper as the basis for consultation was originally expected in spring 2002, with legislation to follow at the earliest opportunity:

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<sup>21</sup> HC Deb 25 February 2002 c 860W

<sup>22</sup> HC Deb 25 February 2002 c 859W

<sup>23</sup> Prior to the creation of the LMA, BNFL ALFA will act as BNFL's own "internal" LMA. BNFL ALFA will bring a high degree of accountability to BNFL's business so that once the LMA is created BNFL will already be operating in a commercially focussed way and therefore will be well placed to take full advantage of a competitive market-Source: BNFL Press Release, *Government's White Paper paves the way for "New BNFL"*, 4 July 2002.

<sup>24</sup> HC Deb 25 February 2002 c 858W

<sup>25</sup> HC Deb 7 November 2002 c725W

We will introduce a Bill at the earliest opportunity. A White Paper to be published next spring will set out in more detail our overall approach to discharging the UK's public sector civil nuclear liabilities. It will spell out the role of the LMA and how it is expected to operate in practice, and address a range of associated issues. It will complement the consultation process on long-term waste management arrangements that is currently under way and draw on the responses to it.

Before the LMA is established, my Department will take steps to strengthen its existing capability for overseeing work on the nuclear legacy. That will include acquiring a more detailed knowledge of the legacy liabilities and their management, and of the Sellafield site in particular, and incentivising and monitoring performance against key performance indicators.<sup>26</sup>

The White Paper, *Managing the Nuclear Legacy-A Strategy for Action*, was finally published on 4 July 2002.<sup>27</sup>

Announcing the publication in the Commons, Brian Wilson, the then Energy Minister said that the LMA would be:

—responsible to Government and with a specific remit to ensure that clean up is carried out safely, securely, cost effectively and in ways which protect the environment for the benefit of current and future generations. It makes clear the Government's determination to drive clean up forward systematically and progressively using the best available skills to get the job done and, through competition, to promote the development of the supply chain and skills base required to sustain the clean up programme over the long term. It also underlines our commitment to ensuring that management arrangements are open, transparent and command public confidence. Implementing legislation will be brought forward at the first available opportunity.<sup>28</sup>

Brian Wilson added that “membership of the LMU will be drawn from the public and private sectors. The appointment of Bechtel as partner contractor adds international experience to the LMU reflecting the Government’s intention to ensure that the best skills are brought to bear on the legacy clean up.”<sup>29</sup>

An associated press notice sets out further information about Brian Wilson’s statement:

"Nuclear clean up is one of the most important technical and environmental challenges facing the UK. We need to ensure that the nuclear legacy is cleaned up in ways which protect the environment for the benefit of current and future

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<sup>26</sup> HC Deb 28 November 2001, c 992

<sup>27</sup> *Managing the Nuclear Legacy-A Strategy for Action*, DTI, 4 July 2002 available electronically at <http://www.dti.gov.uk/nuclearcleanup/ach/whitepaper.pdf>

<sup>28</sup> HC Deb 4 July 2002, cc477-78W

<sup>29</sup> *ibid*



generations. We must develop wider expertise in nuclear clean up, building on the best efforts of BNFL and UKAEA and the real progress made in recent years.

"The LMA will have strategic management control of clean up across the UK, based on high safety, security and environmental standards, while maximising value for money for the taxpayer.

"The White Paper underlines our commitment to ensuring management arrangements are open, transparent and command public confidence. The LMA will therefore be a champion of public information - visible, accessible and actively involved in dialogue. Getting this right is fundamentally important and one of the key areas in which we would welcome views on the proposals in the White Paper."

(...) It:

- Makes clear that the Government's objective in establishing the LMA is to deliver clean up of the nuclear legacy to high safety, security and environmental standards;
- sets out the role and responsibilities of the LMA in developing a coherent overall strategy for clean up and ensuring that the skills and resources required are available and can be sustained over the medium and long term;
- highlights the Government's intention to ensure, through competition that the best available skills and experience, from both public and private sectors, are bought to bear on the task;
- underlines the Government's commitment to ensuring that management arrangements are open, transparent and command public confidence;
- seeks views on two possible funding arrangements for nuclear clean up - a segregated fund and a segregated account - each of which would represent a radical departure from conventional arrangements for the funding of Government programmes.

Once established, the LMA will take on responsibility for the public sector civil nuclear liabilities currently held by BNFL and UKAEA. The liabilities will be managed on its behalf by site licensees, initially BNFL plc and UKAEA under performance based contracts. For regulatory and managerial reasons reflecting the integrated nature of the Sellafield site, THORP, SMP and other commercial assets at Sellafield will also transfer to the LMA. Commercial contracts will remain with BNFL plc and are unchanged by these proposals

In the interim, DTI has established a Liabilities Management Unit (the LMU) to strengthen the DTI's existing capability for overseeing work on the nuclear legacy and to prepare the ground for the LMA. Membership of the LMU is drawn from the public and private sectors.<sup>30</sup>

The consultation closed on 18 October 2002.

## **VII Views on the White Paper**

### **A. The Trade and Industry Select Committee Report**

The Commons Trade and Industry Select Committee (TISC)<sup>31</sup> broadly backed the White Paper proposals which it believed should produce a focused clean-up programme in the long-term with sufficient funding and transparency to engender public confidence. It called for the introduction of the necessary legislation without delay, and recommended a segregated fund to finance the programme as the best way to ensure that sufficient money was available to fund the clean-up.

Concern was expressed in the report that BNFL's financial liabilities are continually being revised upwards and that the nature of BNFL's accounting procedures make it difficult to form a soundly-based assessment of them. It suggests that one of the LMA's first tasks should be to produce an independent assessment of the civil nuclear liability.

The following summary is reproduced from the report:

#### **Summary**

We welcome the Government's proposal to establish a Liabilities Management Authority to take over responsibility for the management of the UK's civil public sector nuclear liabilities from BNFL and UKAEA. The arrangements described in the White Paper should result in the development of a focused, long-term clean-up programme and provide transparency in the way in which the nuclear legacy is to be managed which the existing arrangements lack. It should also contribute to an improvement in public confidence in the arrangements for the storage and disposal of civil nuclear material.

If the Government's strategy is to work, it is essential that:

- a) the legislation necessary to establish the LMA is introduced without delay;
- b) from the outset, the LMA produces an independent, authoritative assessment of the extent of the nuclear liability;

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<sup>30</sup> DTI press notice P/2002/428, *New Body to Lead UK Nuclear Clean Up*, 4 July 2002

<sup>31</sup> TISC Fifth Report, *Managing the Nuclear Legacy: Comments on the Government White Paper*, HC 1074-I, 24 July 2002

- c) an independent assessment is made of the value of the assets to be transferred from BNFL to the LMA, including the NLIP<sup>32</sup>, to ensure that the terms of the transfer of assets and liabilities represent the best value for money for the taxpayer;
- d) whichever mechanism is adopted for funding the LMA, the Government ensures that its contribution is sufficient to make good any shortfall resulting from the commercial operations to be transferred to the LMA; and
- e) the LMA Board and management are given the freedom and budget necessary to recruit and retain staff with the high quality skills that the Authority will need to provide the direction and supervision to manage the clean-up programme.<sup>33</sup>

Following the report the BNFL accounts for 2002 were published and provided answers to some of the Committee's questions.<sup>34</sup> In addition the Government submitted its response to the report.<sup>35</sup> The Committee published its view of these, which taken together broadly satisfied its information needs, although it had some further comments that required investigation.<sup>36</sup>

The Committee followed up certain matters regarding BNFL liabilities. In particular it raised the question of why the Government proposed to transfer £4.3bn more in liabilities than assets from BNFL to the LMA when the BNFL accounts showed a surplus of liabilities over assets of only £1.8 bn. The responses made clear that the discrepancy was due to additional funding required to decommission the Magnox stations which is the Government's liability. The Committee examined further details of the transfer of assets from BNFL to the LMA.

The White Paper explained that the responsibility for nuclear liabilities at BNFL sites is split between BNFL, UKAEA and the MoD. The Committee asked to be informed if MoD, or any other customer, disputed liabilities attributed to them by BNFL, as this could undermine the ability of the LMA to carry out its responsibilities.

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<sup>32</sup> At present BNFL meets its share of nuclear clean-up costs from its own funds, mainly through a range of investments in its Nuclear Liabilities Investment Portfolio (NLIP). This is disclosed in the company's balance sheet as a fixed asset totalling about £4bn at 31 March 2002.

<sup>33</sup> TISC Fifth Report, *Managing the Nuclear Legacy: Comments on the Government White Paper*, HC 1074-I, 24 July 2002, available electronically at <http://pubs1.tso.parliament.uk/pa/cm200102/cmselect/cmtrdind/1074/107402.htm>

<sup>34</sup> TISC First Report, *Managing the Nuclear Legacy: Responses to the Committee's Fifth Report of Session 2001-02*, HC 86, 25 November 2002, Appendix 1, available electronically at <http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmtrdind/86/86.pdf>

<sup>35</sup> TISC First Report, *Managing the Nuclear Legacy: Responses to the Committee's Fifth Report of Session 2001-02*, HC 86, 25 November 2002, Appendix 2, available electronically at <http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmtrdind/86/86.pdf>

<sup>36</sup> TISC First Report, *Managing the Nuclear Legacy: Responses to the Committee's Fifth Report of Session 2001-02*, HC 86, 25 November 2002, available electronically at <http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmtrdind/86/86.pdf>

Oral and written evidence from a number of interest groups was taken by the TISC and published as minutes of evidence to the report.<sup>37</sup>

## **B. BNFL reaction to the White Paper**

BNFL had a positive reaction to the White Paper. A press release set out its views:

BNFL today welcomed the Government's publication of their White Paper outlining key policy, financial and regulatory issues relating to the UK's nuclear industry. The resolution of these issues will pave the way for the creation of "New BNFL".

BNFL Chief Executive Norman Askew said: "We have now developed a long term strategy for the business and started its implementation. The White Paper gives BNFL and its employees further clarity and we all look forward to embracing the challenge of a world where we operate in a more commercially competitive environment and have a real opportunity to earn a PPP for the business.

Askew added: " I would now urge the Government to enact the legislation needed at the earliest available opportunity so that we can drive forward the important work of dealing with UK's nuclear legacy in a safe, efficient and cost-effective way."<sup>38</sup>

## **C. UKAEA reaction to the White Paper**

In a parliamentary update UKAEA welcomed the White Paper.<sup>39</sup> John McKeown, the UKAEA Chief Executive, said:

"UKAEA is already at the forefront of nuclear environmental restoration and the White Paper gives us the opportunity to stay there. It also signals the development of competition at site management level, and we relish the challenge that this places on us."

The update stated that:

UKAEA looks forward to working closely with the LMA to reduce the liabilities safely and cost-effectively and to building on its excellent track record in decommissioning and environmental restoration at its sites:

- 18 major facilities dismantled including six research reactors
- Detailed plans put in place for restoring all UKAEA sites
- New approach to managing clean-up pioneered by separating planning and management of projects from their implementation
- Savings to the UK taxpayer of up to one-third achieved by maximising competition in the decommissioning programme.

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<sup>37</sup> TISC Fifth Report, *Managing the Nuclear Legacy: Comments on the Government White Paper :Minutes of Evidence ad Appendices*, HC 1074-II, 12 August 2002, available electronically at <http://pubs1.tso.parliament.uk/pa/cm200102/cmselect/cmtrdind/1074/107402.htm>

<sup>38</sup> BNFL press notice, *Government White Paper paves the way for a "New BNFL"*, 4 July 2002

<sup>39</sup> UKAEATODAY, A Parliamentary Update from the UKAEA, Autumn 2002

It noted that under the proposals the body that provides security for civil nuclear sites and for the transport of radioactive material, the UKAEA Constabulary, will be known as the Civil Nuclear Constabulary, a stand-alone force (see later).

#### **D. RWMAC reaction to the White Paper**

The Radioactive Waste Management Advisory Committee (RWMAC), although now in abeyance, provided independent advice to Ministers on the management of radioactive waste in the UK. A committee of independent experts set out its views of the White Paper in its Annual Report for 2001-2002.<sup>40</sup> In an accompanying press release<sup>41</sup>, the committee broadly welcomed the Government's proposals for the LMA, but believed that the LMA's use of contractors to manage the sites, including dealing with the resulting radioactive wastes, raised questions about how some important legal responsibilities would be discharged. It stressed that these must be carefully thought through.

The RWMAC Chairman, Professor Charles Curtis, said:

"RWMAC welcomes the creation of the LMA as a key step by Government in getting to grips with some of the older nuclear sites such as Sellafield and Dounreay. But creation of a new body, however well intended, is not, by itself, the answer. The need is to establish real drivers and incentives to carry forward historic nuclear site clean up work more rapidly than in the past without compromising safety. Without these drivers to progress, the LMA could become just another layer of bureaucracy.

The Committee's response highlights other important requirements. The LMA must have the skills and resources to manage its contractors in a coherent and effective manner. The potential skills shortage needs to be tackled early. Responsibilities and accountabilities for ensuring safety must be clearly allocated: this is a matter that cannot be left to fall somewhere between the LMA and its contractors. The Government must provide clear policy guidance on the way it wishes the LMA to conduct its business: our response indicates the requirements for doing so, not all of which are currently met.

Lastly, given the large sums of taxpayers' money for which it will be responsible, the LMA must account, in a way that is readily understandable, for the progress it achieves. In this, the commitment to openness and transparency contained in the White Paper is key."

Referring to the breadth of the proposed remit for the LMA:

RWMAC is disappointed that the LMA has not been given a remit to deal with some of the historic used radioactive sources that are still held at hospitals and educational establishments because the money for their disposal has not been planned for in NHS and university budgets. As a radioactive waste liability falling to the taxpayer, RWMAC

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<sup>40</sup> RWMAC, *Twenty Second Annual Report of The Radioactive Waste Management Advisory Committee*, October 2002.

<sup>41</sup> RWMAC press release, "*Nuclear Clean-Up: We Have Got to Get Responsibilities Right*"-Say Independent Experts, 1 November 2002

believes that the LMA should have been allocated responsibility for dealing with this problem.<sup>42</sup>

RWMAC also addressed responsibility for long-term *storage* of radioactive waste prior to the development and implementation of permanent *disposal*:

By law, responsibility for the safe operation of nuclear sites rests with site licensees, currently BNFL and UKAEA. This is regulated by the Health and Safety Executive (HSE). The HSE, with the support of the two environment agencies, has called for long-lived radioactive waste to be stored under conditions of "passive safety", without the need for human intervention, until a permanent management route is developed. In RWMAC's view, this will form one of the LMA's responsibilities.<sup>43</sup>

## **E. Environmental groups' reaction to the White Paper**

**Friends of the Earth** were not averse to the establishment of the LMA but were concerned about the implication for the creation of further waste and whether taxpayers were getting value for money:

Roger Higman, Nuclear Campaigner at Friends of the Earth said:

"Today's revelation of the staggering cost of cleaning up Britain's civil nuclear waste legacy highlights once again that nuclear power is completely uneconomic. The Government must address this issue seriously by ruling out the building of new nuclear power stations and concentrating on the development of renewable energy instead. The nuclear industry's future is in decommissioning and safely dealing with the waste it has already created. That's where public acceptability and market opportunities lie.

"We don't oppose the establishment of the Liabilities Management Authority. But freeing BNFL from the cost of dealing with nuclear waste must not be the green light for it to help create even more. And the National Audit Office must investigate the DTI's handling of BNFL to ensure the taxpayer is getting value for money."<sup>44</sup>

**Greenpeace** made similar points:

The proposals centre on the creation of a Liabilities Management Authority (LMA) which will assume responsibility on behalf of the taxpayer for the estimated £40 billion bill for cleaning up the radioactive waste mountain. This move effectively bails out the technically insolvent BNFL, freeing it to expand its nuclear waste-creating businesses.

The proposals fail to address the root cause of the problems of radioactive waste; namely its generation from nuclear power station operation, fuel fabrication and the reprocessing of spent fuel.

Worse, the LMA removes over £40 billion of debt from the accounts of nuclear companies (such as BNFL) that created the problem, freeing them to pursue an aggressive

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<sup>42</sup> *ibid*

<sup>43</sup> *ibid*

<sup>44</sup> FoE press notice, *Nuclear Liabilities Rise*, 4 July 2002.

nuclear expansion programme.... This will create an even greater radioactive waste problem for this and future generations to deal with.<sup>45</sup>

## F. Responses to the White Paper Consultation Exercise

In response to a parliamentary question<sup>46</sup> asked by Llew Smith about the outcome of the consultation, Brian Wilson, the then Energy Minister, wrote to him on 12 November 2002 summarising the strong support the Government believed it had received from respondents:

As of 6 November, 64 responses had been received including the report by the Trade and Industry Committee (Managing the Nuclear Legacy: Comments on the Government White Paper HC1074-I) which was published on 24 July. We also commissioned a report collating the views of 19 environmental groups including the Welsh Anti-Nuclear Alliance, CANDO, People Against Wylfa B, and the Council for National Parks in respect of their interest in Trawsfynydd.

The broad picture is that there is a universal backing for the LMA, and strong support for the sharper government focus on clean up which is a fundamental element of the White Paper proposals. Respondents also welcomed the commitment to openness and transparency, though a range of views were expressed on how it should be implemented. There is also strong support for the proposals on funding with the large majority favouring a segregated fund rather than the segregated account. We will be considering all the comments and suggestions made in taking work forward on implementation on the White Paper proposals.

We will be publishing a summary of responses within the next few weeks. Copies will be placed in the Library.<sup>47</sup>

The publication of a summary of responses<sup>48</sup> was announced in a written ministerial statement on 17 December 2002.<sup>49</sup> Copies are available in the Library. The publication contained a summary of key messages emerging:

A wide range of views and suggestions were put forward. However, some messages stand out relatively strongly. In particular:

All respondents broadly supported the setting up of the LMA and the management arrangements set out in Chapter 3 of the White Paper. There was a concern however that the roles of the LMA and site licensees should be more clearly specified;

Openness and transparency is widely seen as critical to the LMA's credibility;

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<sup>45</sup> Greenpeace press notice, *On the Government's White Paper for the Creation of the LMA*, July 2002

<sup>46</sup> HC Deb 7 November 2002 c709W

<sup>47</sup> "Will write" letter, 12 November 2002, from Brian Wilson to Llew Smith in answer to PQ 80098

<sup>48</sup> DTI, *Managing the Nuclear Legacy: A Strategy for Action: Summary of Responses to the White Paper 4 July-18 October 2002*, December 2002.

<sup>49</sup> HC Deb 17 December 2002, 44WS

46 responses commented on funding options. 31 strongly supported the Segregated Fund, whilst 3 preferred the Statutory Segregated Account. The remainder had no strong view. However, all respondents who commented on funding endorsed the objectives set out in Chapter 6 of the White Paper;

40% of respondents expressed concerns about the exclusion of liabilities (including sealed sources) held by MoD, NHS, the universities and Nycomed Amersham. Some people also suggested that British Energy assets and liabilities should be transferred to the LMA;

A few respondents said that NIREX<sup>50</sup> should be wound up in its present form and a new organisation created, either controlled by the LMA or constituted as a separate NDPB with a wide industry involvement. The general view is that this is an appropriate time to review the ownership of NIREX;

Many respondents observed that Cm2919 (which sets out the Government's current policy on decommissioning) is out of date, and that an updated statement of policy is necessary and urgent;

Some people wanted to change the name of the LMA as the word 'Liabilities' conveys a negative message. The only specific alternative suggestion was 'The Nuclear Environmental Restoration Authority' (NuERA). One trade association asked DTI not to use acronym 'LMA' as it uses it for its own commercial purposes;

A significant number of responses underlined the need for clarity and stability of Government policy on the management of Intermediate Level Waste (ILW) and High Level Waste (HLW);

It was suggested that there should be no direct Government presence on the LMA Board, and that the Board should include representatives of trade unions, environmental groups and local communities;

Environmental groups were concerned that there should be clear separation between the LMA and any Government decision on new build. Some environmental groups also suggested that all facilities that produce waste should be phased out, and that Government should give a commitment that no further waste producing facilities will be built. A few respondents supported the building of more nuclear capacity on the site of existing power plants;

Regional and local authorities in the North West want to see the LMA located in West Cumbria. One respondent suggested that it should be in London with a regional office in either Edinburgh or Glasgow. Another stated that it does not support the suggestion that, because Sellafield is the major liability, the LMA must be located in West Cumbria;

Thorp and SMP are seen by some as potentially distracting the LMA from its core task of managing the nuclear legacy.<sup>51</sup>

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<sup>50</sup> Nirex is responsible for implementing Government policy to find a safe and environmentally sound solution for dealing with the UK's solid intermediate-level radioactive waste and certain low-level wastes that are unsuitable for near-surface disposal at Drigg

<sup>51</sup> DTI, *Managing the Nuclear Legacy: A Strategy for Action: Summary of Responses to the White Paper 4 July-18 October 2002*, December 2002



## VIII The Nuclear Decommissioning Authority

Following negative comments about the name of the LMA in responses to the White Paper, the Government formally changed the name on 13 March 2003 to the Nuclear Decommissioning Authority (NDA). The aim was to better reflect its role while keeping the remit unchanged.<sup>52</sup>

In answer to a parliamentary question about developments towards the creation of the NDA, Brian Wilson, the then Minister of State for Energy and Construction, said that the DTI spent about £9.5m up to the end of the 2002-03 financial year in support of the Liabilities Management Unit (LMU), the group overseeing work on nuclear liabilities prior to legislation. He said:

In the meantime, I can report that good progress is being made in preparing the ground for the NDA. The LMU is developing a comprehensive understanding of the liabilities on legacy sites and working closely with BNFL and UKAEA and the nuclear regulators in a number of important areas including the development of comprehensive long term decommissioning plans for all the legacy sites.<sup>53</sup>

In answer to another parliamentary question he gave information about the stakeholder consultation:

**Mr. Wilson:** My officials are actively engaging with interested stakeholders, in particular, through a rolling series of meetings at regional level. The first round of these meetings is focusing on explaining progress to date and identifying the issues which stakeholders wish to discuss. Subject to their views, the second round in the summer is expected to focus on how the NDA might work with stakeholders with a view to developing a draft stakeholder engagement framework which the NDA can build on once it is in place. This programme of regional events supplements existing arrangements for bilateral dialogue with stakeholders through the BNFL Stakeholder Dialogue, and regular meetings with the nuclear regulators, trade unions, BNFL and UKAEA staff, local authorities, environmental groups and the local liaison committees for individual sites.<sup>54</sup>

### A. Siting

In a written ministerial statement on 31 March 2003,<sup>55</sup> Brian Wilson announced that the Government had chosen West Cumbria, near to Sellafield, as the preferred site for the head office of the NDA following detailed analysis of a number of potential locations:

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<sup>52</sup> HC Deb 13 March 2003 cc363-4W

<sup>53</sup> HC Deb 13 March 2003 c363W

<sup>54</sup> HC Deb 13 April 2003 cc 486-7W

<sup>55</sup> HC Deb 31 March 2003 cc 38-9WS

The Government believe that—while a number of other locations could offer similar benefits in terms of the operational needs of the NDA—the NDA will bring significant benefits to the community of West Cumbria by providing a catalyst for economic growth and diversification. These benefits are particularly important to a community that has suffered significantly from economic setbacks and recent job losses. West Cumbria is already a high priority area for economic regeneration and has a long history of engagement in the nuclear business.

The decision is the outcome of a two-stage assessment process. The first stage conducted by the Department of Trade and Industry compared eight locations throughout the UK and concluded that the North West was the region of choice.

The second stage, conducted by the North West Development Agency, compared two areas within the region—West Cumbria and the area west of Manchester. The results showed that while there were some differences in the two locations, both locations would deliver against the operational needs of the NDA. Hence, their respective needs for investment and economic regeneration became the deciding factor and on this basis I have chosen West Cumbria.

Today's decision clearly demonstrates the Government's commitment (made in the White Paper on Managing the Nuclear Legacy) to support the communities in which the NDA will operate and in particular, to generate new growth and opportunities in areas such as West Cumbria.<sup>56</sup>

The precise location will be decided by the NDA after it has been formally established.

The Government was not, however, prepared to disclose possible locations for disposal sites for nuclear waste:

**Llew Smith:** To ask the Secretary of State for Trade and Industry pursuant to the answer of 1 April 2003, *Official Report*, column 628W, on radioactive waste, if she will list the places identified as possible disposal sites for intermediate level nuclear waste by Nirex in addition to Sellafield and Dounreay. [107699]

**Mr. Wilson:** I cannot agree to this request.

The Department does not hold, and has never held, Nirex's list of these locations.

The reason given to the House on 10 June 1997 by the then Minister for Science, Industry and Energy, namely that revealing the location of potential sites could unnecessarily cause anxiety to people living nearby, in any case means that it would not be appropriate to disclose the list's contents.<sup>57</sup>

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<sup>56</sup> HC Deb 31 March 2003 cc 38-9WS

<sup>57</sup> HC Deb 14 April 2003 cc 486-7W

## B. Funding

As mentioned previously the total undiscounted cost of cleaning up the UK's historic civil nuclear legacy is estimated to be about £48 billion.

At 31 March 2002 the total estimated undiscounted cost was £47.9 billion. This expenditure will cover the decommissioning and eventual demolition of irradiated plant and buildings; the processing, storage and final disposal of nuclear wastes; and carrying out any necessary environmental restoration. Annual expenditure is expected to be well over £1 billion in each of the next 10-15 years.<sup>58</sup>

Clearly the nature of the funding for the NDA will be central to its success. The Government included two options as part of its wider consultation, either a Segregated Fund or a Segregated Account. Chapter 6 of the White Paper sets out the options:

- a) A segregated fund, akin to a pension fund holding investments, whose accumulated assets would be available to the NDA to meet future clean up costs; and
- b) A statutory segregated account, a "savings account" identified in legislation and kept by the Secretary of State. It could only be used to fund the NDA's clean up programme and would be kept at a sufficient level to support the NDA's future spending plans.<sup>59</sup>

After studying the options the Government announced that an Account would be the most suitable, concluding that it would not be an efficient use of public money for the Government to set aside at the beginning the huge sum that a Segregated Fund would require.<sup>60</sup>

The Government is now investigating ways in which the account can provide the rolling commitment to finance the NDA beyond the normal public spending planning cycle.

## IX Related radioactive issues

### A. Disposal of radioactive waste

In addition to the establishment of the NDA, the Government is also developing a policy for a publicly acceptable, long-term disposal option for radioactive waste, the majority of which is currently stored above ground. This is a very contentious issue and at present it is envisaged that policy formulation will be completed in 2006, with any necessary

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<sup>58</sup> DTI press notice P/2003/367, *Nuclear Clean Up Programme Takes Major Step Forward*, 24 June 2003.

<sup>59</sup> DTI press notice P/2003/228, *Wilson Announces Funding Arrangements for £48bn Nuclear Clean Up*, 3 April 2003

<sup>60</sup> DTI press notice P/2003/228, *Wilson Announces Funding Arrangements for £48bn Nuclear Clean Up*, 3 April 2003

legislation to follow in 2007. Implementation, which may involve excavating an underground repository, could then take decades. See Library note SN/SC/1248, *Radioactive Waste Management*<sup>61</sup>, for further details.

## **B. Consultation on decommissioning policy**

On 28 November 2003 the Government published a consultation on proposals for revising the decommissioning policy for nuclear facilities.<sup>62</sup> Existing policy was set out in July 1995 in the White Paper: *Review of Radioactive Waste Management Policy - Final Conclusions* but responses to the White Paper: *Managing the Nuclear Legacy* of July 2002 suggested a need to up date and clarify the policy.

The consultation:

Re-affirms that decommissioning must be conducted as soon as reasonably practicable in a manner which is safe, secure, efficient and cost effective, and represents the Best Practicable Environmental Option (BPEO) for the site;

Clarifies what decommissioning means in practice, and that the future use of the site will be an important factor in determining the decommissioning operations to be carried out;

Makes clear that decisions on end points should only be reached after consultation with local communities and other stakeholders.<sup>63</sup>

The consultation closed on 27 February 2004. The Government is currently considering the responses.

Further information is available in Library note SN/SC/2894, *Decommissioning the UK's nuclear facilities*.<sup>64</sup>

## **C. Slightly radioactive waste**

The Radioactive Waste Management Advisory Committee (RWMAC), formerly the Government's advisory body (see CoRWM below), carried out a review of the low level radioactive wastes in the UK and the Radioactive Waste Inventory.<sup>65</sup> RWMAC concluded that there is great difficulty in estimating the volume of slightly radioactive

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<sup>61</sup> <http://hc11.hclibrary.parliament.uk/notes/ses/snsc-01248.pdf>

<sup>62</sup> Modernising the Policy for Decommissioning the UK's Nuclear Facilities, DTI, 28 November 2003, available electronically at <http://www.dti.gov.uk/nuclearcleanup/pdfs/decomcondoc.pdf>

<sup>63</sup> DTI press notice P/2003/583, *Consultation issued on modernisation of policy for decommissioning UK nuclear facilities*, 28 November 2003.

<sup>64</sup> <http://hc11.hclibrary.parliament.uk/notes/ses/snsc-02894.pdf>

<sup>65</sup> RWMAC Advice to Ministers on the Management of Low Activity Solid Radioactive Wastes Within the UK, RWMAC, March 2003

waste, at the low end of the low level waste (LLW) category<sup>66</sup> that will be identified during the forthcoming decommissioning and clean up of nuclear sites. The study indicated that there could be large volumes of slightly radioactive waste to deal with. Although classified as radioactive waste it is of such low activity that special packaging is not required. As in Sweden and France, the material could be buried or piled into artificial mounds at the sites where it is generated, and covered in soil and vegetation to effectively seal it while radioactive decays occurs. The sites could be fenced and would pose limited long-term danger.

It is reported in the press that there could be about 4 million cubic metres of such waste on 20 sites. The cost of burial or forming into mounds is £30-£60 per cu metre compared with the cost of burial at Drigg, the official site for LLW, of £800 per cu metre<sup>67</sup>. There would also be insufficient capacity at Drigg to bury such a huge volume of waste, and transport to the site would pose considerable problems.

A detailed knowledge of BNFL and UKAEA nuclear liabilities is being acquired by the LMU in preparing the ground for the NDA.<sup>68</sup> The issue of dealing with soil or building rubble from the decommissioning and clean up of nuclear sites that may be slightly radioactive will be a significant issue for the NDA.<sup>69</sup>

#### **D. The Committee on Radioactive Waste Management**

The Government is reviewing its advisory machinery on radioactive waste management. It has established the new Committee on Radioactive Waste Management (CoRWM) to advise it, and the future of RWMAC and Nirex<sup>70</sup> are under consideration.<sup>71</sup>

It was claimed in the press that RWMAC, a body that can criticise Government policy, is being abolished to save money and replaced by CoRWM that only has power to advise it.<sup>72</sup>

Information about the appointment of a Chairperson and members of CoRWM, its work and clarification the future role of Nirex, independent of industry, was given in response to a parliamentary question:

**Margaret Beckett** [*holding answer 2 July 2003*]: I have today, along with the Environment Ministers for Scotland, Wales and Northern Ireland, appointed

<sup>66</sup> See Library note SN/SC/1248, Radioactive waste management, for description of waste categories.

<sup>67</sup> "Audit unearths huge piles of nuclear waste", *Guardian*, 31 March 2003, p13.

<sup>68</sup> HC Deb 2 April 2003 cc707-8W

<sup>69</sup> HC Deb 3 April 2003 c1066

<sup>70</sup> Nirex is responsible for implementing Government policy to find a safe and environmentally sound solution for dealing with the UK's solid intermediate-level radioactive waste and certain low-level wastes that are unsuitable for near-surface disposal at Drigg.

<sup>71</sup> HC Deb 26 March 2003 cc228-233W

Katharine Bryan as Chair of the new Committee on Radioactive Waste Management, CoRWM. Her task will be to lead CoRWM in recommending how the UK should manage its most highly radioactive waste and keep it safe for many thousands of years. Together, we shall receive CoRWM's recommendations and around 2006, we shall decide how these should be implemented to secure the best outcome for the UK as a whole.

In September 2001, we invited comments on our proposed programme, *Managing Radioactive Waste Safely*. As we said, a substantial legacy of solid radioactive waste is being stored, awaiting a decision on how best to manage it for many thousands of years while radioactivity falls to safe levels. Even if no new nuclear plants are built, around 500,000 tonnes of waste will arise over the next century as existing plants are shut down and cleaned up. We proposed a rigorous and public review of alternative options, including underground disposal and surface storage. We proposed a new independent body to advise us when enough information had been gathered to decide the best option or combination of options. There was general support for this approach.

We advertised for CoRWM in March 2003. We received over 400 applications. We have begun by appointing the Chair who will help us identify the best team. We shall now interview and appoint the remaining members so that CoRWM is up and running by October 2003.

CoRWM's terms of reference require it, among other things, to aim to make its recommendations no later than the end of 2005; to prepare a work programme that will enable it to do this; to send this to us for agreement at an early stage; to meet us every six months; and to make an annual progress report which we can place before Parliament. Its review of options must be carried out in an open, transparent and inclusive manner; to inspire public confidence in the way in which it works, in order to secure such confidence in its eventual recommendations; and so to ensure the long-term safety of the UK's radioactive wastes.

I am confident that Katharine will lead the Committee and the review very effectively. I shall make an announcement when the rest of CoRWM is appointed and it is ready to start work. With this important step forward in the process for deciding future policy for the long-term management of the UK's radioactive waste, Government have been giving consideration to the future of United Kingdom Nirex Ltd. (Nirex). As well as undertaking important work on standards for the conditioning and packaging of radioactive waste, the company has extensive knowledge of some of the potential options for radioactive waste management to be considered by CoRWM.

It is very important that Nirex stands ready, along with others, to help CoRWM reach its view and inform policy decisions. It is important also that the company can do this from a position where it is, and can be seen to be independent of industry. The Government will consult Nirex shareholders on the best way of making Nirex independent of industry and under greater Government control, and

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<sup>72</sup> "Nuclear watchdog axed to save money", *Guardian*, 15 April 2003, p9.

our aim is to establish and announce the appropriate way forward by autumn of this year.<sup>73</sup>

The announcement of the other members of CoRWM was made on 17 November 2003.<sup>74</sup>

The initial appointee as Chair, Katharine Bryan, resigned to take up another appointment and was replaced on 11 December 2003 by Gordon MacKerron, another appointee to CoRWM.<sup>75</sup>

On 22 March 2004, the Minister for the Environment, Eric Morley, announced the outcome of the review for RWMAC.<sup>76</sup> It is to be temporarily suspended while CoRWM is in operation:

In light of this review, we have concluded that RWMAC should be put into abeyance for the two to three year period during which CoRWM will be compiling its recommendations on future policy for the long-term management of the UK's higher activity radioactive wastes. At the end of this period we shall carry out a further review of Government advisory machinery needs in the radioactive waste management policy area.

In his letter to the chairman of RWMAC, the Minister thanked him and the Committee members “for the hard effort, and sound advice, that they have provided in recent years. This advice will remain available for scrutiny and use on the Committee’s website [www.defra.gov.uk/rwmac/](http://www.defra.gov.uk/rwmac/).”<sup>77</sup>

Mr Morley explained the difficulty in making the decision and set out his reasons:

This has not been an easy decision to take given the quality of the past advice we have received from RWMAC. But the key factors that have swayed my colleagues and me in arriving at this decision are:

- we believe that in principle it would be wrong for Government to have two "independent" advisory committees operating in the radioactive waste management policy area;
- we believe this could create problems of perception of the respective roles and requirements of the two Committees;

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<sup>73</sup> HC Deb 16 July 2003 cc 318-9W

<sup>74</sup> DEFRA press notice 479/03, *New team appointed to find long term solution for UK nuclear waste*, 17 November 2-003.

<sup>75</sup> DEFRA press notice 517/03, *New Chairman takes over to advise on long-term management of UK radioactive waste*, 5 December 2003.

<sup>76</sup> HC Deb 22 March 2004 cc 41-2WS

<sup>77</sup> HC Deb 22 March 2004 cc42WS

- we are fully committed to the CoRWM process and the need to drive this forward over the next two to three years, to arrive at a decision on how best to manage the UK's higher activity radioactive wastes;
- the resources available to us must be focused on this task.<sup>78</sup>

An alternative solution incorporating continuing but reduced operation of RWMAC was considered unsuitable:

During the course of our review work, we did receive a proposal from the committee for a reconfigured and slimmed down form of RWMAC operation. We considered this very carefully, but it did not solve the basic problem of having two independent advisory committees operating in the same policy area. And we felt that this could have potentially led to a lesser degree and standard of advice than we, and potentially the Committee itself, have come to expect.<sup>79</sup>

The position will be reconsidered regularly during the two to three year period:

We recognise that needs for review and advice could arise during the period that CoRWM is conducting work and RWMAC is in abeyance. Our proposal, for the period of CoRWM's work, is to consider and address these in a case by case manner through our Radioactive Waste Policy Group (RWPG). This is a Group made up of UK Government, devolved Administration and regulatory body representatives that meets regularly, several times a year, to discuss radioactive waste management policy and regulatory issues. The Group has the remit to carry out reviews, calling on external advice, as necessary.<sup>80</sup>

## **X The *Draft Nuclear Sites and Radioactive Substances Bill***

Draft legislation to establish the Nuclear Decommissioning Authority (NDA) was announced in the Queen's Speech on 13 November 2002. This was published on 24 June 2003.<sup>81</sup>

The legislation, at that stage entitled the *Draft Nuclear Sites and Radioactive Substances Bill*,<sup>82</sup> was designed to implement the Government proposals for improving nuclear clean up as set out in the White Paper. Principally, the legislation would establish the legal basis to create a dedicated public body, the NDA, which would be responsible to Government for the safe, secure, cost effective clean up of civil nuclear liabilities in a manner that would protect the environment.<sup>83</sup>

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<sup>78</sup> HC Deb 22 March 2004 c41WS

<sup>79</sup> HC Deb 22 March 2004 c41WS

<sup>80</sup> HC Deb 22 March 2004 c41WS

<sup>81</sup> HC Deb 24 July 2003 c34-5WS

<sup>82</sup> Draft Bill and explanatory notes available electronically at [www.dti.gov.uk/nuclearcleanup](http://www.dti.gov.uk/nuclearcleanup)

<sup>83</sup> DTI Press Office Background Note, *Nuclear Reform*, 13 November 2002



The NDA would be the first decommissioning authority in Europe and would help ensure that the UK becomes an international centre for nuclear clean up with associated financial, educational and employment opportunities.

The accompanying press release summarised the additional purposes of the draft Bill as follows. It:

- facilitates the introduction of competition in order to ensure the best possible skills are brought to bear on the task and are being used to best effect
- -provides for the transfer of assets and liabilities to the NDA and the consequential restructuring of BNFL as set out in the White Paper
- sets out a list of statutory consultees
- provides the necessary authority for the NDA to carry out functions that support the clean up programme including;
  - Carrying out research
  - Education and training
  - Supporting the social and economic development of local communities
  - Raising the profile of clean up
- delivers statutory means for protecting the pensions position of employees

It also includes provisions that:

- implement European wide changes to the Paris and Brussels Conventions on nuclear insurance
- amend the Radioactive Substances Act 1993 to allow for a fast track process for discharge authorisations.<sup>84</sup>

Once operational, the NDA would put site management responsibilities on a formal contractual basis with associated performance targets and incentives. Initially, contracts would be with BNFL and UKAEA, but in time competitive tendering would be established and contracts could be placed with third parties. Changes to site management arrangements would, however, only be made after consultation with the nuclear regulators and local stakeholders.

A range of briefing documents relevant to the draft Bill are available online.<sup>85</sup> These include a draft memorandum of understanding between the NDA and the nuclear

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<sup>84</sup> DTI press notice P/2003/367, *Nuclear Clean Up Programme Takes Major Step Forward*, 24 June 2003.

regulators,<sup>86</sup> and a draft NDA management statement setting out the basis of the relationship between the NDA and Government,<sup>87</sup>

Several parts of the final Bill were not in place in the draft:

The draft Bill as published does not include two detailed Schedules dealing with successor companies<sup>88</sup> and taxation<sup>89</sup>. These will be added to the Bill prior to its introduction into Parliament. In each case, however, these notes<sup>90</sup> explain the purpose of the Schedule and what they are expected to cover. Amendments will also be made to the draft Bill prior to introduction to reflect the fact that the NDA will have functions which relate to both reserved and devolved matters and so will be similar to cross border authorities designated under the terms of the Scotland Act 1998.<sup>91</sup>

On introduction the Bill will also include provisions to reconstitute the United Kingdom Atomic Energy Authority constabulary and establish a new statutory Police Authority responsible for its operational efficiency and effectiveness. Those provisions are intended to implement the Government's decisions on the future of the Constabulary following completion of the UKAEA Quinquennial Review.<sup>92</sup>

One of the recommendations of the Review was that:

the UKAEA Constabulary should be established as a stand-alone force employed by a statutory Police Authority<sup>93</sup>

this was elaborated upon in the White Paper.<sup>94</sup> See Appendix 3 for details.

The closing date for comments on the draft Bill was 16 September.

## **A. Pre-legislative scrutiny**

The Trade and Industry Select Committee (TISC) scrutinised the draft Bill. It took oral evidence on 8 July and 9 September 2003 from DTI officials and representatives of BNFL, UKAEA and Greenpeace.<sup>95</sup> Written evidence was also contributed by a range of

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<sup>85</sup> <http://www.dti.gov.uk/nuclearcleanup/nws/nws-np.htm>

<sup>86</sup> <http://www.dti.gov.uk/nuclearcleanup/pdfs/draftmou.pdf>

<sup>87</sup> <http://www.dti.gov.uk/nuclearcleanup/pdfs/ndastatement.pdf>

<sup>88</sup> Schedule 5

<sup>89</sup> Schedule 7

<sup>90</sup> The explanatory notes

<sup>91</sup> HC Deb 24 June 2003 c35WS

<sup>92</sup> Explanatory notes p1.

<sup>93</sup> HC Deb 28 November 2003 c993W

<sup>94</sup> Managing the Nuclear Legacy-a Strategy for Action, DTI, 4 July 2002, Cm 5552, available electronically at <http://www.dti.gov.uk/energy/nuclear/environment/liabilities/index.shtml>

<sup>95</sup> Trade and Industry Select Committee Press Notice 76, 24 June 2003 [http://www.parliament.uk/parliamentary\\_committees/trade\\_and\\_industry/trade\\_and\\_industry\\_press\\_notice\\_76.cfm](http://www.parliament.uk/parliamentary_committees/trade_and_industry/trade_and_industry_press_notice_76.cfm)

organisations. The TISC report was published on 29 October 2003 with the minutes, oral and written evidence.<sup>96</sup>

The Committee did not attempt a clause-by-clause analysis of the draft Bill but concentrated on the issues identified in its earlier report and concerns presented by contributors to the enquiry. It expressed broad satisfaction with the draft Bill:

We are broadly content that the draft Nuclear Sites and Radioactive Substances Bill will provide the correct framework to give effect to the Government's plans for a coherent strategy for the decommissioning and clean-up of the UK civil nuclear liability through the establishment of the Nuclear Decommissioning Authority (NDA). We are satisfied that most of the issues that we identified in our review of the White Paper, *Managing the Nuclear Legacy (Cm5552)*, which was published on 4 July 2002, have been addressed, either in the text of the draft Bill or in the supporting documentation which was published alongside it.<sup>97</sup>

Nevertheless, it made several recommendations to improve the Bill, the chief of which are set out below.

## 1. Overarching principles for NDA

In its evidence Greenpeace criticized the draft Bill because it did not contain an overarching objective for the NDA and a clear statement of the environmental and health principles that it should be trying to achieve. Greenpeace proposed an addition to the first clause of the Bill to the effect that:

“the overriding objective of the NDA in carrying out its functions is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation”.<sup>98</sup>

The Committee recommended:

that a clear and unambiguous statement of the overarching principles within which the NDA will work would be a useful addition to the draft Bill. Such a statement would have most force if it were given in the main body of the Bill.<sup>99</sup>

It noted:

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<sup>96</sup> TISC Seventeenth Report, *The Nuclear Decommissioning Authority: Pre-legislative Scrutiny of the Draft Nuclear sites and Radioactive Substances Bill*, HC 968, 29 October 2003, available electronically at <http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmtrdind/968/96802.htm>

<sup>97</sup> *ibid*, p3.

<sup>98</sup> *ibid*, Appendix 9

<sup>99</sup> *ibid*, Conclusion 2

that the draft Bill does not specify any standards for nuclear clean-up or decommissioning. Section 78 of the Environmental Protection Act 1990 (as amended by paragraph 57(7)(b) of the Environment Act 1995) describes remediation as preventing, minimising, remedying or mitigating the effects of any significant harm arising from the contaminated land. Harm is itself defined as "harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property", and the question of what harm is regarded as "significant" is to be determined by the Secretary of State (57(5)).<sup>100</sup>

It suggested:

that the draft Bill should be amended to make clear that, in fulfilling its obligations regarding clean-up and decommissioning, the NDA will operate in accordance with the concept of remediation and harm as set out in the Environmental Protection Act 1990, as amended.<sup>101</sup>

## 2. Finance

The high projected cost of nuclear clean-up of about £48 billion has already been mentioned. The TISC noted that adequate estimates of the cost of the clean up were not available at the time of pre-legislative scrutiny:

During our review, we noted that the draft Bill and associated documentation did not contain an informative schedule of the estimated cost implications of the proposals, or potential future savings. The only indication of costs, contained in the Explanatory Notes, was not comprehensive. The estimation of the civil liability has not progressed at all since our Report in July 2002. In addition the Regulatory Impact Assessment, which is concerned with the part of the legislation implementing the revised Paris and Brussels Conventions, was not available over the course of the consultation period and this inquiry. The implications for the public purse of the proposals are significant (at least £48 billion) and it has been difficult to make a full assessment of the consequences of the legislation, as in the information provided the subject of costs has been largely ignored.<sup>102</sup>

It recommended:

that the Department produce a fuller estimate of the cost implications of this Bill before its presentation to Parliament. With future draft legislation more attention should be devoted to ensuring that there is a comprehensive estimate of the cost

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<sup>100</sup> *ibid*, p7

<sup>101</sup> *ibid*, Conclusion 3.

<sup>102</sup> *ibid*, p6.

implications and that any Regulatory Impact Assessment is available at the same time as the draft Bill.<sup>103</sup>

The Committee considered that one of the NDA's initial tasks should be to produce an authoritative assessment of the civil nuclear liability and to update this as necessary.

The two funding options for the NDA have already been discussed in Section VIII B. These are the Segregated Fund and the Segregated Account. The Government opted for the latter and the TISC report set out further details of its operation:

Clause 19 of the draft Bill provides for the establishment of a statutory account, to be held and managed by the Secretary of State, as the basis for the funding of the NDA's activities. The opening balance of the Account would be the sum of the value of the BNFL Nuclear Liabilities Investment Portfolio, which would be paid into the Consolidated Fund; the value of the Magnox Undertaking of 1998 at the time the Account is established; and an initial contribution by the Government. Thereafter, the Government would provide an annual contribution to the Account. This would be supplemented by any income generated by the assets transferred from BNFL to the NDA, which would be paid over to the Secretary of State. Funding for the NDA and its activities would be provided by means of grants from the Account as authorised by the Secretary of State.

It is the Government's intention that the balance of the Account would be kept at the level required to support a rolling ten year programme of NDA operations. The definition of the minimum balance of the Account, and therefore the Government's annual contribution to it, would be determined by the DTI in consultation with the Treasury. We were told that the mechanism by which these issues were to be addressed was still the subject of negotiation between DTI and Treasury officials.<sup>104</sup>

In its previous report on the White Paper, the TISC concluded that it would favour a Segregated Fund because this offered greater transparency in the funding process and would improve public confidence in the independence of the Authority.

During oral evidence an official from the DTI set out the Government's reasons for rejecting the Segregated Fund:

... from the Government's perspective, such an approach would require the Government to commit more resources than is actually earmarked for decommissioning and clean-up, in order to provide, at the beginning of the process, the funds necessary for a ten year rolling programme.<sup>105</sup> Resources could be tied up until the opportunity to use them arises.<sup>106</sup> He made the point that such

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<sup>103</sup> Ibid, Conclusion 1.

<sup>104</sup> *ibid*, p17 & Question 19.

<sup>105</sup> *ibid*, Question 20

<sup>106</sup> *ibid*, Questions 17&21.

an approach was not consistent with that usually employed by the Treasury, whereas:

"... having a commitment in a Segregated Account of this kind is a very public commitment that the Government are held to . . . The account is designed to provide the assurance that money is being set aside for decommissioning and clean-up and will be forthcoming as and when the NDA requires it to fulfil [its] contracts."<sup>107</sup>

The TISC noted, however, that not all members of the nuclear industry were convinced by the Government's reassurances. The Committee concluded that it would still prefer a Segregated Fund to a Segregated Account. However, it went on to say:

what matters most is that the NDA is provided with the resources that it needs to carry out its responsibilities. The Government has provided assurances that the necessary support will be forthcoming, although it cannot provide more than a rough estimate of the resources that will be needed annually. That is understandable. However, before the Bill is presented to Parliament the Government should finalise and publish the process by which the level of its initial and annual contributions to the Account will be determined.<sup>108</sup>

### **3. Disposal of radioactive waste**

As already set out in Section IX of this paper, the establishment of the NDA to oversee the clean up of civil nuclear waste is running in tandem with the development of a nuclear waste management strategy to include a publicly acceptable, long-term disposal option for radioactive waste, which is currently stored.

A number of bodies have criticized the Government for its slow progress in developing the strategy which is clearly central to the work of the NDA. These include the Environment, Food and Rural Affairs Committee<sup>109</sup> and the TISC in its response to the White Paper.<sup>110</sup>

Several witnesses to the TISC pre-legislative scrutiny mentioned this point in their evidence. For example, Washington Group International stated:

"Unless there is a strategy developed for waste [disposal] that dovetails both integrally and harmoniously with the programme for liabilities management, the

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<sup>107</sup> *ibid*, Question 19.

<sup>108</sup> *ibid*, Conclusion 15.

<sup>109</sup> EFRAC Third Report, *Radioactive Waste: The Government's Consultation Process*, HC 407, 6 February 2002.

<sup>110</sup> TISC Fifth Report, *Managing the Nuclear Legacy: Comments on the Government White Paper*, HC 1074-I, 24 July 2002, para 50.

opportunity to realise optimum outturn cost of liabilities management will be severely jeopardised."<sup>111</sup>

In response the Government explained:

that the Committee on Radioactive Waste Management (CoRWM) was in the process of being established under the leadership of Dr Katharine Bryan and it was expected that the full Committee would be appointed by October or November of this year.<sup>112</sup> The Committee's terms of reference require CoRWM to aim to make recommendations to Ministers by the end of 2005; it would be for CoRWM to agree a work plan with Ministers to meet this deadline. It was the Government's intention that CoRWM would develop its policy proposals with a high degree of public and stakeholder group involvement, so that the policy ultimately recommended can command widespread support.<sup>113</sup>

The TISC concluded:

We note that more than two years will have elapsed from the issue of the Government's consultation document "Managing Radioactive Waste Safely", in September 2001, and the first meeting of CoRWM. We hope that the Committee will show a greater sense of urgency in its approach to its work than Government Departments have demonstrated thus far. From the outset, the NDA will need clear instructions from the Government as to the waste management strategy that it will be required to implement.<sup>114</sup>

#### 4. British Energy

Following financial difficulties experienced by the nuclear generator British Energy (BE) in 2002, company restructuring was attempted with the aim of it becoming solvent. The Government prepared contingency plans to ensure nuclear safety and security of supply in case this failed and the company went into administration. The *Electricity (Miscellaneous Provisions) Act 2003* was intended to enable the Government to fulfill its part of the restructuring in the event of either a solvent restructuring or administration. Background and further details are contained in Library Research Paper 03/07, *The Electricity (Miscellaneous Provisions) Bill*.<sup>115</sup>

Although it was originally proposed that the NDA manage the historic civil nuclear liabilities which are currently the responsibility of BNFL and UKAEA, following BE's problems the possibility arose that the NDA might have to act on behalf of the Secretary

<sup>111</sup> TISC Seventeenth Report, *The Nuclear Decommissioning Authority: Pre-legislative Scrutiny of the Draft Nuclear sites and Radioactive Substances Bill*, HC 968, 29 October 2003, available electronically at <http://pubs1.tso.parliament.uk/pa/cm200203/cmselect/cmtrdind/968/96802.htm> Appendix 11.

<sup>112</sup> Ibid, Appendix 8

<sup>113</sup> ibid, p20.

<sup>114</sup> ibid, Conclusion 16.

<sup>115</sup> <http://hcl1.hclibrary.parliament.uk/rp2003/rp03-007.pdf>

of State at BE sites. The position of Ministry of Defence (MoD) nuclear liabilities was also raised in the White Paper. In the light of these considerations the scope of the NDA's remit was extended in the draft Bill to include not only BNFL and UKAEA sites, but also the possibility that it might run MoD, BE and private company sites:

In the latter case, a private company could be required to pay for the work carried out by or for the NDA. The Government argued that the ... extension of the Authority's remit (to BE) is necessary as a consequence of its intention to underwrite the costs of decommissioning and clean-up of BE sites as part of the restructuring plan for the company. This would entail a Government commitment to meet the costs of historic AGR<sup>116</sup> reprocessing contracts; the creation of a BE Nuclear Liabilities Fund (BE NLF) to contribute towards the cost of uncontracted liabilities; and a Government commitment to meet the cost of uncontracted liabilities in excess of the assets in the BE NLF. It is the Government's intention that the NDA should be able to ensure that BE's operation and subsequent decommissioning and clean-up of its nuclear plant should limit the call on public funds to a minimum.<sup>117</sup>

The TISC agreed with the extension of the NDA's remit:

As regards the widening of remit of the NDA, we feel that the Government has been prudent in giving the NDA wider powers to take account of the possibility that if British Energy were to cease trading (or another private firm in the industry) then it would be necessary for the Government to intervene in the interests of public safety, especially since legislating later, if such an event occurred, would be a lengthy process.<sup>118</sup>

## **5. Research and Development**

While the draft Bill allowed for the NDA to develop a R&D programme relating to its primary functions, the TISC noted that its scope and development needed thought:

The draft Bill provides for the establishment and management of a research programme by the NDA appropriate to the discharge of its primary functions. DTI officials told us that the development of such a programme would underpin its key activities but it would be for the NDA Management Board to determine its research needs.<sup>119</sup>

The TISC concluded:

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<sup>116</sup> Advanced Gas Cooled Reactors, the second generation of nuclear power reactors in the UK, transferred to BE after privatisation.

<sup>117</sup> *ibid*, p8.

<sup>118</sup> *ibid*, Conclusion 5.

<sup>119</sup> *ibid*, p10.



that while the development of the NDA's Research and Technology programme was an essential component of the Authority's work, the draft NDA management statement did not address this function directly. We recommend that this crucial activity be afforded a higher priority when the management statement is developed further.<sup>120</sup>

With regard to the scope of the R&D the TISC reported:

BNFL suggested that the scope of the NDA's programme should go beyond decommissioning and clean-up to include wider areas relevant to the nuclear industry as a whole.<sup>121</sup> It argued that permitting work to be undertaken for others within the nuclear industry would not only improve skill and capability maintenance but would help defray NDA infrastructure costs. The maintenance of this capability and facilities would also enable the continued performance of contracts of national strategic importance.<sup>122</sup>

The TISC concluded that a wider remit was advisable but its nature should be considered before second reading:

We recognise the iterative and interactive nature of R&T and that it is not necessarily simple to separate out from BNFL's current R&T programme those elements that relate specifically to decommissioning, or to distinguish generic research not oriented towards new nuclear build from generic research which is so targeted. It is appropriate that 'New BNFL' retain the last, but it would make sense for it to have some capability in the first two—not least because it would need to maintain its competency as an Management & Operations contractor for decommissioning and clean-up. The Government should give more thought to the question of how these R&T functions are to be separated, before the Bill receives its second reading. In so doing the Government must ensure that the NDA does not lose its focus on decommissioning and clean-up.<sup>123</sup>

## 6. Stakeholder consultation

The framework for stakeholder involvement and transparency within which the NDA will operate is still being developed by the Government. The TISC and UKAEA both agreed with the arrangements proposed in the draft Bill whereas Greenpeace felt the list of bodies and individuals who must be consulted is too limited. The TISC report sets out the position:

Clause 8 of the draft Bill places a duty on the NDA to prepare a strategy for carrying out its functions and to keep that strategy under review. Schedule 2, paragraph 2 sets out the requirements for the NDA, in preparing or amending its

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<sup>120</sup> Ibid, Conclusion 7.

<sup>121</sup> *ibid*, Appendix 5.

<sup>122</sup> *ibid*, Question 144.

<sup>123</sup> *ibid*, Conclusion 8

strategy, to consult a range of third parties, including the nuclear regulators, local authorities, site managers appointed by the NDA, their employees and trade union representatives and other bodies such as local site committees established by the site operators. This list is non-exhaustive. The Government has explained that there would be no constraint on the NDA consulting other stakeholder groups or the general public: nor would the NDA be constrained as to the methods of consultation. The Authority would also be required to have regard to all representations made to it. The DTI is consulting interested parties on the development of a framework for stakeholder engagement and transparency. UKAEA expressed satisfaction with the proposed arrangements for consultation, which would appear to be consistent with its current practice.<sup>124</sup> On the other hand, Greenpeace expressed concern that Schedule 2 (4) (2) of the draft Bill draws the list of those who must be consulted too narrowly, and felt that the NDA should have a statutory duty to consult with the public.<sup>125</sup>

The TISC concluded that:

It seems to us that the requirements for stakeholder consultation by the NDA and its contractors strike a reasonable balance between prescription and the need to have the flexibility to adjust the consultation arrangements to suit the individual problems posed by any particular site. In practice, the NDA will be required to have regard to any representation made by a member of the public. Failure to do so, or do so adequately, would leave the Authority's decisions open to challenge through the process of judicial review. Bearing in mind that the processes for stakeholder consultation are at an early stage of development, we would expect the Government to monitor the NDA's efforts in this area closely and to take suitable corrective action should the need arise.<sup>126</sup>

## **7. Staff conditions of service**

The Government gave an assurance in the White Paper that conditions of service and pensions for staff employed by UKAEA and BNFL would be protected when the assets and liabilities passed to the NDA.

The trade union, Prospect, expressed concern that it is not clear in the draft Bill how conditions of service would be preserved when a competitive market is established and primary and sub-contracting arrangements between NDA and other parties are put in place. The TISC reported:

The trade union felt that guarantees of the continuity of terms and conditions should at least be set out in the term contract between the NDA and any potential contractor and that this commitment should apply equally to primary contracts and sub-contracting arrangements. It suggested that specific provisions in the Bill

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<sup>124</sup> *ibid*, p13.

<sup>125</sup> *ibid*, Appendix 9.

<sup>126</sup> *ibid*, Conclusion 11.

were necessary to provide protection for staff involved in second tier contracts and in subsequent contracting rounds once a competitive market for decommissioning services had been developed.<sup>127</sup>

Both BNFL and Prospect had reservations about provisions for protection of the pension position contained in Clause 32 and Schedule 6 of the draft Bill. As a solution, Prospect proposed an industry-wide pension scheme:

Prospect advocated the establishment by the NDA of an industry-wide pension scheme which would provide equivalent benefits to new entrants to the industry and to contractors who do not have pension arrangements equivalent to those already in place in UKAEA and BNFL. It suggested that opening membership of such a scheme to all those involved in the clean-up operations would provide a long-term incentive for staff in the industry.<sup>128</sup>

The TISC concluded that it was in agreement with such a scheme:

In principle, we agree that the creation of a nuclear industry pension scheme, providing benefits of membership equivalent to those provided by the existing schemes, could provide an incentive to join and remain in the decommissioning and clean-up industry. In any case, the pension rights of BNFL staff should be protected to remove any potential for discrimination between different groups of BNFL staff.<sup>129</sup>

## **XI Part 1 of the *Energy Bill* in the Lords**

The measures in the draft legislation were finally published as Part 1 of the *Energy Bill* [HL], Bill 2 2003-04. For an overview of the Bill and electronic links to documents see Library note SN/SC/2780, *Energy Bill [HL] 2 2003-04 – Background*.<sup>130</sup>

### **A. Changes from the draft Bill**

This Section was contributed by an official from DTI:

The NDA provisions of the *Energy Bill* as introduced in the House of Lords differed only slightly to those set out in the *Draft Nuclear Sites and Radioactive Substances Bill*. The key areas in which provisions have been added are set out below (unless stated otherwise all clause, schedule and paragraph references are to the *Energy Bill* as introduced in the House of Lords);

#### **1. Devolved matters**

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<sup>127</sup> *ibid*, p15&16.

<sup>128</sup> *ibid*, p16 and Appendix 1.

<sup>129</sup> *ibid*, Conclusion 14.

<sup>130</sup> <http://hcl1.hclibrary.parliament.uk/notes/ses/snsc-02780.pdf>

Clause 6 sets out the circumstances in which Scottish Ministers must agree or be consulted on designations which relate to or might otherwise affect devolved responsibilities of the Scottish Parliament. It reflects the agreement reached with Scottish Ministers on how to deal with the complex relationship between reserved matters in the nuclear sector and other environmental responsibilities which are devolved. Clause 6(2) therefore provides that the Secretary of State should act jointly with Scottish Ministers where devolved matters are concerned. Clause 6(3) provides that where there are certain issues which would otherwise be devolved were it not for the fact that the activity took place on a licensed site, which is explicitly reserved, Scottish Ministers should be consulted.

Schedule 2 (NDA's strategy) and Schedule 3 (NDA's annual plans) have similar provisions. The contents of the NDA's strategy and annual plans that relate to the responsibilities mentioned in clause 6(2) must be approved by Scottish Ministers. The Secretary of State must consult Scottish Ministers before approving any content relating to matters mentioned in clause 6(3). The *Energy Bill* also requires that Scottish Ministers should be consulted by the Secretary of State before he appoints an NDA chairman, non-executives, or approves a chief executive.

## **2. Pensions**

Clause 8 now provides that the NDA can establish a pension scheme that would cover all employees in the UK nuclear clean up industry. This will help to facilitate the free movement of employees between NDA sites, and will help to give effect to the protection offered under Schedule 8 for current employees who are required to leave their current pension scheme as a result of a nuclear transfer scheme or arrangement. Schedule 8 has also been modified as a consequence of clause 8 to allow the Secretary of State or NDA to modify an NDA scheme (effectively the industry-wide scheme) to ensure that it is an 'appropriate scheme' for the purposes of paragraphs 9 and 10 of Schedule 8 (i.e. one that taken overall offers no less favourable benefits than the one a current employee is required to leave due to a transfer scheme or arrangement). Schedule 8 has also been modified to provide pension protection to employees not only on their first transfer for NDA purposes, but also on their subsequent transfers.

A new Part 2 has also been inserted in Schedule 8 to give the NDA the power to modify the BNFL Group Pension Scheme. This reflects the fact that some of its workforce who will transfer from BNFL to the new site licensee companies will belong to the BNFL Group Scheme. The NDA therefore needs to be able to modify the scheme to give effect to the protection offered under Schedule 8.

## **3. Contents of the NDA's strategy**

Clause 12(3) has been inserted following representations received from stakeholders during consultation on the *Draft Nuclear Sites and Radioactive Substances Bill*. It requires the NDA to set out its plans for stakeholder engagement in its strategy. This reflects the Government's intention that the NDA should seek to secure public confidence by being a champion of openness and transparency. Along with its Stakeholder Engagement Framework Clause 12(3) will help to ensure this.

#### **4. Directions by the NDA**

Two modifications have been made to the NDA's direction making powers in clause 18 and clause 20 to reflect developments in the proposed contracting model for the NDA. The policy as reflected in the *Energy Bill* envisages Site Management Contractors (SMCs) competing to manage NDA sites, with successful bidders taking ownership of the Site Licensee Company (SLC) for the duration of the contract. Consequently, as SLCs may be owned by a parent company, paragraph 4 has been added to clause 18 to ensure that these parent companies are accountable to the NDA for the actions of their subsidiary SLCs. Paragraph 4 has also been added to clause 20 to disapply the duty to comply with directions from the NDA that are given under clause 18 where there is a contract in place between the NDA and the operator.

#### **5. NDA borrowing**

Clauses 23, 24 and 25 have been added to provide for borrowing by the NDA from the Secretary of State and from other persons. These clauses are modelled on the provisions that apply to BNFL. All borrowing is subject to approval by the Secretary of State and the Treasury.

#### **6. Nuclear Transfer Schemes**

Clause 35 has been modified to require the Secretary of State to consult BNFL or UKAEA before making any transfer of their property, rights and liabilities to another party. For BNFL this was included in response to representations made by the company. For UKAEA this provision is written across from the *Atomic Energy Act 1995*, which in turn has been largely repealed because of the overlap between its transfer provisions and the transfer provisions in the *Energy Bill*.

Clause 44 has been included to ensure that the NDA and UKAEA have the necessary power to function as statutory bodies. In the case of UKAEA clause 44 carries forward similar provisions from the 1995 Act.

Schedule 7 has been modified to extend financial provisions currently applicable to BNFL to designated BNFL companies (ie New BNFL). It also carries forward financial provisions from the 1995 Act to transferee companies that are not designated BNFL companies.

#### **7. Tax provisions relating to nuclear transfer schemes**

Clause 27 was included to allow for the exemption from corporation tax, with appropriate safeguards, of certain activities carried on by or on behalf of the NDA. It also gives effect to Schedule 4 which makes further detailed provisions for this tax exemption. Schedule 9, given effect by clause 43, was also included to establish the tax provisions that will apply to transfers by way of a nuclear transfer scheme. The main intention of Schedule 9 is to ensure that tax charges and reliefs on either party are not triggered as a result of a nuclear transfer scheme and that such schemes should, as far as possible, be tax neutral for both parties.

#### **8. Application of Regulatory Framework**

Clause 22 (Application of Part 2A of the of the *Environmental Protection Act 1990*) has been removed from the *Energy Bill*. It was decided that existing

provisions in clause 9(1) are sufficient to ensure that the regulatory framework is properly applied to the NDA's work. Indeed it is the Government's intention that the NDA will work closely with the various nuclear regulators, which includes the Environment Agency (EA). The EA authorises radioactive discharges and waste disposals to air, water (surface water and groundwater) and land under the *Radioactive Substances Act 1993* (c.12) and regulates nuclear sites under the Pollution Prevention and Control (England and Wales) Regulations 2000 (SI 2000/1973), as amended, made under section 2 of the *Pollution Prevention and Control Act 1999* (c.24). A Memorandum of Understanding (MoU) between the NDA and each of the nuclear regulators will set out the responsibilities of both parties as they work to tackle the nuclear legacy.

### **9 Reorganisation of clauses**

Clause 3 now covers the NDA's principal functions and the mechanism for assigning them (directions by the Secretary of State), this was previously dealt with in clauses 3 and 4 of the *Draft Nuclear Sites and Radioactive Substances Bill*. Clause 7 now covers the NDA's supplemental functions (previously dealt with in clause 3(2)-(6) of the Draft Bill). Clause 19 now covers designations as a related site (previously dealt with in clause 4(3) and 4(4) of the Draft Bill). The definition of key terms used are now swept up into clause 34 for Chapter 1 and clause 46 for Chapter 2.<sup>131</sup>

## **B. The Second Reading**

The *Energy Bill* received its First Reading in the Lords on 27 November 2003.<sup>132</sup> The Second Reading took place on 11 December.<sup>133</sup>

The Parliamentary Under-Secretary of State, DEFRA, Lord Whitty, opened the debate for the Government. He outlined the main provisions of the Bill in relation to the NDA:

Chapters 1 and 2 of Part 1 of the Bill implement our commitment in last year's *Managing the Nuclear Legacy White Paper* to make radical changes to arrangements for the decommissioning and clean up of the UK's civil public sector nuclear sites, continuing to be funded by the taxpayer. Current estimates put the total cost of this clean up at £48 billion. It is important that the task is completed as effectively as possible. The Bill therefore provides for the establishment of a Nuclear Decommissioning Authority, referred to in the Bill as the NDA, as a non-departmental public body by April 2005. The NDA will provide strategic management and direction to the task of securing decommissioning and clean up. In carrying out its functions it is to have particular regard to safety, security and the need to safeguard the environment. The NDA will be funded directly by the Government, with resources provided within the usual budgetary process. However, we recognise the long-term nature

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<sup>131</sup> Personal communication from official at DTI

<sup>132</sup> HL Deb 27 November 2003 c23

<sup>133</sup> HL Deb 11 December 2003 cc829-865 & cc893-924

of the clean up task—more than 100 years—so we have provided for the establishment of a statutory account, the Nuclear Decommissioning Funding Account, to demonstrate our commitment to meet the costs of cleaning up the public sector nuclear legacy for future generations.

The NDA will operate in an open and transparent manner. It will promote engagement with its stakeholders, and, by promoting competition for the management of sites, it will bring the best skills available to the task of clean up and deliver it effectively. The NDA will also have a function in encouraging and supporting socio-economic regeneration in the regions where it has responsibility for sites. Indeed, the NDA will be part of the strategic task force, for example, that the Government announced today for West Cumbria. The task force will be led by the North West Development Agency and will include central and local government, the private and social sectors. It will be charged with developing a sustainable vision and a plan for the long-term economic and social regeneration of that area of West Cumbria

He drew attention to several related issues. The first of these were the conclusions of a strategic review of BNFL which was published that day:

... broadly, the review has concluded that, in order to meet the Government's priority of cleaning up the nuclear legacy, a new parent company should be established in 2005. It will focus on the management of clean up activity through a group of subsidiary companies. The other businesses that are not directly contributing to this priority will be managed to deliver value and to limit risk to the taxpayer. In relation to the other BNFL businesses, steps will be taken, when appropriate, to open up possibilities for private sector participation.

He set out proposals to establish a new Civil Nuclear Police Authority in Part 1 Chapter 3 of the Bill:

The United Kingdom Atomic Energy Authority (UKAEA) Constabulary will be separated from the authority and reconstituted within a modern framework under a newly created statutory police authority.

The Civil Nuclear Police Authority will be responsible for the efficiency and effectiveness of the constabulary. The present UKAEA Constabulary will be renamed the Civil Nuclear Constabulary. Officers and staff will transfer from the UKAEA. The constabulary's jurisdiction will be largely unchanged and within its jurisdiction its officers will have the powers generally available to constables. The Bill also contains provisions about the employment arrangements for the new constabulary. They largely maintain existing arrangements and are intended to ensure that the conditions of service continue largely to mirror those of other police forces.

Further details are in Section XIII.

Lord Whitty outlined other provisions:

Chapter 4 amends the Radioactive Substances Act 1993 to streamline the process for the transfer or variation of discharge authorisations. The changes are intended to improve efficiency and effectiveness while reducing costs. Chapter 5 contains clauses to enable the implementation of changes to the UK's international obligations governing third party liability in the event of nuclear accidents; to address minor gaps in existing law on the regulation of security of equipment and software relating to uranium enrichment, and of sensitive nuclear information; and to give the Government explicit financial authority to incur expenditure under a range of options negotiated as part of the restructuring of British Energy.

For further details about third party nuclear liability see Section XIV.

The Conservative Spokesperson for Education and Skills and Trade and Industry, Baroness Miller of Hendon, said the Conservatives “have no overriding objections to what is proposed in the Bill, subject to ...examination of the detail...” When speaking about the NDA her concern centered on the lack of Government policy to commission new nuclear stations rather than decommissioning for which the NDA was being established. This was a recurrent theme throughout the passage of the Bill through the Lords:

The White Paper asks whether the creation of the Nuclear Decommissioning Authority is a kind of back-door route to more nuclear power stations. I can confidently endorse the White Paper's denial. I believe that the whole tenor of the Bill is to push the question of the development of new nuclear power stations to replace the existing ones into the background. This is borne out by a little phrase hidden away in the White Paper, where the Government state:

"The NDA's focus will be squarely on the progressive reduction of liabilities".

Your Lordships will note that there is nothing about assuming responsibility for future liabilities.(...)

In fact, the Minister of State, Mr Stephen Timms, when speaking at the All-Party Nuclear Energy Group dinner as recently as 3rd December, said:

"We need the possibility of new nuclear build".

(...) the question is not whether we need the possibility of new nuclear build but whether or not the Government are going to grasp the nettle and do something about it.

Lord Ezra, the Liberal Democrat Energy Spokesperson, voiced general concern that the Bill did not address many of the policies set out in the Energy White Paper<sup>134</sup>:

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<sup>134</sup> The Energy White Paper-Our Energy Future-Creating a Low Carbon Economy, DTI/DEFRA, February 2003



While the Bill is important and will command widespread support as far as it goes, my general reaction to it is one of sad disappointment. When reference was made in the Queen's Speech to the introduction of legislation on energy matters which would aim to,

"promote secure, sustainable supplies and a safer environment",

I looked forward to the Bill with eager anticipation. I thought that here would be a statutory endorsement of the main courses of action and aspirations set out in the energy White Paper of February 2003. Instead, we have three disparate pieces of legislation rolled into one, which, although important and significant, are by no means the main issues raised in the White Paper.

He said that the establishment of the NDA would command widespread support, but he highlighted two major related issues which are not resolved: policy on the long-term disposal of radioactive waste; and new nuclear build:

The Bill does not deal with two matters of over-riding importance in the nuclear sector. First, there is the long-term management of nuclear waste, which is very relevant to the setting up of the NDA, has been under discussion for many years and is as yet unresolved. I asked a Question on that subject the other day. Secondly, there is the over-riding issue of the future of the nuclear industry itself, to which the noble Baroness, Lady Miller of Hendon referred. That will have a substantial impact on energy policy as a whole. So long as it remains unresolved, it is difficult to see how a coherent and effective future energy policy can be devised.

In relation to nuclear liabilities the journal ENDS noted:

Green Party peer Lord Beaumont called for the NDA to be given "a clearly defined set of environmental principles", backed by a statutory duty to consult the public. He also called for a requirement for future private nuclear operators to establish segregated funds for nuclear waste, in order to avoid a repeat of the problems following the collapse of British Energy.

Lord Beaumont also called for the Bill to enshrine the Government's earlier proposal that the NDA should review annually the rationale for keeping open its nuclear facilities-including the Magnox reactors and controversial reprocessing activities at Sellafield.<sup>135</sup>

## C. The Committee Stage

For the Committee Stage of the Bill see Library note, SN/SC/2919, *Energy Bill [HL] 2 2003-04 – Lords Committee Stages*.

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<sup>135</sup> ENDS Report December 2003 p40-41

The Grand Committee considered amendments to Part 1 (now Part 2) of the *Energy Bill* in five sittings on 15,<sup>136</sup> 20,<sup>137</sup> 22,<sup>138</sup> 27 January 2004<sup>139</sup> and 3 February 2004.<sup>140</sup>

Amendment 103A was the only one passed. It resulted in a new clause, which corrects some anomalies in Northern Ireland legislation, being inserted as clause 81 in Bill 93:

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs, Lord Whitty, set out the reason for the amendment:

The Northern Ireland Act 1998 provides that nuclear energy and installations are excepted matters. The Act made no consequential amendments to the Nuclear Installations Act 1965 and, as a result, there are provisions in the 1965 Act which are now inconsistent with the Northern Ireland Act. Consequently, the purpose of this group of amendments is to amend such provisions in the 1965 Act to reflect the devolution settlement in the 1998 Act.

The amendments to Sections 3(1A) and (6A), 4(3A) and 5(1A) of the 1965 Act extend the consultation requirements in respect of a nuclear site licence to Northern Ireland in the event that a licence is granted there. At present, these consultation requirements apply only in respect of a nuclear site licence in Great Britain.

Section 27 of the 1965 Act deals with the application of certain provisions to Northern Ireland. The effect of this section is to substitute references with a UK meaning with references within the context of Northern Ireland—for example, the substitution of "Minister" with "Minister of Commerce for Northern Ireland" and so on. However, in light of the 1998 Act, most of the provisions in Section 27 are now otiose. Consequently the amendment repeals those provisions in Section 27 and updates the provisions that are still required to reflect the devolution settlement.<sup>141</sup>

As is usual in Grand Committee, the amendment was agreed without a Division.

## **D. The Report Stage**

For the Report Stage of the Bill see Library note SN/SC/2985, *Energy Bill [HL] 34 2003-04 – Lords Report Stages*.<sup>142</sup>

As there were about a hundred amendments proposed at Report relating to Part 1 it is not possible to provide a comprehensive overview of the amendments or the discussion

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<sup>136</sup> HL Deb 15 January 2004 GC cc135-190

<sup>137</sup> HL Deb 20 January 2004 GC cc253-310

<sup>138</sup> HL Deb 22 January 2004 GC cc373-430

<sup>139</sup> HL Deb 27 January 2004 GC cc67-133

<sup>140</sup> HL Deb 3 February 2004 GC cc283-298

<sup>141</sup> HL Deb 3 February 2004 GC 284

<sup>142</sup> <http://hcl1.hclibrary.parliament.uk/notes/ses/snsc-02985.pdf>

relating to them. Hansard references for all amendments that were passed are given below. There was substantial discussion of some of these prior to them being passed:

#### **HL Deb 18 March 2004**

- Clause 6-Designations relating to Scotland: c427-31;
- Clause 7-Supplemental functions: c431-32;
- Clause 9-General duties when carrying out functions: c432;
- Clause 10- Powers for carrying out functions: c432;
- Schedule 2-Procedural requirements applicable to NDA's strategy: c432-33;
- Clause 12- Contents of strategy: c433;
- Schedule 3-Procedural requirements applicable to NDA's annual plans: c433;
- Clause 14-Annual reports: c433-34.

#### **HL Deb 22 March 2004**

- Clause 20-Duty to comply with directions under s 18: c476;
- Clause 21-Financial responsibilities of NDA: c476-79;
- Clause 27-Tax exemption for NDA activities: c491-93;
- New clause inserted after clause 27-Taxation of NDA activities chargeable under case VI of Schedule D: c493-4;
- New clause inserted after clause 27-Disregard for tax purposes of cancellation etc. of provisions: c494-98;
- New clause inserted after clause 27-Disregard for tax purposes of provisions recognised by NDA: c498-99;
- Clause 32-Powers to modify Chapter 1 of Part 1: c504-05;
- New clause inserted after clause 40-Extinguishment of BNFL losses for tax purposes: c508-509;
- Schedule 7-Finances and accounts of transferee companies: c509-510;
- Schedule 8-Pensions: c510-14; c517; c518-23;
- Schedule 9-Taxation provisions relating to nuclear transfer schemes: c527-33;
- Schedule 10-The Civil Nuclear Police Authority: c542;
- Clause 52-Jurisdiction of Constabulary: c569;
- Schedule 14-Minor amendments relating to Constabulary; c580-81;
- New clause inserted after clause 75-Additional functions of UKAEA: c581-84.

## E. The Third Reading

For the Third Reading of the Bill see Library note SN/SC/3014, *Energy Bill [HL] 58 2003-04 – Lords Third Reading*.<sup>143</sup>

The establishment of the NDA and related issues are now designated as Part 2 of the Bill. A number of further amendments were proposed at Third Reading on the NDA. The following are Hansard references for all amendments that were passed including the discussion about them and related issues:

### HL Deb 20 April 2004

- Clause 4-Constitution of NDA: c188-92;
- Clause 11-General duties when carrying out functions: c204-15 & c218;
- Clause 82-Additional functions of the UKAEA: c235-36.

## F. Government policy on nuclear power

One amendment (No 3 to Clause 5) proposed at Third Reading but not agreed, aimed to designate the responsibility for commissioning, planning and developing nuclear power stations to the NDA. The amendment, moved by Lord Peyton of Yeovil (Conservative), led to discussion about the Government's current stance on nuclear power as set out in the Energy White Paper<sup>144</sup> which, as already mentioned, was a recurrent theme during the passage of the *Energy Bill* through the Lords.

In the Energy White Paper the Government set out its policy of prioritizing the development of renewable energy sources for electricity production. By contrast the White Paper did not contain proposals for building new nuclear power stations, although it did not rule out the possibility that at some point in the future new nuclear build might be necessary to meet carbon targets. Although nuclear stations do not produce carbon dioxide, they do produce highly toxic, long-lived radioactive waste, for which there is currently no long-term disposal option. Assertions that the failure to include concrete proposals for new build was misguided formed part of the debate at each stage of the Bill:

**Lord Lea of Crondall [Labour]:** My Lords, those of us who are convinced of the need to move fast on some new nuclear commissioning can take some comfort from the fact that during the course of this long process of discussion of the Bill in Committee, on Report and, now, on Third Reading, what one might call the intellectual case has gone from strength to strength despite all the arguments advanced against the proposition that we need to move quickly to consider commissioning new stations

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<sup>143</sup> <http://hcl1.hclibrary.parliament.uk/notes/ses/snsc-03014.pdf>

<sup>144</sup> The Energy White Paper-Our Energy Future-Creating a Low Carbon Economy, DTI/DEFRA, February 2003

Support for new nuclear build came from both sides of the House. Speaking after several Conservative peers Lord Tomlinson said:

**Lord Tomlinson** [Labour]: My Lords, I would not want my noble friend to feel that support for the continuation of nuclear power exists only on one side of the House. I do not propose to speak for long, but simply to make it clear to him, as I have previously, that I am not in favour of one form of energy at the expense of another. I have nothing against all the plans for renewables—I wish them well and hope that they succeed. But I prefer to have a guarantee available, lest the optimism with which they are viewed proves ill-founded.(...)

I would not want to join in anything that appeared to be an attack on renewables, but I sound the warning to my noble friend that, when it comes to the guaranteed supply of energy, in my opinion, nuclear will continue to have a role until we have a proven and guaranteed alternative.

A number of other Lords contributed to the criticism of Government policy on nuclear energy during the Third Reading, but none spoke in favour of it.<sup>145</sup> Lord Peyton raised concern about the future need to import an ever increasing amount of oil and gas: “the Government are apparently content on dependence for three-quarters of the raw material needed for [electricity] generation from overseas sources a long way away through a pipeline that has not been built” and warned about “the entertainment of high hopes in relation to renewables” while “turning away from nuclear”. He mentioned common concerns about the funding of nuclear research and erosion of the nuclear skills base.

Lord Gray of Contin (Conservative) presented many of the main features of the arguments:

It is a matter of very great disappointment to those of us on both sides of the House who support the nuclear industry that the White Paper, on which so much of this Bill is based, makes no more than token mention of nuclear power. To say that the future of nuclear power will not be ruled out is poor reward for an industry that presently provides approximately 25 per cent of our power generation, and which can justifiably claim to be among the cleanest of all generation methods.

A wonderful opportunity has been missed to make a positive commitment to replace the nuclear power stations, which will be decommissioned over the next few years, with a proper new nuclear programme. While many other parts of the world are seizing the challenge, our Government, I am afraid, are fumbling and foundering and making unrealistic demands on the renewable energy industry, which is still in its infancy.

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<sup>145</sup> HL Deb 20 April 2004 cc192-204

Lord Monro of Langholm said:

My Lords, I should like to add a word or two in support of my noble friends Lord Peyton and Lord Gray, who, between them, have put a very powerful case for continuing nuclear development.(...)

As my noble friend Lord Gray has indicate, [nuclear] power stations will be needed by the year 2020. Surely, it would be sensible to keep these licensed nuclear sites ready and prepared for the next generation. As my noble friend said, to build a modern nuclear power station is much easier than it was in the 1950s and 1960s.

So, I believe that for that reason, and knowing that we will be short of power by 2020, it is foolish to go into reverse and to sit on the fence, as the Government are currently doing.

My second point is that the Government grossly overestimate the progress that will be made with wind power. I have sheaves of correspondence and newspaper cuttings demonstrating mounting opposition to wind farms, some of them 400 feet high and with transmission lines running through much beautiful countryside. The population will not stand for the spoilage of much of our attractive countryside by those ghastly wind farms and transmission lines.

Lord Ezra (Liberal Democrat Spokesperson on Energy) remarked upon the great importance of the contributions made by Lord Peyton and Lord Gray:

[Lord Peyton] has drawn attention to what was a major gap in the energy White Paper. We must resolve what we are going to do about the nuclear option. I also listened with great care to the speech made by the noble Lord, Lord Gray of Contin. He referred to recent developments in new forms of nuclear generation and the need to assess those developments with care.

## **XII Part 2 of the *Energy Bill* as it entered the Commons**

As it entered the Commons on 22 April 2004, the measures on nuclear decommissioning were published as Part 2 of the *Energy Bill* [HL] Bill 93 2003-04<sup>146</sup> along with Explanatory Notes.<sup>147</sup>

### **A. Political views**

The major opposition parties were approached to give their views.

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<sup>146</sup> <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmbills/093/04093.i-viii.html>

<sup>147</sup> Bill 93-EN

<http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmbills/093/en/04093x--.htm>

The Shadow Energy Minister, Lawrence Robertson, provided the following quote of the Conservative view:

We are basically in support of the creation of the Nuclear Decommissioning Authority. It is only right that the government should accept its responsibilities to finally deal with the nuclear waste which has been created by the processes carried out by a company which it owns, namely BNFL.

We do, though, have some concerns about how it will operate. I am aware, for example, of concern at BNFL's Sellafield site about who will actually carry out decommissioning work, as the people employed on that site have a particular expertise in that field. Will they be contracted to do it?

And the question remains as to how that waste will be dealt with. For example, Finland, where I have visited, is far more advanced in its treatment of waste than we are in this country. What is needed is an underground repository for the storage of such waste similar to the one which has been built, and the extra one they are building, in Finland.

We are also concerned about the ability of the Secretary of State to actually take over nuclear installations which, for example, might belong to, say, British Energy, because although this Bill doesn't provide that power, earlier legislation might well do.<sup>148</sup>

Andrew Stunell, the Liberal Democrat Energy Spokesperson, contributed the following summary of his party's policy:

Liberal Democrats support the setting up of a nuclear decommissioning Authority and feel that after several years of consultation, it is long overdue.

One of the first tasks of the Nuclear Decommissioning Authority should be to assemble a comprehensive inventory of high level and intermediate level waste that includes surplus plutonium, uranium and spent fuels.

We hope that the transfer of liabilities will not lead to a blurring of the lines between historic liabilities that the Government should take fiscal responsibility for and new liabilities created under the auspices of BNFL and British Energy. Waste generated costs must be entirely transparent and the nuclear industry must take responsibility for their liabilities under a polluter pays principle.

The NDA must also ensure that community life is fully integrated into their strategy. A full and transparent local consultation process must inform decision making at every site. A general principle should be adopted that the cost of

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<sup>148</sup>

Laurence Robertson MP personal communication

meeting local and regional community needs or environmental blights will be included within all models for future action.<sup>149</sup>

### **XIII The Civil Nuclear Police Authority**

The provisions of Part 2, Chapter 3 of the Bill would create a new Civil Nuclear Police Authority to oversee a reconstituted nuclear constabulary which is currently the UKAEA Constabulary.<sup>150</sup>

The UK Atomic Energy Authority Constabulary (AEAC) was established under the *Atomic Energy Authority Act 1954* with a statutory remit to protect nuclear material on specified nuclear sites - Sellafield, Dounreay, Chapelcross, Harwell, Capenhurst, Sellafield and Winfrith. It also escorts sensitive nuclear material in transport.

The 570 strong AEAC currently forms part of UKAEA and is fully funded by the nuclear site licensees whose sites it polices. It is overseen by a non-statutory police authority composed of representatives of the site licensees involved, the Director of Civil Nuclear Security (DCNS), an expert police adviser and another representative of the Department of Trade and Industry. The Authority has no legal standing and is only indirectly accountable to the Secretary of State.

One of the recommendations of the UKAEA Quinquennial Review was that:

the UKAEA Constabulary should be established as a stand-alone force employed by a statutory Police Authority.<sup>151</sup>

The Government signalled its intention to implement this recommendation the same day.<sup>152</sup>

Detailed plans for the AEAC were set out in chapter 8 of the White Paper.<sup>153</sup> This explains the intention to separate AEAC from UKAEA and reconstitute it as a stand alone force which will be independent of the nuclear industry. AEAC would be placed under the control of a statutory Police Authority which would report to the Secretary of State. The intention is to ensure public accountability and introduce greater openness and transparency about the force's operational efficiency and effectiveness.

The provisions to accomplish the changes were not included in draft legislation but:

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<sup>149</sup> Andrew Stunell MP personal communication

<sup>150</sup> Chandrika Nath of POST intends to publish a note about terrorist attacks on nuclear facilities

<sup>151</sup> HC Deb 28 November 2001 c991

<sup>152</sup> HC Deb 28 November 2001 c993W

<sup>153</sup> Managing the Nuclear Legacy-a Strategy for Action, DTI, 4 July 2002, Cm 5552, available electronically at <http://www.dti.gov.uk/energy/nuclear/environment/liabilities/index.shtml>



On introduction the Bill will also include provisions to reconstitute the United Kingdom Atomic Energy Authority constabulary and establish a new statutory Police Authority responsible for its operational efficiency and effectiveness.<sup>154</sup>

For further details see Library note SN/SC/2214, *The UKAEA Constabulary*<sup>155</sup>

## **XIV Third party nuclear liability**

The provisions of clause 79 of the Bill give effect to international obligations regarding third party nuclear liability.

In the nuclear industry particular issues arise in relation to third party liability. Although high safety standards ensure that the risk of an incident is low, in the event of one occurring the potential for damage and the consequent level of compensation would be very high. Additionally, the consequences could affect more than one country. To address these issues an international third party liability regime has been developed under the Paris and Vienna Conventions. These establish an international legal framework within Western Europe to compensate victims of a nuclear incident.

The Paris Convention 29 July 1960, to which the UK is a signatory, established the basis for all international and most national legislation on nuclear liability. In the UK the *Nuclear Installations Act 1965* is the relevant legislation. The Paris Convention states minimum levels of liability for nuclear operators, and that their liability is strict and must be covered by compulsory financial security. The Brussels Convention provides that supplementary compensation be paid from public funds.

These Conventions have been revised to increase compensation for victims of nuclear accidents and widen the geographical scope of the Conventions following a civil nuclear accident. Individual operator liability per incident has been raised from £140m to £430m (700m euros), and supplementary compensation from £220m to £930m (1.5bn euros). Additionally, the definition of “nuclear damage” has been broadened to cover not only people and property but also environmental damage, loss of income from it and the cost of preventative measures to prevent a repeat accident.

A Joint Protocol to the Conventions has been drawn up to allow parties to the two to receive reciprocal benefits. Ratification of the Joint Protocol would enable a country to participate in a global compensation arrangement between the mainly Western European parties to the Paris Convention and those of the Vienna Convention which include Southern American states and Former Soviet Union and Eastern European Countries.

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<sup>154</sup> Explanatory notes p1.

<sup>155</sup> <http://hcl1.hclibrary.parliament.uk/notes/ses/snsc-02214.pdf>

After more than a year of prevarication the European Commission has found a legal solution permitting the Euratom Member States (the fifteen EU Member States except for Austria, Ireland and Luxembourg) to sign and ratify the amendment.<sup>156</sup>

Clause 79 gives the Secretary of State power to amend the primary legislation to implement international obligations in the Paris and Brussels Conventions. It also makes provision for ratification of the Joint Protocol.<sup>157,158</sup>

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<sup>156</sup> *Europe environment 25 July 2003*, EU moves towards deal in amendment of Paris Convention, pI.1

<sup>157</sup> Explanatory notes to Bill

<sup>158</sup> TISC Fifth Report, *Managing the Nuclear Legacy: Comments on the Government White Paper, Appendices to the Minutes of Evidence*, HC 1074-II, 12 August 2002, Appendix 7

## Appendix -The European position

The management of nuclear plant decommissioning provisions is becoming an issue within the European Union. At present each member state defines its own policy, and there is concern that funds earmarked for dismantling and decontamination of nuclear plants may be channelled for use other than the intended purpose.

During the past year environmental lobbyists and MEPs have been pressurising the EU Commission to remove funds allocated for decommissioning the EU's 136 nuclear reactors from companies' control. Powerful European energy giants are resisting the suggestion.

In the absence of EU legislation governing the matter, member states have largely made up their own rules. Some countries require that decommissioning funds are transparent and kept off the balance sheet of the utility, such as the UK, while others allow the company to keep the funds. In others, the state takes over all the liabilities.

Besides the UK, the two big players in Europe are France and Germany. In 2000 Germany announced an accelerated decommissioning programme requiring its two big power utilities, RWE and Eon to take on the biggest provisioning burdens. Although Germany has less than a third of France's reactors in operation, the German conservative provisioning reserves are higher than those of the French state-owned power monopoly, Electricite de France (EdF). EdF, however, believes it has wholly adequate reserves for decommissioning.

Both the Commission's examination of state aid to British Energy and its consideration of the Electricity Market Directive to liberalise the European market have provided for it to appraise and implement a policy requiring decommissioning provisions to be removed from companies' accounts and placed under government control, but lobbying from France and Germany has neutralised any attempts to do so. Instead it seems likely that the Commission will earmark a directive outlined in January 2003 on nuclear safety to append provisions on decommissioning. The wording of these has been criticised as 'lacking teeth', but analysts say that more ambitious legislative proposals are unlikely to be forthcoming within the near future and nuclear operators look set to retain control of their decommissioning funds for some time to come.<sup>159</sup>

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<sup>159</sup> *Petroleum Economist* August 2003, Utilities ride out nuclear decommissioning fallout, p32-33.