



House of Commons
Trade and Industry Committee

The Nuclear Decommissioning Authority

Pre-legislative Scrutiny of the Draft Nuclear Sites and Radioactive Substances Bill

**Seventeenth Report of
Session 2002–03**



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*Report, together with formal minutes, oral and
written evidence*

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated in the form 'App' followed by the number of the Appendix.

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Summary

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. Nevertheless, the provision of a clear statement of the overarching principles to which the NDA would work would be a useful addition to the draft Bill.

It is essential that the NDA is provided with the resources that it needs to carry out its responsibilities. While the Government has provided assurances that the necessary support will be forthcoming, 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 NDA's Segregated Account will be determined.

It is also essential that, from the outset, the NDA receives clear instructions from the Government as to the waste management strategy that it will be required to implement. Given the central role that the Government envisages for Nirex in the development of this strategy, the uncertainty over the future funding and management of the organisation should be resolved without delay.

We feel that the Government has been prudent in widening the remit of the NDA 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.

We consider that the development of the NDA's Research and Technology programme is an essential component of the Authority's work to which higher priority should be given when the NDA management statement is developed further.

The Government is still establishing the framework for stakeholder involvement and transparency within which the NDA will work. We feel that the proposed requirements for stakeholder consultation by the NDA and its contractors strike a reasonable balance between prescription and the need for flexibility in order to adjust the consultation arrangements to suit the individual problems posed by any particular nuclear site.

The performance of the NDA and its contractors will depend heavily on the quality and skills of their workforce. We concluded that the creation of a nuclear industry pension scheme, providing benefits of membership equivalent to those provided by the existing industry schemes, could provide an incentive to join and remain in the decommissioning and clean-up industry. In any case, the terms and conditions, including pension rights of staff already in the industry should be protected to remove any potential for discrimination between different groups of staff within the industry.

1 Introduction

1. The Government White Paper, *Managing the Nuclear Legacy—a Strategy for Action* (Cm 5552), published on 4 July 2002, set out its proposals for a Liabilities Management Authority to be responsible for the transfer from BNFL¹ and UKAEA² of the UK's public sector civil nuclear liabilities and their subsequent management. The Government's intention was to establish a structure to provide the strategic direction necessary for a focussed, long-term civil nuclear clean-up programme and to improve public confidence in its nuclear liabilities management policy.

2. The Government proposed the establishment of a Nuclear Liabilities Management Authority (which it has since renamed the Nuclear Decommissioning Authority, or NDA). The NDA was to be a statutory non-departmental public body, accountable to the Secretary of State for Trade and Industry. It would have financial responsibility for all civil public sector nuclear liabilities and be responsible for the delivery of the Government's nuclear clean-up objectives and the planning and prioritisation of the decommissioning and clean-up of nuclear sites.

3. It was envisaged that the NDA would not undertake clean-up activities directly, but operate through management contracts or licences specific to each site. The site licensees would be responsible for safety and site management; the development of whole-life site clean-up plans; and the implementation of annual work programmes for each site, as agreed with the NDA. Where relevant, the licensee would also operate commercial plant and facilities such as the remaining Magnox reactors, the Sellafield MOX Plant and the THORP reprocessing plant, the ownership of which would pass to the Authority. Initially, site management contracts would be let to the incumbents, BNFL and UKAEA. However, the Government intends to introduce competition into the market for decommissioning and clean-up services to enable the importation of project management skills available in other sectors, improve the quality of management available to the nuclear liabilities sector and improve the prospects for cost savings.

4. The NDA would also develop and maintain a generic R&D programme to underpin site liabilities management, and be responsible for the development and dissemination of best practice throughout the industry. It would act as a source of professional advice to government on relevant issues and work to build public confidence in public sector liabilities management.

5. We commented on the Government's proposals in our Fifth Report of Session 2001–02.³ We gave a general welcome to the Government proposals on the basis that they should result in the development of a focussed, 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. In so doing, we urged

1 Formerly British Nuclear Fuels Limited

2 United Kingdom Atomic Energy Authority

3 Trade and Industry Committee Fifth Report of Session 2001-02, *Managing the Nuclear Legacy: Comments on the Government White Paper*. HC 1074-I.

the speedy introduction of the necessary legislation; that the NDA produces an independent, authoritative assessment of the extent of the nuclear liability as one of its first tasks; that an independent assessment is made of the value of the assets to be transferred from BNFL to the Authority to ensure that the terms of the transfer of assets and liabilities represent the best value for money for the taxpayer; that the Government ensures that the NDA is adequately funded on a long-term basis; and that the NDA Board and management are given the freedom and budget necessary to recruit and retain staff with skills that the Authority will need to provide the direction and supervision to manage the clean-up programme.

6. The Government published the Bill designed to give effect to the proposals set out in the White Paper in draft form on 16 July 2003.⁴ The draft Bill provides for the establishment of the NDA as a body corporate, defines its functions and duties and describes the arrangements for funding of the Authority. It provides for the transfer of nuclear assets and liabilities to the NDA and for the extinguishment of the existing arrangements for meeting nuclear liabilities. It also provides for the amendment of primary legislation in order to implement obligations contained in the Paris and Brussels Conventions on third party nuclear liability.

7. In undertaking our pre-legislative scrutiny of this draft legislation, we have not attempted to review it clause-by-clause. Instead, we have concentrated on the issues we identified in our earlier Report and on the concerns expressed to us by contributors to this inquiry.

8. 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. **We recommend 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 implications and that any Regulatory Impact Assessment is available at the same time as the draft Bill.**

9. In the course of our inquiry we have taken oral evidence from DTI officials and representatives from BNFL, UKAEA and Greenpeace. We are grateful to these witnesses and to all the organisations which contributed written evidence.

4 Draft Nuclear Sites and Radioactive Substances Bill (Cm5858), 16 July 2003.

2 The Functions of the NDA

10. The Bill would put in place the mechanism by which the decommissioning and clean-up of the nuclear liability will be managed in the future. In summary, it is envisaged that the Secretary of State will designate sites, facilities or installations that fall within the responsibility of the NDA, which will then develop a long-term strategy to deal with the operation, decommissioning and clean-up of these sites. Once a site has been designated the NDA will engage a contractor for the management and operation of that site to implement the strategy in relation to the site.

11. Clause 3 of the draft Bill sets out the main responsibilities of the NDA. In addition to the decommissioning of designated sites and installations the Bill also provides for the operation by the NDA of facilities for the treatment, storage, transport and disposal of nuclear matter, nuclear waste and contaminated matter. This will allow the NDA to operate the Sellafield MOX plant, THORP and other commercial Sellafield facilities, on the grounds that the Sellafield site has to be managed as a single integrated site for regulatory and operational reasons. The Bill also gives the NDA the responsibility for the carrying out and promotion of research; raising the profile of decommissioning through the provision of information; education and training; and the establishment of a pension scheme for employees at NDA managed sites.

12. Greenpeace has called for the draft Bill to be redrawn with an overarching objective and clear set of underlying environmental and health principles along the lines of the legislation in force in Australia. It suggested that an addition be made to Clause 1 of the Bill to make clear 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”.⁵

13. We consider 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.

14. We note 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)). **We suggest 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.**

Scope of the NDA's remit

15. The focus of the NDA, as set out in the White Paper, was to be the management of the historic civil nuclear liability, i.e. the liabilities of BNFL and UKAEA. The White Paper also raised the possibility that the Authority could assume responsibility for all or part of the liabilities accumulated by the nuclear programmes operated by the Ministry of Defence, and this role has been allowed for in the Bill.

16. The scope of the NDA's remit has also been extended in the draft Bill to enable it to act on behalf of the Secretary of State in the decommissioning and clean-up of sites owned by British Energy (BE), and to be given the responsibility for private company sites.⁶ 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 first extension of the Authority's remit 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 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.

17. While the UKAEA accepted that such changes were prudent,⁷ Greenpeace was concerned that the extension of the NDA's remit would facilitate the continuation or even expansion of the private nuclear sector and assist the Ministry of Defence to continue generating nuclear waste by the production of nuclear weapons and the commissioning of nuclear powered submarines. It was also concerned that the Bill did not rule out the possibility of a future government giving guarantees to private companies to underwrite the decommissioning of new nuclear power stations at the end of their life. It told us:

“That there is no cut off point to the amount of waste, and taxpayer funding, for nuclear waste in the NDA bill is a cause for great concern. The NDA appears to be being set up as an organisation with at least the capability, if not the intention, to facilitate the perpetuation of the nuclear industry, whether it be by taking a major role in the bail-out of the bankrupt privatised British Energy, or by freeing government-owned British Nuclear Fuels Ltd of its past liabilities in order to allow it to continue promoting the Westinghouse AP1000 reactor design worldwide and replacing current UK nuclear generating capacity.”⁸

18. The Nuclear Free Local Authorities (NFLA) also felt that the proposed extension of the NDA's responsibilities raised serious questions about the funding of BE liabilities.⁹ They called for clarity and transparency in the way the NDA's Account is to be credited and

6 Explanatory notes accompanying the Draft Nuclear Sites and Radioactive Substances Bill, paras 30-45, in Cm5858 of 2003.

7 Q14

8 App 6

9 App 7

debited with regard to liabilities owned or originally created by BE, and called for the DTI to explain “at the earliest opportunity” how this transparency will be achieved. NFLA shared Greenpeace’s concern that the Bill as currently drafted could enable any owner of new nuclear power stations to decide not to provide fully for its decommissioning liabilities in the knowledge that a mechanism exists for the Government to underwrite such liabilities.¹⁰ NFLA suggested that the Government should adopt a policy to require any company owning new nuclear power stations to establish a segregated fund to meet the costs of post-operational liabilities. NFLA also pointed out that, as written, the Bill could allow the NDA to build new reactors for the purpose of burning plutonium as part of a plutonium treatment strategy.

19. At the time that it announced its intention to establish the NDA the Government insisted that its proposals were targeted towards the clean-up of the nuclear legacy and would have no impact on the prospects for any new nuclear build in the future.¹¹ The Government has not pledged itself to support the nuclear power sector by means of any commitment to fund the decommissioning of any privately owned facility, save for the very specific and urgent case of British Energy.¹² This approach is consistent with that advocated by the European Commission, which has argued that it is necessary for owners of new nuclear facilities to create legally separated funds to cover decommissioning and the long-term management of nuclear waste and spent fuel.¹³

20. The White Paper gave an assurance that there would be no direct link between the NDA and new nuclear build. This assurance should be given force through a statement of policy by the DTI that approval of any proposal from the private sector for new nuclear plant would be conditional, amongst other factors, upon the establishment and maintenance of a segregated fund to meet the costs of clean-up at the end of its useful operational life.

21. 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.

22. Greenpeace felt that the NDA should shut down the nuclear facilities to be transferred to the Authority as soon as was reasonably practicable, rather than attempting to keep operations going as long as possible.¹⁴ NFLA called for annual reviews of the justification for continued operation of such facilities. Washington Group International (WGI) agreed and advised us that:

10 Apps 7 and 9

11 HC Debates, 28 November 2001, col 990-1005

12 HC Debates, 28 November 2001, col 488

13 15875/02 COM(2002) 605 final: Communication from the European Commission to the European Parliament: Nuclear safety in the European Union.

14 App 6

“Early site closure is the single biggest contributing factor to reducing substantially the cost of liabilities ... Incentivisation/acceleration/early site closure must be the key theme of any successful liabilities management programme.”¹⁵

23. On the other hand, the NIA were concerned that the lack of a duty on the NDA to raise or maximise income from the operating plants that will fall under its jurisdiction might allow the closure of any operating plant without an economic case for doing so, thereby increasing uncertainty within the industry. It suggested that the NDA should be required to provide advance justification for the proposed closure of any operating plant.¹⁶

24. On balance, it seems to us logical that, since the primary objective of the NDA will be the decommissioning and clean-up of the nuclear legacy, there should be some reference made in the legislation to the need for a regular review of the justification for the continued operation of the nuclear facilities under the control of the NDA, and the publication of a timetable for their withdrawal from service.

Research and Technology Programme

25. 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.

26. We noted 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.

27. 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.¹⁷ 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.

28. 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

15 App 11

16 App 3: The Nuclear Industry Association, the British Nuclear Energy Society and the Institution of Nuclear Engineers

17 App 5

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.

General duties of the NDA

29. Clause 6 of the draft Bill describes the NDA's remit for decommissioning and clean-up, and sets out the Authority's responsibilities for ensuring the availability of a skilled workforce to sustain its work programmes, developing a competitive market for clean-up contracts, and ensuring the adoption of best practice on all its sites.

Maintaining the skills base

30. As Prospect told us :

“It is vital to ensure the supply of educated and trained staff to deal with a task that transcends generations. This requires Government leadership on a workforce agenda that will establish a long-term skill base.”¹⁸

31. Clause 6 (1) (b) of the draft Bill places upon the NDA the duty “to promote and ensure the maintenance and development ... of a skilled workforce able to undertake the work of decommissioning...”. Information available from the DTI on how this will be done is aspirational rather than specific – DTI officials indicated to us that this was regarded as a matter for the NDA management board.¹⁹ The DTI's Nuclear Skills Group conducted a study of the skills required by the nuclear industry as a whole which, while it did not look specifically at the needs of the NDA, provided a useful starting point for the development of the NDA's skills base, which could be built upon with the involvement of the Sector Skills Council, Cogent.²⁰

Introducing a competitive market for nuclear site management

32. In its White Paper the Government made clear its intention that the NDA will develop a competitive market for contracts for managing nuclear licensed sites and carrying out clean-up work, on the basis that competition would stimulate innovation and lead to improved operational efficiency without compromising safety or environmental performance. Subsequently, we have been informed that experience gained from the US decommissioning programme suggested that efficiency savings of 20–40% were achievable.²¹

33. The NDA will have a duty to promote competition with a view to bringing the best available skills to the task of clean up and secure benefits arising from the sharing of best practice. While BNFL and UKAEA as incumbent site licensees will have the opportunity to demonstrate that they can be suppliers of choice to the NDA, their longer-term position as contractors will depend on their performance.

18 App 1

19 Q33

20 App 4

21 Q32 (Mr Davis)

34. While UKAEA expressed some concern over the speed with which competition would be introduced,²² we were informed by the DTI that it would be for the NDA to judge whether and when the introduction of competition for Management and Operation (M&O) would bring significant benefits to the task of clean up for any particular site, and that there was no prescribed timetable or agenda for the introduction of a tendering process for such contracts. Before taking any decision to change site management arrangements the NDA will have a duty to consult the regulators and key stakeholders.²³

35. Past experience in a range of public sector procurement activities has shown that the placement of contracts for the management of each site, holding the site licensee to account for performance against objectives and the introduction of competition could be high risk activities. This is because the track record in the public sector is of poor project management and a reluctance to take difficult decisions to terminate contracts with poor performers. In this case we are comforted, at least in part, by the fact that the DTI appear aware of the risks inherent in this activity,²⁴ by the fact that the draft legislation sets out clear procedures for holding the NDA to account,²⁵ and by our expectation that the introduction of competition would be a gradual process.

Assessment of NDA performance

36. The draft management statement for the NDA provides an indication of the likely areas where objectives and targets will be set for the Authority by the Secretary of State. The DTI has suggested that the NDA's objectives will include the elimination or reduction of dangers from ionizing radiation; progress towards delivery of agreed site clean-up plans; safety and security; delivering value for money; and openness, transparency and public confidence. Annual targets will be set in areas such as safety, security and environmental performance; financial performance; reducing uncertainties in liabilities estimates; progress in building supply chain capability; contractor performance; and the development and maintenance of the skills base required by the Authority.²⁶

37. While it should be possible to set unambiguous and measurable targets in such areas, it is likely that progress with such activities as the fostering of a culture of openness and transparency; success in stakeholder engagement, or the improvement of public confidence in liabilities management policy will prove difficult to measure or validate. **In our view, one of the best ways of establishing whether openness, transparency and public confidence has been delivered is to include the public in the evaluation of such engagement right from the start of the process. Such participatory evaluation would help to define criteria for success that the general public understand and ensure that the outcomes of the evaluation are ones they can endorse. Establishing an interactive process that ensures credibility among a wide range of stakeholders could be a more flexible, less prescriptive process than using fixed criteria, formal measurement and audit.**

22 App 2, Q143

23 App 10

24 Q31

25 Draft Bill, clauses 10 and 18 for example.

26 Draft Management Statement for the NDA, DTI, 16 July 2003

38. The DTI was still in the process of establishing the basis and methodology for performance measurement, but it was clear that provision would need to be made for independent evaluation of performance against targets.²⁷ **We would have liked to have seen more information on how and whether performance against targets will be independently validated. This information should be included in the NDA's management statement in order to ensure that this process is fully in the public domain.**

Stakeholder consultation, openness and transparency

Consultation

39. 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 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.²⁸ 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.²⁹

40. 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.

Interaction with the regulatory authorities

41. The White Paper signalled the Government's intention that the NDA, the nuclear industry regulators and the site licensees/NDA contractors would work together to ensure consistency between contractual requirements and directions issued by the NDA and the requirements of the Nuclear Installations Inspectorate and other agencies. The

27 Draft NDA Management Statement, DTI, July 2003

28 Q144

29 App 9

Government intends to express this working relationship through a Memorandum of Understanding (MoU) between the NDA and the regulators.³⁰

42. The NIA welcomed that fact that the MoU specified the need for regulators to participate in the planning of the NDA site programmes and in the vetting of licensee/contractors.³¹ UKAEA were also broadly content with the draft MoU.³² BNFL, however, was concerned that there was not provision for site licensee contractors to be party to the MoU.³³ The company suggested that the Bill should be drafted to specifically exclude the possibility that the NDA could direct a contractor to act in such a way as to put its site licence at risk or lay it open to enforcement proceedings.

43. It seems to us that the rights and responsibilities of the NDA and its site operators and managers should properly be set out within the contracts between the two parties. That said, the three-way relationship between the Authority, its contractors and the nuclear regulators, and a framework for the conduct of this working relationship could usefully be recognised in the draft Memorandum of Understanding which is being developed by the Government in advance of the establishment of the NDA.

30 Draft Memorandum of Undertaking between NDA and Nuclear Regulator, DTI July 2003.

31 App 3

32 Q157

33 Qq 126-128, App 5

3 Transfer of assets and staff

Transfer of assets and liabilities

44. In the White Paper, the Government envisaged that all UK civil nuclear assets which do or will require decommissioning and/or clean-up will be transferred to the NDA. The licensed site operators would undertake decommissioning or clean-up as required by their contracts with the NDA, and the Authority would licence or lease to the site operators those assets required by the operators to fulfil contracts already agreed with third parties. The NDA would assume responsibility for the nuclear liabilities of each site transferred to its ownership.³⁴ Clauses 25 to 29 and Schedule 4 of the draft Bill provide for the establishment of schemes to effect the transfer of liabilities and assets from BNFL (including the BNFL Nuclear Liabilities Investment Portfolio), UKAEA, and publicly-owned companies. Such schemes would be effected by Order following passage of the legislation.

45. UKAEA were broadly content with the arrangements proposed by the Government,³⁵ but BNFL had reservations about whether the Bill as drafted would free a site licensee of the long-term liabilities associated with the site, as was intended by the Government. It feared that, without amendment to the Nuclear Installations Act 1965, a site licensee could face a lengthy period of responsibility under its licence even though it did not own the contaminated land and even though its site management contract with the NDA was limited to a much shorter period than the period of responsibility.³⁶

46. While it is the Government's view that Clause 16(4)(d) of the draft Bill would override the requirements of the Nuclear Installations Act as regards responsibilities for the liability associated with an individual site, BNFL was concerned that the draft Bill would not remove the long-term liabilities from the site licensee's balance sheet.³⁷ **The Government should ensure that the transfer of assets and liabilities to the NDA is complete, and does not leave any residual long-term liability remaining with the site operator, unless provision for this is made in its site management contract with the Authority.**

Terms and conditions for staff in the nuclear industry

47. The White Paper included an assurance that the terms and conditions of service for staff employed by UKAEA and BNFL would not be adversely affected by the transfer of assets and liabilities to the NDA. Prospect expressed concern that the draft Bill was not clear as to how these objectives would be met. 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 were necessary to provide protection for staff involved in second tier contracts

34 Cm 5552 (2002) Chapter 3

35 App 2, Q 147

36 App 5

37 Qq131 – 133, App 1

and in subsequent contracting rounds once a competitive market for decommissioning services had been developed.

48. The Government also gave an assurance in the White Paper that it would protect the pensions position of BNFL and UKAEA staff affected by the restructuring of BNFL and any changes that the NDA might make to the management of BNFL and UKAEA sites. Clause 32 and Schedule 6 are intended to give effect to that assurance.

49. BNFL was concerned that, as drafted, the provisions would not apply in circumstances where employees remain employed by BNFL but a minority of the voting rights in BNFL pass to the private sector. In such circumstances BNFL would cease to be publicly owned for the purposes of the legislation and its employees would no longer be eligible to participate in any relevant UKAEA scheme, on the basis that the provisions of Schedule 6 paragraph 2 permitting continuing scheme membership for employees of relevant transferees does not apply to BNFL. Such BNFL employees would therefore be disadvantaged.

50. 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.³⁸

51. 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.

4 Funding Arrangements

52. The White Paper estimated that the public civil nuclear liability stood at £48 billion, although we noted in our previous Report that estimates of reprocessing and clean-up costs have been continually revised upwards. It will be one of the NDA's most immediate tasks to provide an authoritative assessment of the civil liability, and to keep this under review. It has been reported that implementation of the Government's plans for the restructuring of British Energy, to which the company's bondholders have recently agreed,³⁹ would add an estimated £3.9 billion to the public liability, should the remaining obstacles to the plans be overcome.⁴⁰

53. The Government estimates that the NDA will employ about 200 staff, that its operating costs will be of the order of £25–30 million per year, and that the Authority will need to spend about £1 billion per year on decommissioning and clean-up. The Government anticipates that savings on this annual expenditure could be achieved over the medium to long term, but has not provided an estimate of the size of such savings, or explained how such savings might be achieved.

54. 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.

55. 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.⁴¹

56. In deciding to fund the NDA by means of an Account, the Government has rejected the other funding option described in the White Paper, that of a Segregated Fund. This would have been a rolling fund, set up in statute and operated under the control of the Authority. The fund would have been established using the assets of the NLIP with additional funding provided by the Government through an annual contribution by the Government, which would be subject to Parliamentary approval through the supply process. In our previous Report we had recommended this approach, on the grounds that

39 British Energy Press Statement Announcement of Formal Agreement on Proposed Restructuring 1 October 2003

40 Ibid

41 Q19

it would offer greater transparency in the funding process and improve public confidence in the independence of the Authority.⁴²

57. For the DTI, Mr Davis explained that, 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.⁴³ Resources could be tied up until the opportunity to use them arises.⁴⁴ He made the point that such 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.”⁴⁵

58. Not all within the nuclear industry appeared convinced by these assurances. BNFL initially felt that it was not clear how the NDA would meet requests for urgent funds or cover unforeseen events that arose in a particular year such as an emergency at a clean-up site or an unforeseen requirement from the regulator;⁴⁶ although it has since indicated that it has been satisfied that suitable mechanisms will be put in place to address this concern.⁴⁷ The NIA considered that certainty over funding, and a clear programme of work should be established as quickly as is practicable, and suggested that continuity of funding for medium term programmes and projects was:

“... so important as to require some provision in statute that funding should be made available by the Treasury at a rate to maintain the [NDA's] strategy.”⁴⁸

While the NIA was reassured by the commitment to provide funding for a ten year rolling programme, it expressed concern that the Secretary of State would have discretion over the amount to be paid annually into the Account, and suggested that the Bill be amended to establish a link between the NDA's long-term strategy and the amounts to be held in the Account.⁴⁹

59. We are still of the view that the use of a Segregated Fund to provide the resources required by the NDA would be preferable to the Segregated Account that is proposed by the Government. However, 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

42 HC (2001-02) 1074-i, para 42

43 Q20

44 Q17,Q21

45 Q19

46 App 5

47 Q137

48 App 3

49 *Ibid*

should finalise and publish the process by which the level of its initial and annual contributions to the Account will be determined.

5 A National Waste Management Strategy

60. In our earlier Report, we called for an early decision on the fate of Nirex, which is currently jointly funded by BNFL, UKAEA and British Energy and which acts as the source of advice on nuclear waste storage. The Government responded at the time that the relationship between Nirex and other organisations such as the NDA would be considered as part of the development of its strategy for the safe management and storage of radioactive waste. The Environment, Food and Rural Affairs Committee has been critical of the slow progress made by the Government in its long-running review of nuclear waste management policy,⁵⁰ and we also concluded that the development of a strategy for nuclear waste management would be central to the work of the NDA and that rapid progress on this was very important. Several witnesses echoed such criticisms in their evidence to our current inquiry.⁵¹ WGI pointed out that:

“Unless there is a strategy developed for waste disposition that dovetails both integrally and harmoniously with the programme for liabilities management, the opportunity to realise optimum outturn cost of liabilities management will be severely jeopardised.”⁵²

61. In response to such criticism, 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.⁵³ 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.

62. Until Ministers have decided on CoRWM’s proposals for waste management in the future, the Government’s current strategy for waste retrieval, conditioning and packaging is being kept under review by the Radioactive Waste Policy Group (RWPG) which is chaired by DEFRA and includes representatives from other Whitehall departments, the devolved administrations and the nuclear regulators.

63. As regards Nirex, the Government has acknowledged that the company has extensive knowledge of some of the potential options for radioactive waste management to be considered by CoRWM and has consulted Nirex shareholders on the best way of making Nirex independent of industry and under greater government control. A decision is expected later this year on an interim arrangement to cover the period up to the point where the Government’s policy is decided under the CoRWM/MRWS process. We understand that there would then be a further review to establish the best means of

50 Environment, Food and Rural Affairs Committee, Third Report of Session 2001-02, Radioactive Waste: The Government’s Consultation Process, HL 407.

51 HC (2001-02) 1074-I, para 50

52 App 11

53 App 8

implementing the chosen option, including, as appropriate, any need for curtailment or reallocation of Nirex functions and that any interim arrangement would neither commit nor constrain Government decision-making at the point at which future policy is decided.

64. 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. Given the central role that the Government envisages for Nirex in the development of this strategy, the uncertainty over the future funding and management of the organisation should be resolved without delay.

Conclusions and recommendations

1. We recommend 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 implications and that any Regulatory Impact Assessment is available at the same time as the draft Bill. (Paragraph 8)
2. We consider 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. (Paragraph 13)
3. We suggest 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. (Paragraph 14)
4. The White Paper gave an assurance that there would be no direct link between the NDA and new nuclear build. This assurance should be given force through a statement of policy by the DTI that approval of any proposal from the private sector for new nuclear plant would be conditional, amongst other factors, upon the establishment and maintenance of a segregated fund to meet the costs of clean-up at the end of its useful operational life. (Paragraph 20)
5. 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. (Paragraph 21)
6. On balance, it seems to us logical that, since the primary objective of the NDA will be the decommissioning and clean-up of the nuclear legacy, there should be some reference made in the legislation to the need for a regular review of the justification for the continued operation of the nuclear facilities under the control of the NDA, and the publication of a timetable for their withdrawal from service. (Paragraph 24)
7. We noted 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. (Paragraph 26)
8. 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. (Paragraph 28)

9. In our view, one of the best ways of establishing whether openness, transparency and public confidence has been delivered is to include the public in the evaluation of such engagement right from the start of the process. Such participatory evaluation would help to define criteria for success that the general public understand and ensure that the outcomes of the evaluation are ones they can endorse. Establishing an interactive process that ensures credibility among a wide range of stakeholders could be a more flexible, less prescriptive process than using fixed criteria, formal measurement and audit. (Paragraph 37)
10. We would have liked to have seen more information on how and whether performance against targets will be independently validated. This information should be included in the NDA's management statement in order to ensure that this process is fully in the public domain. (Paragraph 38)
11. 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. (Paragraph 40)
12. It seems to us that the rights and responsibilities of the NDA and its site operators and managers should properly be set out within the contracts between the two parties. That said, the three-way relationship between the Authority, its contractors and the nuclear regulators, and a framework for the conduct of this working relationship could usefully be recognised in the draft Memorandum of Understanding which is being developed by the Government in advance of the establishment of the NDA. (Paragraph 43)
13. The Government should ensure that the transfer of assets and liabilities to the NDA is complete, and does not leave any residual long-term liability remaining with the site operator, unless provision for this is made in its site management contract with the Authority. (Paragraph 46)
14. 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. (Paragraph 51)

15. We are still of the view that the use of a Segregated Fund to provide the resources required by the NDA would be preferable to the Segregated Account that is proposed by the Government. However, 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. (Paragraph 59)
16. 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. Given the central role that the Government envisages for Nirex in the development of this strategy, the uncertainty over the future funding and management of the organisation should be resolved without delay. (Paragraph 64)

Formal minutes

Wednesday 15 October 2003

Members present:
Mr Martin O'Neill, in the Chair

Mr Roger Berry
Mr Richard Burden
Mr Jonathon Djanogly

Mr Andrew Lansley
Mrs Linda Perham
Sir Robert Smith

The Committee deliberated.

Draft Report (The Nuclear Decommissioning Authority), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 64 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventeenth Report of the Committee to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Wednesday 29 October at 2.30 pm]

Witnesses

Tuesday 8 July 2003

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Mr Derek Davis, Ms Serena Hardy and Mr Bill Jones, **Department of Trade and Industry** and Mr Brian Oliver and Dr Robert Jackson, **Department for Environment, Food and Rural Affairs** Ev 1

Tuesday 9 September 2003

Ms Kate Harrison, **Greenpeace** Ev 9

Mr Hugh Collum, Mr David Bonser and Mr Alvin Shuttleworth, **BNFL** Ev 14

Mr Denis Tunnicliffe and Mr Stephen White, **UK Atomic Energy Authority** Ev 20

List of written evidence

1.	Prospect	Ev 25
2.	UK Atomic Energy Authority	Ev 28
3.	Nuclear Industry Association	Ev 29
4.	Environment Agency	Ev 32
5.	BNFL	Ev 36
6.	Greenpeace	Ev 40
7.	Department of Trade & Industry	Ev 48
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9.	Greenpeace	Ev 54
10.	Department of Trade and Industry	Ev 59
11.	Washington Group International	Ev 60