



# Energy Act 2004

## 2004 CHAPTER 20

### PART 1

#### THE CIVIL NUCLEAR INDUSTRY

### CHAPTER 2

#### TRANSFERS RELATING TO NUCLEAR UNDERTAKINGS

##### *Transfer by scheme of property etc.*

#### **38 Nuclear transfer schemes**

- (1) The Secretary of State may make a scheme providing for one or more transfers authorised by this Chapter (a “nuclear transfer scheme”).
- (2) Nothing in this Chapter authorises the transfer in accordance with a nuclear transfer scheme of a nuclear site licence.
- (3) Before making—
  - (a) a nuclear transfer scheme which transfers property, rights or liabilities to or from the NDA or a subsidiary of the NDA, or
  - (b) a nuclear transfer scheme not falling within paragraph (a) which he is proposing to make for purposes connected with the carrying out of the NDA’s functions,the Secretary of State must consult the NDA.
- (4) Before making a nuclear transfer scheme which transfers property, rights or liabilities to any person—
  - (a) from BNFL, or
  - (b) from a wholly-owned subsidiary of BNFL,the Secretary of State must consult BNFL.

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- (5) Before making a nuclear transfer scheme that transfers property, rights or liabilities to any person—
  - (a) from the UKAEA, or
  - (b) from a wholly-owned subsidiary of the UKAEA,
 the Secretary of State must consult the UKAEA.
- (6) The consent of the Treasury is required for the making of a nuclear transfer scheme.
- (7) A nuclear transfer scheme shall come into force at such time as the Secretary of State may appoint, whether in the scheme or subsequently.
- (8) Schedule 5 (which makes further provision about nuclear transfer schemes) has effect.

### **39 Transfers of publicly owned assets**

- (1) A nuclear transfer scheme may provide for a transfer to—
  - (a) a publicly owned company,
  - (b) the NDA, or
  - (c) a consenting person,
 of property, rights and liabilities falling within subsection (2) that are set out in the scheme.
- (2) The property, rights and liabilities that may be transferred are—
  - (a) securities of BNFL;
  - (b) securities of a company falling within subsection (3);
  - (c) property, rights and liabilities of BNFL or the UKAEA;
  - (d) property, rights and liabilities of a company falling within subsection (3);
  - (e) property, rights and liabilities of a wholly-owned subsidiary of BNFL, of the UKAEA or of a company falling within that subsection.
- (3) A company falls within this subsection if—
  - (a) it is a nuclear company that is publicly owned; or
  - (b) it is a company designated for the purposes of this section by an order made by the Secretary of State.
- (4) The Secretary of State may designate a company for the purposes of this section only if it is a publicly owned company to which—
  - (a) securities of BNFL,
  - (b) property, rights or liabilities of BNFL, or
  - (c) property, rights or liabilities of a wholly-owned subsidiary of BNFL,
 were transferred (whether in accordance with a nuclear transfer scheme or otherwise) at a time when both the company and BNFL were publicly owned.
- (5) The Secretary of State must lay a copy of every order under subsection (3) before Parliament.
- (6) Nothing in this section authorises—
  - (a) a transfer of securities of BNFL, or
  - (b) a transfer of property, rights or liabilities of BNFL or of a wholly-owned subsidiary of BNFL,
 at a time when BNFL is no longer publicly owned.

- (7) Nothing in this section authorises—
- (a) a transfer of securities of a company designated for the purposes of this section, or
  - (b) a transfer of property, rights or liabilities of such a company or of a wholly-owned subsidiary of such a company,
- at a time when the company is no longer publicly owned.
- (8) Schedule 6 (which makes provision about the structure etc. of publicly owned companies to which transfers are made that are authorised by this section) has effect.
- (9) For the purposes of this section a person is a consenting person, in relation to a nuclear transfer scheme, if he has consented to the provisions of the scheme so far as they relate to him.

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

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

#### **41 Recovery of property from private ownership**

- (1) This section applies in the case of a nuclear company (“the transferred company”) all the shares in which were transferred for the purposes of a management contract to the contractor or to a subsidiary of the contractor where—
- (a) the contractor is in breach of that contract; or
  - (b) that contract has come to an end, whether by the expiry of the period for which it was in force or otherwise.
- (2) A nuclear transfer scheme may provide for the transfer to—

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- (a) a publicly owned company,
- (b) the NDA, or
- (c) a consenting contractor,

of the property, rights and liabilities falling within subsection (3) that are set out in the scheme.

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

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“transferred”, in relation to shares, property, rights or liabilities, means transferred in accordance with a nuclear transfer scheme.

## **42 Transfer of Nuclear Liabilities Investment Portfolio**

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