

ENERGY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 1: Nuclear Decommissioning

Section 17: Duty to use installations etc for purposes of NDA

94. **Section 17** puts a duty on the person with control (see section 36) of a designated principal nuclear site, a designated nuclear installation, a designated facility situated in or on a principal nuclear site, or a designated installation comprised in an NDA facility, not to use or dispose of that site, installation or facility except in order to discharge the NDA's responsibilities in relation to it or to enable the person with control to comply with relevant statutory and regulatory requirements. For the purposes of this section, disposal covers granting a lease or licence of the site or contracting to do so (subsection (9)). This section does not mean that a site, installation or facility cannot be used or disposed of where the NDA has given its consent (subsection (3)). In a case where the site, installation or facility has been transferred to the NDA, the person with control has a right under subsection (4) to use them for those two purposes, without the need for any further permission from the NDA.
95. Except where the NDA otherwise directs or where the NDA is charging for the work it is doing, subsection (5) further requires the person with control to pay to the NDA any sums and other benefits received as a consequence of operating the site, installation or facility or the disposal of an interest or right in relation to the site, installation or facility. The main purpose of this provision is to ensure that where the NDA is funding the operation of installations such as THORP, SMP and Magnox stations, it also receives the income provided. It could also include sums received by way of rents and disposal of surplus assets. Section 22(3) requires the NDA in turn to pay the money received to the Secretary of State. This section does not impose any obligations on the persons in control of contaminated sites.
96. Subsections (6) and (7) provide that where a management contract or other agreement is in force between the NDA and a person with control or its owner, fulfilling the terms of the agreement by definition facilitates the discharge of the NDA's responsibilities.
97. Both the duty under subsection (2) and the right under subsection (4) apply to interests or rights in the installation, site or facility and subsection (8) extends those to anything located on the site, e.g. vehicles, a business or undertaking operated from the site and intellectual property.