

ENERGY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 1: Nuclear Decommissioning

Section 21: Financial responsibilities of NDA

103. **Section 21** gives the NDA financial responsibility for the decommissioning, operation or cleaning up of installations, facilities, sites or related sites which, at the time the relevant designation is made under section 3, are controlled by one of the persons listed in subsection (2). From that point, the NDA is responsible for the future costs of carrying out its responsibilities. It is primarily intended to ensure that the fact that the NDA will be assuming responsibility for the cost of decommissioning and cleaning-up will mean that the costs will not have to be shown on the balance sheet of BNFL or any successor companies holding a site licence.
104. Where the NDA has financial responsibility but is not itself the person with control of an installation, site or facility, subsection (3) provides that the person with control is not to be or become liable for the costs of doing anything the NDA has to do to discharge its responsibilities for decommissioning, cleaning-up or operation. Subsection (5) makes it clear that this does not mean that the person with control will not be liable to make payments under, for example, contracts it enters into with third parties. Subsection (4) prohibits the NDA from charging the person with control when the NDA has financial responsibility and provides that the person with control does not have to make any financial provision for meeting costs for which the NDA has financial responsibility. This would include making provision for any future costs in the accounts of the person with control. The effect of subsection (4) with subsection (6) is to require the NDA to put the person with control in funds to meet the costs it incurs in meeting regulatory obligations (as authorised or required by section 17), as well as the costs of complying with directions given by the NDA under section 18. Subsection (9) makes the provisions of section 21 subject to a contract in place between the NDA and the person with control of the installation, site or facility or a body corporate of which that person is a subsidiary.
105. Where the NDA is given responsibility for an installation, facility or site without it including financial responsibility under subsections (1) and (2), a payment could be required by the Secretary of State under section 5(2) on making the designation or the NDA could charge for the work under section 5(3) or section 10(3). However, if no charge is made under either of those provisions, the NDA will carry the cost of the work itself. Subsection (10) makes it clear that the NDA can also carry the financial burden in cases where it does not have financial responsibility under this section.