

ENERGY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 5: Miscellaneous Provisions Relating to Nuclear Industry

Section 76: Amendment for giving effect to international obligations

214. **Section 76** gives the Secretary of State the power to amend primary legislation in order to implement certain international obligations contained in the Paris and Brussels Conventions on third party nuclear liability.
215. The Conventions establish an international legal framework within Western Europe for compensating victims of a radiation leak. The Paris Convention establishes minimum levels of liability for operators of nuclear installations and the principle that their liability is strict and is to be covered by compulsory financial security. The Brussels Convention provides supplementary compensation to be paid from public funds.
216. The Conventions have been revised to provide higher and broader levels of compensation in the event of civil nuclear accidents. In particular, the liability of individual operators has been increased from £140m to €700m (£430m) per incident and the provision for supplementary compensation has been increased from £220m to €1.5bn (£930m). The definition of “nuclear damage” is also being widened to include not only loss of life or personal injury and loss of or damage to property, but also environmental damage, loss of income deriving from such damage and the cost of measures to prevent an accident occurring again.
217. **Section 76** also makes provision for ratification of the “Joint Protocol” which allows parties to the two international Conventions (Paris and Vienna) governing liability for civil nuclear accidents to extend reciprocal benefits to each other. The ratification of the Joint Protocol will enable UK participation for the first time in a global compensation regime between the largely Western European parties to the Paris Convention and the parties to the Vienna Convention, which include Former Soviet Union and Eastern European countries and South American States.

Section 77: Regulation of equipment, software and information

218. This section fills gaps in the regulation making powers of section 77 of the ATCS Act. To the extent not already covered by section 77 of ACTS, the amendments will permit the regulation of persons holding, transmitting or transporting the following items outside nuclear premises, namely (a) uranium enrichment equipment and software, and (b) sensitive nuclear information. The regulation making power will apply regardless of whether uranium enrichment itself is carried out inside or outside the UK.
219. Additional regulations will be made in these areas as soon as the enabling power has been modified.

Section 78: Application of the 1965 Act to Northern Ireland

220. **Section 78** makes a number of consequential amendments to the 1965 Act as a result of the Northern Ireland Act 1998, which provides that nuclear energy and installations are excepted matters.

Section 79: Expenditure on nuclear related matters

221. **Section 79** gives the Secretary of State statutory authority to incur expenditure as a result of options included in the documents relating to the restructuring of British Energy. The provision is general, but goes further than the free-standing provisions in EMPA by authorising spending on two elements of the agreements not currently covered by legislation:

- In circumstances where British Energy has sold one of its nuclear power stations to a third party, the acquisition of the power station from that third party and subsequently operating it. This would follow the exercise of an option on the part of HMG to acquire the station for this purpose; and
- The acquisition of British Energy's shareholding in Nirex, and to incur expenditure on any consequences of such an acquisition.

Section 80: Additional functions of UKAEA

222. **Section 80** ensures that UKAEA will have sufficient statutory powers to operate in the new UK nuclear clean up market. It provides that UKAEA:

- can set up site licensee companies, site management companies, joint ventures or subsidiaries in order to bid for NDA site management contracts, including for non-UKAEA sites.
- has powers to run nuclear pensions schemes and, subject to approval by the Secretary of State, public service pension schemes other than the UKAEA pensions scheme.
- has powers to manage and commercially exploit the property it owns, where it no longer requires that property for its other functions.