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STATUTORY INSTRUMENTS

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**2005 No. 644**

**INCOME TAX**

**The Energy Act 2004 (Nuclear Decommissioning) (Exempt Activities and Further Conditions) Regulations 2005**

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|---|---------|------------------------|
| <i>Made</i>                             | - - - - | <i>10th March 2005</i> |
| <i>Laid before the House of Commons</i> | - - - - | <i>10th March 2005</i> |
| <i>Coming into force</i>                | - -     | <i>1st April 2005</i>  |

The Treasury, with the concurrence of the Secretary of State, in exercise of the powers conferred upon them by section 27(3)(b) and (5)(d) of the Energy Act 2004(1), make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Energy Act 2004 (Nuclear Decommissioning) (Exempt Activities and Further Conditions) Regulations 2005 and shall come into force on 1st April 2005.

(2) In these Regulations—

a reference, without more, to a numbered section or Schedule is a reference to the corresponding provision of the Energy Act 2004;

“the NDA” means the Nuclear Decommissioning Authority (see section 1); and

“designated” means designated by means of a direction given by the Secretary of State to the NDA under section 3(3); and any other expression defined in section 37(1) bears the same meaning in these Regulations.

**Exempt activities for the purposes of section 27 of, and Schedule 4 to, the Energy Act 2004**

2.—(1) For the purposes of section 27 and Schedule 4 (tax exemptions for NDA activities) the activities mentioned in paragraph (2) are specified.

(2) The activities are the operation of designated facilities for the treatment, storage, transportation or disposal of hazardous material, carried on for the purpose of thermal oxide reprocessing or mixed oxide manufacture where that reprocessing or manufacture is undertaken at Sellafield in Cumbria.

**Further conditions in respect of NDA company which is a relevant site licensee**

3.—(1) The further conditions referred to in section 27(5)(d) (conditions in respect of NDA company which is a relevant site licensee) are those in paragraphs (2) and (3).

(2) The condition is that all the ordinary share capital of the company must have been transferred from the NDA or a wholly owned subsidiary of the NDA (“the original transfer”).

(3) The condition is that where—

(a) a management contract is in force—

(i) which relates to the whole or part of the site, or to an installation or facility in or on that site, for which a nuclear site licence is in force; and

(ii) which is made between the NDA and the company, or between the NDA and a company which owns, directly or indirectly, at least 90 per cent of the ordinary share capital of the company; or

(b) the company has control of a designated installation, site or facility and directions have been given to the company under section 18(3) in respect of that installation, site or facility; the company’s memorandum and articles must be such as to secure that the restrictions imposed by paragraphs (4) and (5) will always be met.

(4) The company may not declare dividends on its shares.

(5) A transfer of the company’s shares—

(a) may only be made to the NDA; or a wholly owned subsidiary of the NDA,

(b) must comprise the whole of the company’s share capital, and

(c) must be for a consideration which is no greater than that given for the original transfer.

(6) For the purposes of paragraph (5)(c) where consideration is given for share capital and for something else besides, a just and reasonable apportionment shall be made between the amount given for the share capital and the amount given for the other thing.

*Jim Murphy*

*Joan Ryan*

Two of the Lords Commissioners of Her Majesty’s Treasury

10th March 2005

Signed by authority of the Secretary of State.  
The Secretary of State concurs.

*Nigel Griffiths*

Parliamentary Under-Secretary of State For  
Small Business and Construction  
Department for Trade and Industry

9th March 2005

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in respect of the activities of the Nuclear Decommissioning Authority (“the NDA”). They define exempt activities for the purposes of section 27 of the Energy Act 2004 (c. 20) and impose additional conditions in respect of those NDA companies the whole of whose share capital is not owned directly or indirectly by the NDA.

Regulation 1 provides for the citation, commencement and interpretation of the Regulations.

Regulation 2 specifies the activities which are exempt for the purposes of section 27 of, and Schedule 4 to the Act.

Regulation 3 imposes further conditions in respect of an NDA company which is a relevant site licensee.

These Regulations do not impose new costs on business.