

**EXPLANATORY MEMORANDUM TO
THE ENERGY ACT 2004 (NUCLEAR DECOMMISSIONING) (EXEMPT
ACTIVITIES AND FURTHER CONDITIONS) REGULATIONS 2005**

2005 No. 644

1. This explanatory memorandum has been prepared by the Inland Revenue and is laid before the House of Commons by Command of Her Majesty.

2. Description

These regulations specify the activities of the Nuclear Decommissioning Authority (“NDA”), or an NDA company, that are exempt activities and provide further conditions that have to be satisfied by a site licensee for it to qualify as an NDA company.

3. Matters of special interest to the Select Committee on Statutory Instruments

None.

4. Legislative Background

- 4.1 These regulations are being made under powers conferred by sections 27(3) and 27(5) of the Energy Act 2004, and are subject to annulment by resolution of the House of Commons. The provisions have effect from 1 April 2005.
- 4.2 Section 27(1) of the Energy Act 2004 provides that trading income and losses of the NDA, or an NDA company, from the carrying on of exempt activities are to be disregarded for corporation tax purposes. Schedule 4 of the Energy Act 2004 contains supplemental tax provisions in relation to exempt activities.
- 4.3 Section 27(5) sets out conditions that a site licensee company has to meet to qualify as an NDA company and allows for further conditions to be imposed.

5. Extent

These Regulations apply throughout the United Kingdom.

6. European Convention on Human Rights

This instrument is subject to the negative resolution procedure and does not amend primary legislation. Accordingly, no statement of compliance with the European Convention on Human Rights is required.

7. Policy background

- 7.1 The NDA is a taxable body but certain of its activities are to be exempt. The exempt activities are those carried on for the purpose of thermal oxide reprocessing and mixed oxide manufacture at Sellafield. The exemption is needed to save the NDA the costs of extracting the tax results for the THORP and SMP operations from its total Sellafield activities and to provide protection against the potential leakage of tax losses.

- 7.2 The exemption will apply to the NDA, or an NDA company, carrying on the specified activities. An NDA company means a wholly owned subsidiary of the NDA or another company that is a relevant site licensee. The further conditions imposed by the regulations are needed to prevent tax leakage by ensuring that the tax exemption is not enjoyed by contractor companies providing services to the NDA. This is achieved by restricting the circumstances in which a company can be a relevant site licensee.

8. Impact

A regulatory impact assessment has not been prepared for this instrument as it does not impose any new costs on business.

9. Contact

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