



Energy Act 2004

2004 CHAPTER 20

PART 1

THE CIVIL NUCLEAR INDUSTRY

CHAPTER 1

NUCLEAR DECOMMISSIONING

Financial provisions

21 Financial responsibilities of NDA

- (1) The NDA's responsibility for securing—
 - (a) the decommissioning or operation of an installation or facility to which this section applies, or
 - (b) the cleaning-up of a site to which this section applies, or of a related site, includes the financial responsibility for the decommissioning or operation of the installation or facility, or for the cleaning-up.
- (2) This section applies to an installation, site or facility which becomes a designated installation, site or facility at a time when the person with control of it is—
 - (a) a Crown appointee;
 - (b) the UKAEA;
 - (c) a wholly-owned subsidiary of the UKAEA;
 - (d) any other publicly owned company which was so owned on 4th July 2002; or
 - (e) a wholly-owned subsidiary of such a company.
- (3) Where—
 - (a) the NDA has financial responsibility for decommissioning, operating or cleaning up an installation, site or facility, and

Status: Point in time view as at 05/10/2004.

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- (b) a person other than the NDA is the person with control of it, that other person is not to be, or to be capable of becoming, liable to meet any of the costs of doing the things that are required to be secured by the NDA in the discharge of its responsibilities in relation to that installation, site or facility.
- (4) Accordingly, where the NDA has the financial responsibility in the case of an installation, site or facility—
- (a) it must not impose charges on the person with control of the installation, site or facility in respect of anything mentioned in subsection (3);
 - (b) it must meet the costs of the doing by that person of anything that he is authorised or required to do by virtue of section 17;
 - (c) it must also meet the costs of the performance by him of his duty to comply with directions under section 18; and
 - (d) that person is not to be required for any purpose to make, or to continue to make, financial provision for meeting costs which fall, by virtue of its financial responsibility, to be met by the NDA.
- (5) Nothing in so much of this section as—
- (a) restricts the extent to which a person is, or may become, liable to meet any costs in relation to a site, installation or facility, or
 - (b) requires any costs in relation to an installation, site or facility to be reimbursed or otherwise met by the NDA,
- is to be construed as restricting the extent to which the person with control of the installation, site or facility may be or become subject, in relation to a person other than the NDA, to the liability or obligation in respect of which the costs arise.
- (6) It shall be the duty of the NDA for the purpose of discharging its financial responsibilities to make all such arrangements as it thinks fit for securing that the person with control of the installation, site or facility is able to meet, as they become due, all his liabilities to persons other than the NDA in respect of matters for which the NDA has financial responsibility or that those liabilities are otherwise discharged.
- (7) It shall also be the duty of the NDA to make all such arrangements as it thinks fit for securing that amounts paid under this section to that person include such sums (if any) as the NDA considers it appropriate to pay by way of incentives to that person to discharge his duty to comply with directions under section 18 in the manner that the NDA thinks most effective.
- (8) The NDA is to be taken to have discharged its responsibility for meeting costs under this section if it is satisfied that those costs—
- (a) have been met by another person directly or indirectly out of money provided by Parliament; or
 - (b) are to be so met.
- (9) The preceding provisions of this section have effect in relation to an installation, site or facility subject to the terms of—
- (a) any agreement between the NDA and the person with control of the installation, site or facility; or
 - (b) any agreement between the NDA and a body corporate of which that person is a subsidiary.
- (10) The NDA's financial responsibilities under this section are in addition to its financial responsibilities apart from this section.

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(11) In this section “related site” has the same meaning as in section 18.

Commencement Information

II S. 21 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

22 Expenditure and receipts of NDA

- (1) The Secretary of State may make grants to the NDA.
- (2) Grants made under this section are to be on such terms as the Secretary of State may determine.
- (3) The NDA must pay to the Secretary of State all sums received by it otherwise than under subsection (1).
- (4) The Secretary of State must pay sums received by him under subsection (3) into the Consolidated Fund.
- (5) In determining—
 - (a) whether to make a grant under this section to the NDA, and
 - (b) the amount of such a grant,the Secretary of State must have regard, in particular, to the extent to which he considers that the NDA should exercise its power to make grants or loans of the kind mentioned in section 10(2)(c) in order to mitigate the effects of the cessation (whether before or after designation) of the operation of a designated installation.

Commencement Information

I2 S. 22 in force at 24.8.2004 by S.I. 2004/2184, art. 2(1), Sch. 1

23 Borrowing by the NDA

- (1) The NDA has no power to borrow money except in accordance with this section.
- (2) The NDA may borrow from the Secretary of State, and the Secretary of State may lend to the NDA, sums in sterling that it requires for or in connection with the carrying out of its functions.
- (3) Where a loan is made to the NDA by the Secretary of State—
 - (a) the loan must be repaid to him at such times and by such methods as he may determine; and
 - (b) interest on the loan must be paid to him at such rates and at such times as he may determine;and nothing in section 22(3) requires the repayment of sums received by way of such a loan otherwise than in accordance with a determination under this subsection.
- (4) The NDA may also borrow temporarily (by overdraft or otherwise) from persons other than the Secretary of State sums in sterling that it requires for or in connection with the carrying out of its functions.
- (5) The consent of the Secretary of State is required for borrowing under subsection (4).

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- (6) The approval of the Treasury is required—
 - (a) for a loan to the NDA by the Secretary of State;
 - (b) for a determination by the Secretary of State under subsection (3); and
 - (c) for a consent by the Secretary of State to any borrowing under subsection (4).
- (7) The powers conferred by this section are subject to section 24.

Commencement Information

I3 S. 23 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

24 Limit on NDA borrowing

- (1) The NDA may not borrow if the effect would be—
 - (a) to take the aggregate amount mentioned in subsection (2) over its borrowing limit; or
 - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (2) That amount is the aggregate of—
 - (a) amounts outstanding from the NDA in respect of the principal of sums borrowed by the NDA; and
 - (b) the amount of every outstanding liability of the NDA that is a liability to which it is subject by virtue of a nuclear transfer scheme and is a liability in respect of the principal of a sum borrowed by another person before the transfer took effect.
- (3) The NDA’s borrowing limit is £2,000 million.
- (4) The Secretary of State may by order increase the NDA’s borrowing limit.
- (5) An order under subsection (4) shall not be made unless a draft of the order has been—
 - (a) laid before Parliament; and
 - (b) approved by a resolution of the House of Commons.
- (6) The reference in this section to a nuclear transfer scheme includes a reference to a modification agreement (within the meaning of Schedule 5) in relation to such a scheme.

Commencement Information

I4 S. 24 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

25 Government guarantees for NDA borrowing

- (1) The Secretary of State may guarantee—
 - (a) the repayment of the principal of any sum borrowed by the NDA from a person other than the Secretary of State;
 - (b) the payment of interest on such a sum; and

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- (c) the discharge of any other financial obligation of the NDA in connection with the borrowing of such a sum.
- (2) The Secretary of State may give a guarantee under this section in such manner, and on such terms, as he thinks fit.
- (3) As soon as practicable after giving a guarantee under this section, the Secretary of State must lay a statement of the guarantee before Parliament.
- (4) If sums are paid out by the Secretary of State under a guarantee given under this section, the NDA must pay him—
 - (a) such amounts in or towards the repayment to him of those sums as he may direct; and
 - (b) interest, at such rates as he may direct, on amounts outstanding under this subsection.
- (5) Payments to the Secretary of State under subsection (4) must be made at such times, and in such manner, as he may from time to time direct.
- (6) Where a sum has been paid out by the Secretary of State under a guarantee given under this section, he must lay a statement relating to that sum before Parliament—
 - (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
 - (b) as soon as practicable after the end of each subsequent relevant financial year.
- (7) In relation to a sum paid out under a guarantee, a financial year is a relevant financial year for the purposes of subsection (6) unless—
 - (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (4); and
 - (b) the NDA is not at any time during that year subject to a liability to pay interest on amounts that became due under that subsection in respect of that sum.
- (8) The approval of the Treasury is required—
 - (a) for the giving of a guarantee under this section; and
 - (b) for the giving by the Secretary of State of a direction under subsection (4) or (5).
- (9) The Secretary of State must pay sums received by him by virtue of subsection (4) into the Consolidated Fund.

Commencement Information

I5 S. 25 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

26 Accounts of NDA

- (1) The NDA must—
 - (a) keep proper accounts and proper accounting records; and
 - (b) in respect of each of its accounting years, prepare a statement of its accounts.
- (2) A statement of accounts prepared under this section must give a true and fair view of—
 - (a) the income and expenditure of the NDA for the accounting year in question; and

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- (b) its state of affairs.
- (3) Such a statement of accounts must comply with every requirement which has been notified by the Secretary of State to the NDA.
- (4) Those requirements may include, in particular, requirements relating to—
 - (a) the information to be contained in the statement;
 - (b) the manner in which that information is to be presented; or
 - (c) the methods and principles according to which the statement is to be prepared.
- (5) The approval of the Treasury is required for the imposition of a requirement under subsection (3).
- (6) The accounts of the NDA relating to each of its accounting years, including the statement of accounts prepared for the year under this section, must be audited by the Comptroller and Auditor General.
- (7) The Comptroller and Auditor General must send a copy of his report on what is audited to the NDA.
- (8) The NDA must send to the Secretary of State and to the Scottish Ministers, in respect of each of its accounting years—
 - (a) a copy of the accounts for that year that are required to be audited under this section; and
 - (b) a copy of the Comptroller and Auditor General’s report on those accounts.
- (9) The NDA must comply with any directions given to it by the Secretary of State about the times by which it must have complied with its obligations under subsections (1) (b), (6) and (8).
- (10) The Secretary of State must lay a copy of whatever is sent to him under subsection (8) before Parliament.
- (11) The Scottish Ministers must lay a copy of whatever is sent to them under subsection (8) before the Scottish Parliament.
- (12) In this section—
 - “accounting records” includes all books, papers and other records of the NDA relating to—
 - (a) the accounts which it is required to keep; or
 - (b) matters dealt with in those accounts;
 - “accounting year”, in relation to the NDA, means—
 - (a) the NDA’s first accounting year; or
 - (b) a financial year after the end of the NDA’s first accounting year;
 - “the NDA’s first accounting year” means—
 - (a) where the NDA is established at the beginning of a financial year, that financial year; and
 - (b) in any other case, the period which begins with the day on which the NDA is established and ends—
 - (i) if no direction is given under sub-paragraph (ii), with 31st March in the financial year current on that day; and
 - (ii) if the Secretary of State so directs, with 31st March at the end of the following financial year.

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Commencement Information

16 S. 26 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

27 Tax exemption for NDA activities

- (1) For the purposes of corporation tax—
 - (a) trading income arising or accruing to the NDA or an NDA company from the carrying on of exempt activities shall be disregarded in computing the total profits of the NDA or that company; and
 - (b) trading losses incurred by the NDA or an NDA company in the carrying on of exempt activities shall be disregarded in determining the amounts that may be set off under section 393 or 393A of the Income and Corporation Taxes Act 1988 (c. 1) (trading losses) or surrendered as trading losses for the purposes of section 403 of that Act (group relief).
- (2) Schedule 4 (which makes further provision for the purposes of the exemption granted by this section) has effect.
- (3) Activities are exempt for the purposes of this section and Schedule 4 if they—
 - (a) are activities carried on in connection with anything mentioned in section 3(1); and
 - (b) are specified for the purposes of this section in regulations made by the Treasury.
- (4) In this section and Schedule 4 “NDA company” means—
 - (a) a company the whole of the ordinary share capital in which is owned directly or indirectly by the NDA; or
 - (b) a company that is a relevant site licensee.
- (5) A company is a relevant site licensee for the purposes of subsection (4) if—
 - (a) it is not a company falling within paragraph (a) of that subsection;
 - (b) it holds a nuclear site licence for a site the whole or part of which is either a designated site or a site in or on which there is a designated installation or designated facility;
 - (c) in a case where there is in force a management contract relating to the whole or a part of the site to which that licence relates, or to an installation or facility in or on that site, the parties to the contract include either—
 - (i) the company in question; or
 - (ii) a company which owns directly or indirectly at least 90 per cent of the ordinary share capital of that company; and
 - (d) such further conditions that are required by regulations made by the Treasury to be satisfied have been satisfied.
- (6) The concurrence of the Secretary of State is required for the making of any regulations under this section by the Treasury.
- (7) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (8) In this section—

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“management contract” means a contract between the NDA and another person under which the other person is required to do or secure anything that the NDA is required to secure for the purpose of discharging its responsibilities;

“owned directly or indirectly” has the same meaning as in section 838 of the Income and Corporation Taxes Act 1988 (c. 1) (subsidiaries), and “owns directly or indirectly” is to be construed accordingly;

“trading income”, in relation to the NDA or an NDA company, means (subject to subsection (9)) income which falls or (apart from this section) would fall to be included—

- (a) in respect of a trade, and
- (b) as chargeable to tax under Case I of Schedule D,

in the total profits for the purposes of corporation tax of the NDA or that company;

“trading losses”, in relation to the NDA or an NDA company, means losses incurred in a trade in respect of which the NDA or that company is or (apart from this section) would be within the charge to corporation tax under Case I of Schedule D.

- (9) For the purposes of this section income consisting in—
- (a) anything giving rise to a credit that would fall to be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (c. 8) (loan relationships), or
 - (b) a credit falling to be brought into account under Schedule 26 to the Finance Act 2002 (c. 23) (derivative contracts),

is to be treated as trading income accruing to the NDA or an NDA company from the carrying on of exempt activities to the extent only that it would fall (apart from this section) to be taken into account as trading income from a trade consisting in the carrying on of such activities by the NDA or that company.

- (10) This section and Schedule 4 are to be construed as one with the Corporation Tax Acts.

Commencement Information

I7 S. 27 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

28 Taxation of NDA activities chargeable under Case VI of Schedule D

- (1) For the purposes of the Corporation Tax Acts so much of any activity of the NDA as—
- (a) is an activity the profits and gains from which would (apart from this section) be chargeable to tax under Case VI of Schedule D, and
 - (b) is not excluded from the operation of this section by subsection (2),
- shall be treated as an activity carried on by it as part of a trade in respect of which it is within the charge to tax under Case I of Schedule D.
- (2) Any activity is excluded from the operation of this section if—
- (a) it is carried on by the NDA otherwise than in connection with something mentioned in section 3(1)(a), (d) or (e) of this Act; and
 - (b) the profits and gains from it would, in the NDA’s case, be chargeable to tax under Case VI of Schedule D by virtue of an enactment other than just section 18 of the Income and Corporation Taxes Act 1988 (c. 1).

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- (3) All activities treated under this section as carried on by the NDA as part of a trade—
 - (a) shall be treated as carried on as part of the same trade; and
 - (b) may be treated as carried on as part of another trade carried on by the NDA.
- (4) Subsection (3) is subject to any other provision made by or under the Corporation Tax Acts that requires an activity to be treated as carried on as part of a separate trade (with or without any other activity).
- (5) This section is to be construed as one with the Corporation Tax Acts.

Commencement Information

I8 S. 28 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

29 Disregard for tax purposes of cancellation etc. of provisions

- (1) This section applies where—
 - (a) a relevant provision is recognised in the accounts of a relevant company in accordance with generally accepted accounting practice;
 - (b) that provision relates to decommissioning or cleaning-up which the NDA acquires responsibility for securing by virtue of a direction under section 3; and
 - (c) that responsibility includes the financial responsibility under section 21.
- (2) In computing the profits, gains or losses of the company for the purposes of corporation tax, no amount shall be brought into account in respect of a credit or debit to which subsection (3) applies.
- (3) This subsection applies to a credit or debit if—
 - (a) it arises on the occurrence of an event mentioned in subsection (4); and
 - (b) it relates to the effect of that event on the relevant provision or the subject matter of the provision.
- (4) The events referred to in subsection (3) are—
 - (a) the coming into force of the direction mentioned in subsection (1)(b); and
 - (b) a transfer of property, rights or liabilities of the company to the NDA or a subsidiary of the NDA in accordance with a nuclear transfer scheme authorised by section 39.
- (5) In this section—

“BNFL company” means BNFL or a wholly-owned subsidiary of BNFL;

“relevant company” means a BNFL company that is publicly owned;

“relevant provision” means a provision for liabilities or charges as defined in paragraph 89 of Schedule 4 to the Companies Act 1985 (c. 6).
- (6) This section is to be construed as one with the Corporation Tax Acts.

Commencement Information

I9 S. 29 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

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30 Disregard for tax purposes of provisions recognised by NDA

- (1) This section applies where—
- (a) by virtue of a direction under section 3 the NDA acquires the responsibility for securing the cleaning-up of a site falling within subsection (2), or the decommissioning of an installation or facility in or on such a site;
 - (b) that responsibility includes the financial responsibility under section 21; and
 - (c) on the coming into force of the direction mentioned in paragraph (a), the NDA recognises in its accounts, in accordance with generally accepted accounting practice, a relevant provision that relates to that responsibility.
- (2) A site falls within this subsection if—
- (a) at the time the direction mentioned in subsection (1)(a) comes into force there is a nuclear site licence in force in relation to the site; and
 - (b) the holder of that licence at that time is a BNFL company that is publicly owned.
- (3) In computing the profits, gains or losses of the NDA for the purposes of corporation tax, no amount shall be brought into account in connection with the recognition of the relevant provision in the accounts of the NDA.
- (4) But subsection (3) shall not affect the amount (if any) to be brought into account in computing the profits, gains or losses of the NDA in connection with an adjustment at a time after the first recognition of the relevant provision in the accounts of the NDA.
- (5) In this section—
- “BNFL company” means BNFL or a wholly-owned subsidiary of BNFL;
- “relevant provision” means a provision for liabilities or charges as defined in paragraph 89 of Schedule 4 to the Companies Act 1985.
- (6) This section is to be construed as one with the Corporation Tax Acts.

Commencement Information

I10 S. 30 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

Status:

Point in time view as at 05/10/2004.

Changes to legislation:

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