

Briefing Note on the Energy Act

Marion Hill

1. Introduction

The Energy Act received Royal Assent in July 2004. The Act covers the civil nuclear industry, renewable energy sources, and energy markets and regulation. This note summarises the parts of the Act that are most relevant to the management of contaminated land on nuclear and defence sites. The note has been checked for accuracy by members of the SAFEGROUNDS Project Steering Group but the opinions expressed are the author's own. The information in the note is taken from the Act itself and its Explanatory Notes [1], unless otherwise referenced.

2. Principal Roles and Responsibilities of the Nuclear Decommissioning Authority

A major purpose of the Energy Act is to create a new public body, to be known as the Nuclear Decommissioning Authority (NDA). This body's main function will be to ensure that the UK's civil; public sector nuclear sites are decommissioned and cleaned up. The NDA will fully come into being in April 2005 but much of it already exists [2].

The NDA will not actually carry out decommissioning and clean-up. It will formulate strategies and objectives for decommissioning and clean-up for all the sites for which it is responsible (see Sections 5 and 6). It will implement these strategies by letting contracts to the companies that will manage the sites that are being decommissioned. The NDA will also be responsible for operating civil public sector nuclear sites prior to decommissioning and will do so by employing contractors to manage these sites. The 'site management companies' for operation and for decommissioning will be the licensees of the nuclear-licensed sites. Initially they will be the current licensees (i.e. BNFL, Magnox and UKAEA) but this may change in the future because it is expected that the NDA will put the management of some sites out to competitive tender [3].

3. NDA Funding, Structure and Reporting

The NDA will be funded by grant-in-aid from the UK Government. A statutory 'segregated account', the Nuclear Decommissioning Funding Account (NDFA), will record flows of money between Government and the NDA. The NDFA will be maintained at a level to support a rolling 10 year programme of work. Income generated by the NDA (eg from running Magnox stations and Drigg) will be credited to the account and will be available for use by the NDA. The NDA will also be able to borrow money up to a limit of £2 billion.

The NDA Board will consist of a (non-executive) chairman, a chief executive and up to eleven other members, most of whom will be non-executive. The NDA will employ the staff it needs to carry out its functions, perhaps about 200 people [3]. It will have its headquarters in West Cumbria. Some staff have already been appointed (including the Chairman Sir Anthony Cleaver and Chief Executive Dr Ian Roxburgh) and a temporary headquarters has been set up [2].

After the end of each financial year the NDA must submit a report on its work to the Secretary of State for Trade and Industry, who must lay this report before Parliament and arrange for it to be published. If the NDA has carried out work on sites in Scotland during the year then its annual report must be sent to Scottish Ministers and be laid before the Scottish Parliament. The Energy Act sets out in some detail what the NDA's annual reports have to cover.

4. Other NDA Responsibilities

In addition to its responsibilities for decommissioning, clean-up and operating nuclear sites pending their decommissioning, the NDA also has the functions of, to the extent that it considers it appropriate to do so, carrying out research, distributing information, educating and training people, and giving support to the social and economic life of communities near the sites that are being decommissioned and cleaned up. The Act specifies that in carrying out its functions the NDA has to have regard to:

- Government policy (eg on decommissioning of nuclear installations)
- safeguarding the environment
- protecting people from risks to their health and safety
- preserving nuclear security.

The NDA also has to make sure that a suitably skilled workforce is available for decommissioning, promote competition, secure value for money, and ensure that good practice is adopted by those who control the sites for which it is responsible. When managing sites that are being decommissioned and cleaned up, and when operating installations and sites prior to decommissioning, the NDA has a duty to act in a way that it considers is most beneficial to the public.

5. Types of Site for which the NDA will be Responsible

The NDA will be able to be made responsible for two types of 'nuclear site' defined in the Act: 'principal nuclear sites' and 'contaminated sites'. 'Principal nuclear sites' are nuclear-licensed sites, sites that would be licensed if the Nuclear Installations Act 1965 (as amended) applied to the Crown (eg defence nuclear sites operated by the Ministry of Defence itself, not by civilian contractors), sites used for fusion research, and sites of all these sorts that are no longer used but are still 'contaminated'. A 'contaminated site' is any site that is radioactively or chemically 'contaminated as a result of nuclear activities' or that has 'hazardous material' on it. The term 'site' is defined in the Act to include an area of land within the UK, subsoil in such an area, an area of territorial waters adjacent to the UK, and the seabed in such an area.

'Contaminated as a result of nuclear activities' means that the contamination is a direct or indirect result of routine operations or incidents (including discharges into the environment), storage or disposal of wastes, or transport of 'hazardous materials'. 'Hazardous materials' are nuclear matter (as defined in the Nuclear Installations Act 1965, as amended), radioactive wastes (as defined in the Radioactive Substances Act 1993), and any article or substance that is radioactively or chemically 'contaminated as a result of nuclear activities'. 'Contamination' is not defined in the Act. Presumably it can be taken to be anything that can be measured and that is not part of the natural background or the ubiquitous artificial background (eg fallout from nuclear weapons tests).

The NDA only becomes responsible for sites when they are 'designated' by the Secretary of State for Trade and Industry. The directions from the Secretary of State designating the NDA's responsibilities at 17 sites were made on 7 December 2004, were published on 13 December and will come into effect on 1 April 2005. These sites are: Harwell, Dounreay, Winfrith, Windscale, Sellafield, Drigg, Capenhurst, Wylfa, Oldbury, Sizewell A, Dungeness A, Chapelcross, Hinkley Point A, Bradwell, Hunterston A, Trawsfynydd, and Berkeley. In due course the NDA will put management of these sites out to competitive tender [4]. The wording of the Act is sufficiently flexible to allow the NDA to be given responsibility for British Energy or Ministry of Defence nuclear sites if it is decided in future that this would be desirable.

When 'principal nuclear sites' are 'designated', the Secretary of State can include other land that is owned or occupied by the controller of the principal nuclear site, whether this land is

adjacent to the site or entirely separate. The mechanism for making any other 'contaminated site' the responsibility of the NDA is that the Secretary of State would issue a direction designating it as a 'related site', that is a site that is related to a 'principal nuclear site', a facility on such a site, or an NDA facility. By these means the Government, via the NDA, will be able to clean up any land (or freshwater body or estuary or area of the sea or seabed) that has been contaminated by past or current nuclear activities. In principle, this fills a long-standing gap in the regulatory framework [5]. What is not clear, however, is how it will work in practice. In particular, how are disagreements amongst stakeholders over whether areas should be cleaned up or not to be resolved? Will it be for the NDA to do this and, if so, will it happen before or after areas are designated? If the Government is to resolve such disagreements how will they do this and what weight will they give to the environment agencies' views? None of these questions are answered in the Act, its explanatory notes or on the Department of Trade and Industry (DTI) or NDA websites.

6. NDA Strategy and Plans

The Act makes it a duty of the NDA to prepare a strategy for carrying out its functions, to review its strategy at least every five years, and to revise it when necessary. The strategy must include decommissioning and clean-up of sites, and operation of installations and facilities. It must set out the NDA's priorities for fulfilling its responsibilities and its proposals for maintaining and developing a skilled workforce, for promoting competition, for ensuring that good practice is adopted, and for supporting local communities (see Section 4 above). It must also include the reasoning behind the strategy. In addition, the strategy has to set out the steps that the NDA proposes to take to publicise and explain its strategy, and to keep itself informed of the views of people who have a particular interest in its work (see also Section 7).

A further requirement is that the strategy must contain objectives for decommissioning and clean-up of various installations and sites, including statements of the conditions to which cleaned-up sites are to be restored, and the NDA's policy for how these objectives are to be achieved. The objectives and policies can be for specific sites or for all sites of a particular type. The policies have to include procedures for making plans to identify and carry out decommissioning and clean-up work at each site, and outlines of the work in such plans, with estimates of costs and timescales.

When preparing, reviewing or revising its strategy the NDA must consult various stakeholders (see also Section 7). Those named in the Act are: the Health and Safety Executive, the Environment Agency, the Scottish Environment Protection Agency, nuclear security regulators, local authorities in all the areas in which there are sites for which the NDA is responsible, site owners/operators, employees of site owners/operators, and every body established by the NDA or by site owners/operators for consultation about activities on sites. The NDA must also consider any representations it receives from members of the public about its strategy. The NDA's strategy, and any revisions, has to be approved by the Secretary of State for Trade and Industry and, in so far as it deals with Scottish sites, by Scottish Ministers. When submitting its strategy for approval the NDA has to provide a report on the representations it has received from consultees and from members of the public. The Secretary of State for Trade and Industry can direct the NDA to modify its strategy but before doing so must consult the NDA and the regulators. The NDA must comply with directions for modifications to objectives for sites, decommissioning periods and expenditure. Once approved, the strategy has to be published by the NDA, together with a report on the representations the NDA has received about it.

At least three months before the start of each financial year, the NDA must prepare a plan for its work over that year. The plan should summarise all the NDA's proposed activities over the year and their costs. In preparing each annual plan the NDA has to consult the same organisations as are consulted on its five year strategy (see above). The plans are to

be submitted to the Secretary of State and to Scottish Ministers for approval. The NDA has to publish each approved plan, with a report on the representations it received while preparing it.

7. NDA Interactions with Stakeholders

The Act places the NDA under a general obligation to communicate with everyone who has an interest in its work, as well as specifying those who the NDA has to consult about its five year strategy and its annual plan (see Section 6 above). Its first draft annual plan was issued for comment in December 2004 [2].

In preparation for the full establishment of the NDA, the Department of Trade and Industry is developing for it a draft framework for stakeholder engagement and transparency [6]. This will be submitted to the NDA for endorsement and adoption. The development work has so far included national, regional and local meetings with stakeholders, publication of documents for consultation, and commissioning of studies. Comments can be submitted at any time via the DTI web site [6].

8. References

- [1] The Energy Act 2004. www.legislation.hmsso.gov.uk/acts/acts2004 (and on the DTI and NDA websites).
- [2] Nuclear Decommissioning Authority 2004. www.nda.gov.uk
- [3] Department of Trade and Industry, 2002. Managing the Nuclear Legacy – a strategy for action. Cm 5552. www.dti.gov.uk/nuclearcleanup
- [4] Department of Trade and Industry, 2003. Conclusions of BNFL Strategy Review: Explanatory Note. www.dti.gov.uk/nuclearcleanup
- [5] Hill, Marion, 2002. The regulatory framework for contaminated land on nuclear-licensed sites and defence sites. www.safegrounds.com
- [6] Department of Trade and Industry, 2004. Managing the Nuclear Legacy, Stakeholder Engagement. www.dti.gov.uk/nuclearcleanup/tgr/tgr-se.htm