

Financial Implications of Licence Condition Compliance at NDA Sites:

A Note by the Health & Safety Executive

Introduction

1. This note sets out HSE's view on the financial basis for site licence companies contracted to the Nuclear Decommissioning Authority of compliance with the Conditions attached to the nuclear site licence. This is founded on the statement *Financial Implications of Licence Condition Compliance at NDA Sites* issued by the Nuclear Decommissioning Authority (available on the NDA website¹), which provides assurances on funding.

2. It is intended that this statement will provide clarity to licensees' accountants and auditors when making decisions regarding the recognition of operating and decommissioning liabilities on site licence company balance sheets.

Site Management and Operations Contracts

3. The creation of the Nuclear Decommissioning Authority by the Energy Act 2004 brought about a fundamental change in the financial framework in which the BNFL and UKAEA licensed nuclear sites are managed. A significant feature of the new arrangements is the introduction of Management and Operations Contracts, under which site licensee companies (SLCs) contract with the NDA to undertake activities on those sites for which the NDA has statutory responsibility under S3(1) of the Act.

4. Section 21(1) of the Energy Act 2004 provides that the NDA has statutory financial responsibility for decommissioning, clean up and operations on sites that have been designated to it under section 3(1) of the Act. This is also given contractual effect through the Management and Operations Contracts, which provide that the costs of operating and cleaning up the sites fall to the NDA. So, although the cost of operating and cleaning up a site in compliance with the conditions attached to the nuclear Site Licence may be large (eg. £billions for Sellafield and Dounreay), the SLC is not liable for those costs, as the company is merely acting under contract to the NDA which is statutorily responsible (Energy Act S21(1)) for providing the necessary funding. Further, section 21(4) of the Act goes on to provide explicitly that where the NDA has financial responsibility, the site licensee is not, as a matter of statutory law, to be required to continue to make financial provision for meeting costs which fall to be met by the NDA by operation of the Act. In turn, the NDA draws on state funds, subject to Ministerial approval. The NDA in recognition of this changed situation has provided an assurance on this matter to HSE.

Licensees and Site Licence Conditions

5. A primary feature of the UK's health and safety regulatory regime is that it aims to be, so far as practicable, goal-setting and non-prescriptive. The nuclear licensing system conforms to this basic principle. The Conditions attached to the licence set out certain generic expectations of any licensee, but do not go into any detail. The onus is on the licensee, as the user of the site, to make adequate arrangements to show that risks on the site are properly controlled – and that the principle that risks are reduced So Far As Is Reasonably Practicable (SFAIRP) has been applied. Similarly it has to make adequate arrangements for managing radioactive waste.

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6. The intent of the licence conditions is to set a broad framework against which the licensee is required to demonstrate that they have the systems, staff and procedures to maintain safety at the site and control the risks to workers or the public from accidents. Because they are standard for all licensed sites, some LCs will be more consonant with certain types of nuclear operations than others, but because HSE is not prescriptive it is left to the licensee to decide how to utilise the Licence Condition framework to best match the site-specific situation. The essential point is that the licence condition compliance arrangements for any site need to be viewed in their totality, rather than as distinct or independent components.

7. As the licence holder, the SLC must undertake various activities to ensure compliance with every licence condition attached to the licence. Not to do so risks breaching criminal law. Complying with those Conditions will, inevitably, carry financial costs.

Financial Implications for Site Licensees

8. HSE clearly has an interest in whether the site license company (SLC) has reasonable expectation of access to sufficient resources to enable it to comply with all the Licence Conditions, and to have confidence that those resources will continue to be available at least for the term of the NDA contract. Confidence in the likely access to adequate and secure funding is one factor which HSE takes into account in its continuous assessment of whether an SLC is, and is likely to remain, a fit and proper body to hold the nuclear site licence (bearing in mind that if not happy with the SLC's fitness, HSE has the power to revoke a licence at any time, and to impose suitable controls on the ex-licensee via Directions issued under the Nuclear Installations Act).

9. For the NDA sites, the NDA owns (in the case of BNFL, and will own in the case of UKAEA) the sites and the assets, and engages the SLCs as contractors to operate (and decommission) the sites on the NDA's behalf. The NDA has legal responsibility² for providing the funding for its contractors to operate and decommission in compliance with all current legislation³, while the Secretary of State must provide funds to NDA by grant, by virtue of section 22(1) of the Energy Act. There is no question of the costs of work undertaken by the SLC in pursuance of adherence to the site licence condition not being reimbursed (although any consequent profits will be subject to contractual terms). Effectively, therefore, there is no operational or decommissioning liability accruing to the SLC as a result of its contracted activities; all of the liability falls, quite rightly, to the NDA, as was intended by Parliament in passing the Energy Act. This is confirmed by the NDA's statement.

10. HSE is content that the arrangements for funding the NDA's licensees provide sufficient guarantee that current and future SLC/contractors will be adequately funded to allow them to comply with the requirements of the licence conditions (and other health and safety legislation). This is based on the published statement from the NDA and the legal requirements in the Energy Act.

HSE, August 2006

² Energy Act 2004 S21(1)

³ Energy Act S18 (7) [s18 (7)]