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Legislation to establish the Nuclear Decommissioning Authority: Issues briefing on the Draft Nuclear Sites and Radioactive Substances Bill¹

Last year the Government trumpeted a new initiative on radioactive waste management by proposing to establish the Nuclear Decommissioning Authority (NDA) to deal with 'legacy wastes' at BNFL and UKAEA sites. Unfortunately, the draft Bill for the NDA (the Bill), published in June, contains numerous add-ons including clauses which allow the Government to pick up the tab for British Energy's (BE's) liabilities, and it fails to include any environmental guidelines for the operation of the NDA.

- **ISSUE: BE Bailout:** The Bill if enacted, will allow the NDA to take on BE's liabilities at an estimated cost of £3.3bn over the next ten years. Under the re-structuring plan, the Government intends to underwrite BE's decommissioning and clean up costs. [Explanatory Notes para 30][Clause 3]
- Officials from the Department of Trade and Industry have admitted that the provisions in the Bill worded to cover BE's liabilities, would also allow for future private nuclear companies to be bailed out for their waste and decommissioning liabilities. Knowing that liabilities would be picked by up the Government could prove to be a major incentive for investment in building new nuclear reactors.
- **RESPONSE:** Remove Clause 3 which allows the NDA to take on BE's liabilities. No legislation should be enacted which will take on BE's liabilities until the European Commission has ruled on this issue. At present the preliminary decision from the EC states that the Government's £3.3bn rescue for BE is "unlawful". In its preliminary judgement², the Commission also said that unlawful aid would have to be repaid by BE to the Exchequer.
- **ISSUE: New Reactors:** The NDA will also have the power to operate electricity generating stations under Clause [7](1)(a). This clause is intended to give the NDA the power to operate plant such as the gas-fired combined heat and power plant at Sellafield. However, taken together with Clauses [3](1)(a) - [3](1)(d), the NDA could inadvertently be given powers not only to operate facilities for the treatment or disposal of radioactive waste, but could also see the NDA building and operating, e.g. plutonium-burning reactors.
- **RESPONSE:** Clause [7](1)(a) should explicitly exclude the operation of new nuclear stations.
- **ISSUE: Annual Reviews of operating nuclear facilities:** There is no provision in the Bill for the annual reporting on the rationale for keeping operating nuclear facilities open, as promised in the White Paper³ [para 5.27].

¹ The Draft "Nuclear Sites and Radioactive Substances Bill was published for consultation in June. The closing date for submissions is 16th September 2003. <http://www.dti.gov.uk/nuclearcleanup/pdfs/print-05publication.pdf>

² See http://www.british-energy.com/cms_files/pdf/1059417779.pdf

³ http://www.dti.gov.uk/energy/nuclear/announce_pubs/conspubs/nuclear_legacy/whitepaper.pdf

- Clause [3](1)(a) is intended to allow the NDA to operate BNFL's ageing, loss-making Magnox reactors. Clause [3](1)(d) gives the NDA the power to continue operating the two reprocessing plants at Sellafield, as well as the Sellafield MOX Plant.
- **RESPONSE:** The commitment to annual reviews and justification of the operation of Magnox reactors, Magnox reprocessing, THORP and SMP should be made explicit in the Bill.
- **ISSUE: Lack of Environmental Principles:** Clause [6](1) confers 5 duties on the NDA, 4 of which are in uncompromising terms (e.g. to promote competition). But Clause [6](1)(a) only requires the NDA to have *regard* to the need to safeguard the environment. The NDA's strategy development would be based only on 'meeting regulatory requirements', and not on a clearly defined set of environmental principles, enshrined in legislation. This lack of environmental principles could lead to inappropriate methods of nuclear waste management being promoted, decommissioning being used as an excuse for increased discharges of radioactivity to the environment, a failure to prioritise the safe containment of most hazardous wastes, and unnecessary transfers of nuclear waste from one site to another⁴.
- **RESPONSE:** All the NDA's activities should give primacy to *environmental and sustainability concerns*, rather than commercial or economic ones.
- The Bill should give the NDA an overarching objective "to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation during the decommissioning and clean up of those nuclear sites, which come under the NDA's control and oversight."⁵
- This objective should be informed by overarching principles which commit the NDA to:
 - always seek to apply international best practice in radiation protection;
 - avoid or minimise nuclear waste creation during its operations;
 - give primacy to environmental and sustainability principles e.g. concentration and containment of waste rather than dilution and dispersal during its operations.
- **ISSUE: Consultation.** There is only "no constraint" on the NDA consulting the public at large and national stakeholder groups such as NGOs or the public. General consultation with the public or environment groups is not mandated in the draft Bill, which has a limited list of stakeholders who must be consulted. [Explanatory Notes para 53].
- **RESPONSE:** Consulting NGOs and the public should be made a statutory requirement in the Bill.

⁴ See for example RWMAC (March 2003) Advice to Ministers on Management of Low Activity Solid Radioactive Wastes within the United Kingdom, (www.defra.gov.uk/rwmac/press/p030324.htm) paras 6.38, 6.13 and A3.21

⁵ For an idea of how this can work in legislation see the Australian Radiation Protection and Nuclear Safety Agency Act 1998. Although not perfect it is led by an overarching object.
http://www.austlii.edu.au/au/legis/cth/consol_act/toc-A.html