

House of Commons
Trade and Industry Committee

MANAGING THE
NUCLEAR LEGACY:
COMMENTS ON THE
GOVERNMENT WHITE
PAPER

Fifth Report of Session 2001- 02

*Volume I: Report, together with
Proceedings of the Committee*

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated in the form 'Memorandum of' or 'Appendix x' followed by the name of the organisation or individual.

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FIFTH REPORT

The Trade and Industry Committee has agreed to the following Report:

MANAGING THE NUCLEAR LEGACY: COMMENTS ON THE GOVERNMENT WHITE PAPER

Summary

We welcome the Government's proposal to establish a Liabilities Management Authority to take over responsibility for the management of the UK's civil public sector nuclear liabilities from BNFL and UKAEA. The arrangements described in the White Paper should result in the development of a focussed, long-term clean-up programme and provide transparency in the way in which the nuclear legacy is to be managed which the existing arrangements lack. It should also contribute to an improvement in public confidence in the arrangements for the storage and disposal of civil nuclear material.

If the Government's strategy is to work, it is essential that:

- a) the legislation necessary to establish the LMA is introduced without delay;**
- b) from the outset, the LMA produces an independent, authoritative assessment of the extent of the nuclear liability;**
- c) an independent assessment is made of the value of the assets to be transferred from BNFL to the LMA, including the NLIP, to ensure that the terms of the transfer of assets and liabilities represent the best value for money for the taxpayer;**
- d) whichever mechanism is adopted for funding the LMA, the Government ensures that its contribution is sufficient to make good any shortfall resulting from the commercial operations to be transferred to the LMA; and**
- e) the LMA Board and management are given the freedom and budget necessary to recruit and retain staff with the high quality skills that the Authority will need to provide the direction and supervision to manage the clean-up programme.**

I INTRODUCTION

1. Modern nuclear plant is designed and operated not only to maximise operational efficiency, but also minimise waste and to ease decommissioning once the plant reaches the end of its commercial life. From the 1940s until the end of the 1960s, things were rather different. Government and the nuclear industry concentrated on the development and application of nuclear technologies and the exploration of the potential of nuclear power. Much less attention was paid to the long-term implications of these activities, with the result that over this period the industry accumulated a significant nuclear legacy in the form of plant and equipment which required decommissioning and of nuclear waste which needed to be stored and treated safely.

2. It was not until the 1980s that the problems associated with the clean-up of nuclear wastes and facilities were fully recognised. Under the arrangements put in place since then, responsibilities for this nuclear legacy currently lies with British Nuclear Fuels plc (BNFL) and the United Kingdom Atomic Energy Authority (UKAEA). It is fair to say that the current arrangements, and the way in which BNFL and UKAEA have gone about discharging their responsibilities in the past, have attracted criticism, on the grounds of both the inefficiency and the lack of clarity of the processes applied to the problem; and this has had an impact on public confidence in successive Governments' policies on the management of the nuclear legacy .

3. In a Statement to the House on 28 November 2001,¹ the Secretary of State for Trade and Industry announced her intention to set up a Liabilities Management Authority (LMA) to be responsible for the Government's interest in the discharge of public sector civil nuclear liabilities, taking them over from BNFL and UKAEA. The Government's aim is to establish a structure to provide the strategic direction necessary for a focussed, long-term civil nuclear clean-up programme and to improve public confidence in the civil nuclear liabilities management policy. A White Paper was to be published in the spring to provide more detail of the Government's new approach. That document, 'Managing the Nuclear Legacy - a Strategy for Action' (Cm 5552), was published on 4 July.

4. We decided to hold a brief inquiry into the proposals set out in the White Paper, in order that our views could be taken into account before the necessary legislation was prepared to establish the LMA. We have taken oral evidence from the British Nuclear Industry Forum (BNIF), Greenpeace, Friends of the Earth (FoE), UKAEA, BNFL, Dr Gordon MacKerron (NERA Consulting), and the Department of Trade and Industry (DTI). We are grateful to all the witnesses for agreeing to see us at short notice.

¹ HC Debates, 28 November 2001, col 990

II. THE PROPOSED NEW ARRANGEMENTS

The role of the LMA

5. The White Paper proposes the establishment of a Nuclear Liabilities Management Authority with the remit to ensure that the civil public sector nuclear legacy is cleaned up safely, securely, cost effectively and in ways which protect the environment for the benefit of current and future generations.

6. The LMA will be a statutory non-departmental public body, accountable to the Secretary of State for Trade and Industry. It will have financial responsibility for all civil public sector nuclear liabilities. It will be responsible for the delivery of the Government's clean-up objectives; strategic planning and prioritisation; deciding how best to manage particular sites; and the letting of management contracts.

7. The LMA will not undertake clean-up activities directly, but will operate through management contracts or licences specific to each site. The site licencees will be responsible for safety and site management; the development of whole-life site clean-up plans; and the implementation of annual work programmes for each site, as agreed with the LMA. Where relevant, the licencee will also operate commercial plant and facilities such as the remaining Magnox reactors, the Sellafield Mox Plant and the Thorp reprocessing plant, the ownership of which will pass to the LMA. Site licencees will be held to account and rewarded by the LMA for performance against contractual requirements and targets.

8. The DTI envisages that, initially, LMA will let these management contracts only to BNFL and UKAEA, because these organisations have the necessary technical expertise available immediately. However, the Government intends to introduce competition into this market, to enable the importation of project management skills available in other sectors such as the oil and gas industries, thereby improving the quality of management available to the nuclear liabilities sector and improving performance overall. In developing a competitive market, the LMA will encourage sub-contracting of particular services and the development of local supply chains, to benefit local economies around each site. We hope that this process will begin sooner rather than later.

9. In addition to these specific responsibilities, the LMA will maintain a generic R&D programme to underpin site liabilities management, and be responsible for the development and dissemination of best practice. It will act as a source of professional advice to government on relevant issues and work to build public confidence in public sector liabilities management.

Implications for BNFL

10. Under the Government's proposals, the LMA will take over from BNFL responsibility for the management of the Sellafield, Drigg, Capenhurst and Thorp facilities, and the Magnox power stations, from BNFL, together with the funding for these sites. BNFL businesses not relevant to the LMA's responsibilities will be moved to a new company formed especially for the purpose. This 'New BNFL' will receive no public subsidy, but it will operate and manage the old BNFL sites under contract from the LMA, in addition to the operation of the businesses outside the LMA's remit.

11. Any operating surplus from commercial nuclear operations at Thorp, Sellafield and Magnox sites should be ploughed back into the funds available to the LMA for clean-up. Financial responsibility for nuclear wastes owned by BNFL's current commercial customers, which the DTI estimates comprises about 12% of the civil nuclear liability, will remain with those customers. The LMA will ensure that contractual commitments to existing customers will be honoured.

Thorp reprocessing plant

12. Although the LMA will own the Thorp reprocessing plant, 'New BNFL' will retain existing contracts and be responsible for dealing with Thorp's customers. Any change in existing contracts would require the approval of the Secretary of State, and any new business would be subject to Government review. 'New BNFL' will be allowed to seek further contracts for the Sellafield Mox plant in line with the economic case for the plant, with no requirement for approval by the Secretary of State. Any new contracts beyond the economic case for the plant, however, would require approval. If no new business can be attracted, the Government could give consideration to conversion of the plant to a waste processing facility once existing contracts are honoured.

Magnox

13. The remaining operational Magnox stations are all scheduled to close by 2010. The Government believes that there is currently an economic case for their continued operation until that date, on the basis that forecast income exceeds forecast avoidable costs,² but their future performance is uncertain and the LMA will keep the case for continued operation under review. Any income generated by the stations will be put towards the costs of their decommissioning.

Implications for UKAEA

14. The LMA will take on responsibility for UKAEA's liabilities, but UKAEA will retain ownership of its sites until there is a clear need for change to this arrangement. UKAEA will be encouraged to take a broader role in the nuclear industry partnership with the private sector.

The LMA's relationship with the regulators

15. The several regulators with responsibilities in this field (in England and Wales, the Environment Agency, the Nuclear Installations Inspectorate, the Health and Safety Executive, and the Office of Civil Nuclear Security) will still operate on a site-specific basis, and will therefore regulate the site licencees rather than the LMA. However, the LMA will need to establish a close working relationship with the regulators so that it can carry out its role of programme management and oversight of licencees and to enable it to promulgate best practice among contractors. It is not yet clear how this is to be achieved.

Initial reactions to the proposals

16. We encountered varying degrees of enthusiasm for the general thrust of the Government's proposals. BNIF thought that the White Paper represented the recognition by Government of the need for a long term strategic approach to the problem of liabilities management, with clear lines of responsibility and accountability and a clear commitment to long term funding.³ In BNIF's view, the Government's approach should enable better planning, both by Government and by the industry, and better co-ordination with the regulators. A commitment to funding of generic research and development should encourage innovation in the development of best practice to assist in dealing with the legacy. BNFL and UKAEA offered similar views,⁴ the latter adding that another important target for the new system would be the introduction of competition to the field and the creation of a credible local supplier base. In welcoming the commitments and arguments

² In this context, 'avoidable costs' is the equivalent of 'variable costs'

³ Q 2

⁴ Qq 55 and 97 respectively

set out in the White Paper, Dr MacKerron pointed out that the new arrangements would provide the best opportunity of analysing the full extent of the nuclear liability.⁵ He also felt that it was premature to try to assess the degree to which the Government's policy would increase public confidence, but the new arrangements would provide the opportunity to do so.⁶

17. Greenpeace and FoE were more guarded in their welcome for the White Paper. Greenpeace expressed concerns over the context in which the LMA was to be created, in that the Government had given no commitment to ending the further generation of nuclear waste materials.⁷ They were also concerned that, in their view, BNFL would be freed of their responsibilities for liabilities management to continue commercial nuclear activities such as the development of new nuclear power stations, a concern that FoE shared.⁸ Dr MacKerron and BNFL pointed out, however, that BNFL would not be able to operate commercially if it was forced to continue to bear the debt burden that represented its nuclear liability.⁹ BNIF gave the opinion that although the liability was currently managed by BNFL and UKAEA, responsibility for it had always rested with the Government.¹⁰

18. FoE welcomed the Government's intention to establish the LMA, but was not convinced that the model set out in the White Paper represented the best value for money.¹¹ It was also concerned that the LMA would be handicapped by the lack of a coherent nuclear waste management policy, the development of which was the responsibility of the Department for the Environment, Food and Rural Affairs (DEFRA).¹² Both FoE and Greenpeace were concerned about the accuracy of estimates of the liability itself.¹³ We return to this issue below.

19. We asked witnesses for their views on the Government's model for liabilities management by the LMA through site licencees operating through management contracts. The industry witnesses were supportive of the proposed arrangements, but, as BNIF pointed out, the success of the system will be crucially dependent on how the contracts are devised and managed and how their operations are supervised by the regulators.¹⁴ Dr MacKerron thought that, despite severe problems with such arrangements in other industries, the model was a good one, provided it was made to work effectively. For example, similar arrangements had been operated satisfactorily at the Atomic Weapons Establishment for years.¹⁵

20. We welcome the Government's intention to put in place a robust, transparent system for the management of the public sector civil nuclear liability and its plans to transfer responsibility for this task from BNFL and UKAEA to an independent Liabilities Management Authority. We believe that such an arrangement should bring clarity of purpose and responsibility to the management of the nuclear clean-up programme and provide certainty to planning and funding of the programme and to the support available for generic research and development for the nuclear sector. It is essential that the legislation necessary to create the Authority be introduced without delay, so that strategic, long term planning for dealing with the problems associated with the civil nuclear legacy can be put in place as soon as possible.

⁵ Q 149

⁶ Q 150

⁷ Q 53

⁸ Qq 54 and 90

⁹ Qq 165 and 261

¹⁰ Q 8

¹¹ Q 84

¹² Q 90

¹³ Qq 63 and 88

¹⁴ Q 29

¹⁵ Q 164

21. The nature and management of the LMA's operating contracts and its supervision of its contractors and sub-contractors will be crucial to its success, as will the development of a successful working relationship with the regulators. If successful, both factors could be instrumental in the promulgation of best practice throughout the industry.

22. While it is inevitable that operating licences will be awarded initially to BNFL and UKAEA, the creation of a competitive market for site management services will be an important element of the LMA's task to improve operating practices and to secure best value for money for the taxpayer.

III. THE SCALE OF THE PROBLEM

23. The lack of focus on the potential problem of waste management and decommissioning to which we have already referred¹⁶ often resulted in incomplete operational records and waste inventories. This has inevitably hampered past attempts to assess the scale of the clean-up problem and size of the nuclear liability. The well-reported shortcomings in BNFL's accounts and reporting procedures in the past (which the current Board is working to rectify), have made it difficult to arrive at a soundly-based assessment of BNFL's liabilities. As FoE and Dr MacKerron told us, estimates of reprocessing and clear-up costs have continually been revised upwards.¹⁷

24. The Government's own estimate for the total cost of dealing with the nuclear legacy stood at more than £42 billion (on an undiscounted basis) at the time of the Secretary of State's Statement. This was derived from BNFL's 2001 Accounts,¹⁸ which estimated the company's liability to be £35 billion, and from UKAEA's estimated liabilities of over £7 billion. By the time the White Paper was published this estimate had risen to £47.9 billion (again on an undiscounted basis), of which BNFL's share was said to be £40.5 billion and UKAEA's £7.4 billion. We appreciate that such estimates are subject to revision as they may be affected by new information, changes in regulatory requirements and other factors; but we were surprised that it had risen by so much in such a short time. The DTI explained that the increase resulted from a BNFL review of its historic liabilities.¹⁹ BNFL warned that its estimates could be subject to further revision if regulations on the disposal of waste changed.²⁰ Hereafter, in order to make comparisons easier and because we believe that discounted estimates are more valid, any figures quoted in this Report are discounted at the rates reflected in the respective accounts from UKAEA (6%) and BNFL (2.5%).

25. One of the first tasks of the new LMA must be to provide an independent, authoritative assessment of the civil nuclear liability and keep it under active review to take account of changes in regulatory requirements, better analysis of the waste stockpile, and other relevant factors.

¹⁶ Paragraph 2

¹⁷ Qq 88 and 157

¹⁸ BNFL Annual Report 2001

¹⁹ Q 193

²⁰ Q 263

IV THE STRUCTURE OF THE LMA

26. The LMA will be established by statute as a Non-Departmental Public Body (NDPB), reporting to the Secretary of State. Arrangements will be devised to enable the involvement of Scottish Ministers. As with other NDPBs, the LMA's annual accounts will be subject to the scrutiny and audit of the National Audit Office. The Authority would have a corporate structure, with a Board appointed by Ministers in line with the rules set down by the Office of the Commissioner for Public Appointments, and with a Chief Executive responsible to Parliament for LMA expenditure and the management of its resources.

27. The DTI estimates that the LMA will employ up to 200 staff and that annual running costs will amount to £25-30 million. The Department recognises that the LMA will need a nuclear, technical engineering and operational management sufficient to get to grips with the portfolio and to ensure that the work programmes and funds are focussed on its objectives. We expect that the nuclear industry itself will prove to be the principal source of such skills. BNFL pointed out that it already has staff with such skills, seconded to the Liabilities Management Unit within the DTI which will act as the forerunner to the LMA.²¹ We agree, however, with the Government's view that the main requirement is for first class commercial and management skills and that it is likely that these will be drawn from other industries across the private sector.

28. We found some uncertainty among our witnesses over the prospects of attracting people with the quality of skills needed for the task. BNIF thought that the necessary nuclear and technical skills base was available now, but were less certain about the supply of suitably skilled personnel for the future.²² BNFL felt that it was difficult to estimate the resources required at this early stage. The key issue would be the recruitment and retention of a skilled, trained workforce, and in BNFL's view, the LMA might have problems in this area.²³ Dr MacKerron pointed out that the LMA would need to have greater freedom than the Public Sector to set pay and conditions which would ensure the development of the right skills base.²⁴ Greenpeace expressed concern over not only the skills base but also the culture in which the LMA would operate,²⁵ and FoE drew attention to the recent RWMAC/NuSAC report²⁶ which in their view, indicated a deficiency in management skills available in the nuclear industry.²⁷

29. It is vital that the LMA is able to attract people with the highest commercial, management and technical skills to enable it to function properly and to encourage public confidence in its operations. The management of the Authority must be given the freedom and the budget necessary to recruit and maintain such staff.

²¹ Q 267

²² Q 25

²³ Qq 267 and 268

²⁴ Q 162

²⁵ Qq 68 and 69

²⁶ *Current Arrangements and Requirements for the Conditioning, Packaging and Storage of Intermediate Level Radioactive Waste*. Report of a Joint Study by the Radioactive Waste Management Advisory Committee and the Nuclear Safety Advisory Committee. DEFRA Publications, June 2002.

²⁷ Qq 84-87

V. FUNDING FOR THE LMA

30. Financial responsibility for the nuclear liabilities at BNFL sites is split between its commercial customers (about 12% of the total), the UKAEA and Ministry of Defence (about 20%) and the company itself. From 2008, the Government will contribute about £500 million per year to cover expenditure on Magnox Liabilities (the so-called Magnox Undertaking). BNFL currently meets its share of the clean-up costs from its own funds, principally through a portfolio of investments known as the Nuclear Liabilities Investment Portfolio (NLIP), which is disclosed on the company's balance sheet as a fixed asset. According to the company's latest figures the NLIP had a total value of £4.023 billion at 31 March 2002.²⁸

31. UKAEA's clean-up costs and the Government's share of BNFL's are funded by grants and grant-in-aid, determined every three years in accordance with the Government's spending cycle. The UKAEA's budget for 2002/2003 is £276 million.²⁹

32. The Government estimates that liabilities management in the future will require more than £1 billion a year. The White Paper invites comments on two options for providing that level of funding:

A Segregated Fund, set up in statute and operated under the control of either the LMA itself or a separate body acting as the trustee to the Fund. It would be established initially by transfer of the NLIP and financed thereafter by income from the NLIP, annual payments by Government and any operating surpluses made from the LMA's commercial assets. The annual payments by Government would be subject to Parliamentary approval through the normal supply process. It would be a rolling fund, kept with a target level appropriate for the support of several years expenditure. It would provide for budgeting to allow both long-term planning and shorter term spend-to-save. The Fund would be subject to NAO auditing and annual reporting procedures.

A Segregated Account: established by legislation, managed by the Secretary of State, and backed by the Consolidated Fund. NLIP, annual Government payments and income from commercial assets would be credited to an on-vote account and paid into the Consolidated Fund. It would be operated as a rolling account, with credits maintained to ensure the account provides for several years' expenditure. The account would be subject to NAO audit and annual reports.

33. Most witnesses welcomed the indication from the Government of a commitment to provide certainty of funding several years ahead of when it would be needed. The BNIF and FoE expressed a preference for a Segregated Fund,³⁰ the BNIF on the basis that a Fund would provide more transparency and distance the funding arrangements from Treasury influence.³¹ Dr MacKerron also felt that a Fund could engender more transparency and public confidence in the funding arrangements.³²

34. We found divergent views over the contribution that the commercial assets which the LMA would take over would make to the funding available to the Authority for clean up. Industry witnesses were confident that these assets would generate an operating surplus, but could not provide us with any view on how big that surplus might be.³³ Greenpeace was firmly of the view that the remaining Magnox reactors are loss-making and should be

²⁸ BNFL Preliminary Financial Statement, 16 July 2002.

²⁹ *Managing the Nuclear Legacy - A Strategy for Action*, Cm5552, paragraph 2.10.

³⁰ Qq 36 and 94; although FoE also said that they not yet had a chance to examine in detail the proposal for a Segregated Account.

³¹ Q 38

³² Q 170

³³ Qq 32 and 278

shut down immediately on environmental and economic grounds, and that all other operations which generate more nuclear waste should cease.³⁴ BNFL contended that although the Magnox stations were loss-making, these losses were smaller than the cost of immediate closure. There was therefore an economic case for continued operation and shut-down according to the timetable that had been announced.³⁵

35. In the Secretary of State's Statement to the House on 28 November 2001, she disclosed that BNFL would need to make additional provision of £1.9 billion in order to meet its share of future liabilities. In BNFL's 2001 accounts (note 26b page 71) BNFL Group expressed the funding position, in relation to funds available to meet its long-term nuclear funding (i.e., not including those recoverable under commercial agreements) as reporting a cash requirement on a current discounted basis as £9,756 million. Set against this, the BNFL accounts said that the NLIP had a market value of £4,007 million and the Secretary of State's undertaking (the Magnox Undertaking) was worth £4,531 million. This meant a level of funding of 88 per cent of liabilities.

36. In his evidence to us, Norman Askew said that when the BNFL 2002 accounts were published, this level of funding will have fallen below 80 per cent.³⁶ **Contrary to our expectations and BNFL's evidence to us, the 2002 BNFL accounts were not available to the Committee for its deliberation prior to the Recess. We may therefore wish if necessary to take further evidence from BNFL and the Department of Trade and Industry in relation to the transfer agreement between the Department and BNFL.**

37. Pending such further information and evidence, however, the Committee has had available to it the information published by BNFL on 16 July and a further letter from the Department of 16 July 2002.³⁷ The former states that BNFL's share of Nuclear Liabilities on a discounted basis had risen to £12.8 billion. This appears to relate to a figure of £10.4 billion as expressed in note 26a of BNFL's 2001 accounts. The increase of £2.4 billion in the BNFL share of nuclear liabilities is substantially in excess of the £1.9 billion referred to on 28 November 2001,³⁸ which we were told was the full extent of the increase in BNFL's increased liability.³⁹ The latter figure appeared to be confirmed by the BNFL news release's reference to the main exceptional item being a "revision of historic waste management policy" of £1,935 million. We do not, in the absence of the BNFL accounts, have access to an analysis, which will enable direct comparison to be made between note 26b in BNFL's 2001 accounts and that in the 2002 accounts.

38. Such a comparison would allow us to see more accurately the composition of liabilities and assets which may be transferred to the LMA from BNFL. This question is an important one, which bears directly upon the issue of the funding arrangements for the LMA and, in particular, whether a segregated fund or a segregated account should be established. The Government has invited views on this issue by 18 October 2002. The Committee may have no opportunity, while the House is sitting, to receive evidence and make a report based on BNFL's 2002 accounts. Yet to the extent that the liabilities could be transferred with a substantial fund, representing not only the NLIP but other BNFL assets, the merits of a fund relative to an account become progressively greater.

39. The information available to the Committee suggests that the 'level of funding' available to BNFL to meet its nuclear liabilities has fallen to 70 per cent. The

³⁴ Q 53

³⁵ Q 273

³⁶ Q 277

³⁷ DTI memorandum, 16 July 2002

³⁸ HC Debates, 28 November 2001, col 993

³⁹ Q 222

Department's note sets out some information relating to the transfer of liabilities and assets to the LMA. This suggests the following:

- (i) that the increase in BNFL nuclear liabilities between 2000/2001 and 2001/2002 is £4.2 billion;
- (ii) that a total of £23 billion liabilities is proposed to be transferred to the LMA; this includes £3 billion of UKAEA liabilities;
- (iii) that the assets to be transferred, discounted on the basis of the relevant accounts, would have a net present value of £4.3 billion less than the present value of the liabilities concerned; and
- (iv) the assets to be transferred include the amounts recoverable from commercial customers (which include MOD and to a lesser extent, UKAEA), but the latter appear to be broadly similar in amount to the figures appearing in the 2000/2001 accounts. The increase in liabilities costs attributable to those commercial agreements does not appear to have triggered any corresponding change in amounts recoverable.

40. We believe there remain several substantive questions to which the Government should give answers prior to the conclusion of the consultation on the White Paper, as follows:

- (i) **If the BNFL balance sheet shows a surplus of liabilities over assets of £1.843 billion, why is it necessary to transfer £4.3 billion more in liabilities than assets to the LMA? This would appear to leave BNFL with a balance sheet surplus of £2.5 billion.**
- (ii) **Why are the assets (principally fixed assets in the form of land and plant and machinery) forming the spent fuel and engineering business group not also to be transferred to the LMA since, as the White Paper implies (para 5.5), the assets which are "integral to, or may be required for, the on-going management of the liabilities it is taking on" are to be transferred?**
- (iii) **Will BNFL be able to transfer the benefit of commercial agreements to recover the costs of clean-up of nuclear liabilities to LMA?**
- (iv) **Has the cost of clean-up attributable to the MoD increased and, if so, has the MoD commitment to pay the costs of this also risen?**
- (v) **How much have the costs of the clean-up attributable to commercial contracts risen between 2000/01 and 2001/02 and do the agreements with customers permit those extra costs to be recovered; if not, why not?**

41. We have not been able to see the annual accounts of BNFL for 2001/02 before the House rises for the Summer Recess in spite of assurances given by Norman Askew that they would be published on 16 July. Given the tight timescale of the White Paper consultation process we have had to publish this Report without the answers to questions in paragraph 39.

42. We support strongly the creation of a system which would offer certainty over funding for nuclear clear-up, assist in long-term planning, and demonstrate the Government's commitment to the clean-up programme. We agree with those witnesses who suggested that a Segregated Fund would offer greater transparency

to the funding process and might boost public confidence in the independence of the liabilities management system.

43. Whichever funding mechanism is adopted, the Government's annual contribution will be vital to the successful operation of the clean-up programme. It is essential that the Government ensure its contribution is sufficient to enable the LMA's objectives to be met, and to make good any shortfall created in the event that the LMA's commercial operations fail to deliver an operating surplus.

44. We welcome the flexibility in the proposed arrangements for operating the commercial assets, which should enable the Government to stop operations if they are making a loss, once existing contracts are honoured, or extend operations if they are making a profit and can continue to operate safely.

VI. OTHER ISSUES

Security: the future of the UKAEA Constabulary (AEAC)

45. Under the Atomic Energy Authority Act 1954, the AEAC has a statutory remit to protect nuclear material on specified sites and works within security parameters set by the Director of Civil Nuclear Security. It forms part of the UKAEA and is funded by the nuclear site licencees whose sites it polices, BNFL and UKAEA. It is overseen by a non-statutory police authority which has no legal standing and is only indirectly accountable to the Secretary of State.

46. The White Paper proposes that the force is separated from UKAEA to create a stand alone police force which would be independent of the nuclear industry. It would move under the control of a statutory Police Authority, reporting to the Secretary of State. The Government's intention is to create a modern framework of public accountability and to introduce greater openness and transparency about the force's operational efficiency and effectiveness. The force's jurisdiction will be amended slightly to reflect its revised status and responsibilities.

47. The Government's proposal to improve governance for the UKAEA Constabulary and to provide greater openness and transparency of its operations is to be welcomed. It is appropriate that it operates within the statutory framework of a modern police force.

The future of Nirex

48. Nirex provides radioactive waste advisory services to the nuclear industry. It is owned by BNFL, UKAEA and British Energy. Among other activities, it maintains an R&D programme to develop long term waste management concepts, advises its shareholders on packaging and transport of nuclear wastes, and maintains the UK national waste inventory in partnership with DEFRA. The shareholders provide most of its finance, currently through loan funding, but in future Nirex will deliver services to its shareholders on a contractual basis. Nirex is a source of unrivalled expertise in geological disposal of nuclear waste in the UK. It is important that this expertise is not lost.

49. The need for the continued existence of Nirex was one of the issues in the consultation paper 'Managing Radioactive Waste Safely', which was published in September 2001 by the Government and the devolved administrations. Although the consultation period ended on 12 March, DEFRA has yet to publish its conclusions. The future of Nirex will also be affected by the creation of the LMA, because once the Authority is responsible for the civil nuclear liability it will, under the existing structural arrangements, be responsible for most of the funding for Nirex.

50. Several of the witnesses to our inquiry accepted the argument for greater separation between Nirex and the nuclear industry and some favoured independence.⁴⁰ It seems to us that this would be achieved in large part once the LMA takes over the civil public sector nuclear liability and becomes by far the biggest customer for Nirex services. The development of a strategy for the long term management of radioactive waste will be central to the future work of the LMA and Nirex, and rapid progress on this is very important. The Government has promised that views will be invited on its proposals for such a strategy "in due course". In this case, "in due course" must mean "soon".

⁴⁰ Qq 50, 51, 79, 182 and 286

List of Conclusions and Recommendations

- (a) **We welcome the Government's intention to put in place a robust, transparent system for the management of the public sector civil nuclear liability and its plans to transfer responsibility for this task from BNFL and UKAEA to an independent Liabilities Management Authority. We believe that such an arrangement should bring clarity of purpose and responsibility to the management of the nuclear clean-up programme and provide certainty to planning and funding of the programme and to the support available for generic research and development for the nuclear sector. It is essential that the legislation necessary to create the Authority be introduced without delay, so that strategic, long term planning for dealing with the problems associated with the civil nuclear legacy can be put in place as soon as possible. (paragraph 20)**
- (b) **The nature and management of the LMA's operating contracts and its supervision of its contractors and sub-contractors will be crucial to its success, as will the development of a successful working relationship with the regulators. If successful, both factors could be instrumental in the promulgation of best practice throughout the industry. (paragraph 21)**
- (c) **While it is inevitable that operating licences will be awarded initially to BNFL and UKAEA, the creation of a competitive market for site management services will be an important element of the LMA's task to improve operating practices and to secure best value for money for the taxpayer. (paragraph 22).**
- (d) **One of the first tasks of the new LMA must be to provide an independent, authoritative assessment of the civil nuclear liability and keep it under active review to take account of changes in regulatory requirements, better analysis of the waste stockpile, and other relevant factors. (paragraph 25).**
- (e) **It is vital that the LMA is able to attract people with the highest commercial, management and technical skills to enable it to function properly and to encourage public confidence in its operations. The management of the Authority must be given the freedom and the budget necessary to recruit and maintain such staff. (paragraph 29).**
- (f) **Contrary to our expectations and BNFL's evidence to us, the 2002 BNFL accounts were not available to the Committee for its deliberation prior to the Recess. We may therefore wish if necessary to take further evidence from BNFL and the Department of Trade and Industry in relation to the transfer agreement between the Department and BNFL (paragraph 36).**
- (g) **We believe there remain several substantive questions to which the Government should give answers prior to the conclusion of the consultation on the White Paper, as follows:**
 - (i) **If the BNFL balance sheet shows a surplus of liabilities over assets of £1.843 billion, why is it necessary to transfer £4.3 billion more in liabilities than assets to the LMA? This would appear to leave BNFL with a balance sheet surplus of £2.5 billion.**
 - (ii) **Why are the assets (principally fixed assets in the form of land and plant and machinery) forming the spent fuel and engineering business group not**

also to be transferred to the LMA since, as the White Paper implies (para 5.5), the assets which are “integral to, or may be required for, the on-going management of the liabilities it is taking on” are to be transferred?

- (iii) Will BNFL be able to transfer the benefit of commercial agreements to recover the costs of clean-up of nuclear liabilities to LMA?
- (iv) Has the cost of clean-up attributable to the MoD increased and, if so, has the MoD commitment to pay the costs of this also risen?
- (v) How much have the costs of the clean-up attributable to commercial contracts risen between 2000/01 and 2001/02 and do the agreements with customers permit those extra costs to be recovered; if not, why not? (paragraph 40).
- (h) We have not been able to see the annual accounts of BNFL for 2001/02 before the House rises for the Summer Recess in spite of assurances given by Norman Askew that they would be published on 16 July. Given the tight timescale of the White Paper consultation process we have had to publish this Report without the answers to questions in paragraph 39 (paragraph 41).
- (i) We support strongly the creation of a system which would offer certainty over funding for nuclear clear-up, assist in long-term planning, and demonstrate the Government’s commitment to the clean-up programme. We agree with those witnesses who suggested that a Segregated Fund would offer greater transparency to the funding process and might boost public confidence in the independence of the liabilities management system. (paragraph 42).
- (j) Whichever funding mechanism is adopted, the Government’s annual contribution will be vital to the successful operation of the clean-up programme. It is essential that the Government ensure its contribution is sufficient to enable the LMA’s objectives to be met, and to make good any shortfall created in the event that the LMA’s commercial operations fail to deliver an operating surplus. (paragraph 43).
- (k) We welcome the flexibility in the proposed arrangements for operating the commercial assets, which should enable the Government to stop operations if they are making a loss, once existing contracts are honoured, or extend operations if they are making a profit and can continue to operate safely. (paragraph 44).
- (l) The Government’s proposal to improve governance for the UKAEA Constabulary and to provide greater openness and transparency of its operations is to be welcomed. It is appropriate that it operates within the statutory framework of a modern police force. (paragraph 47).
- (m) Several of the witnesses to our inquiry accepted the argument for greater separation between Nirex and the nuclear industry and some favoured independence. It seems to us that this would be achieved in large part once the LMA takes over the civil public sector nuclear liability and becomes by far the biggest customer for Nirex services. The development of a strategy for the long term management of radioactive waste will be central to the future work of the LMA and Nirex, and rapid progress on this is very important. The Government has promised that views will be invited on its proposals for such a strategy “in due course”. In this case, “in due course” must mean “soon”. (Paragraph 50).

MINUTES OF PROCEEDINGS RELATING TO THE REPORT

TUESDAY 23 JULY 2002

Members present:

Mr Martin O'Neill, in the Chair

Mr Roger Berry

Mr Richard Burden

Mr Jonathan Djanogly

Dr Ashok Kumar

Mr Andrew Lansley

Mrs Jackie Lawrence

Linda Perham

Sir Robert Smith

The Committee deliberated.

Draft Report (Managing the Nuclear Legacy: Comments on the Government White Paper), proposed by the Chairman, brought up and read.

Ordered, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 50 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Wednesday 16th October at ten o'clock.]

LIST OF WITNESSES

Tuesday 9th July 2002

[Morning sitting]

BRITISH NUCLEAR INDUSTRY FORUM

Mr Adrian Ham, Dr John Mills and Mr Les Ingham

GREENPEACE

Dr Doug Parr and Mr Peter Roche

FRIENDS OF THE EARTH

Mr Roger Higman and Dr Rachel Western

Tuesday 9th July 2002

[Afternoon sitting]

UNITED KINGDOM ATOMIC ENERGY AUTHORITY

Mr Dennis Tunnicliffe, Dr John McKeown and Mr Steven White

PROFESSOR GORDON MACKERRON**DEPARTMENT OF TRADE AND INDUSTRY**

Ms Anne Lambert and Mr Dennis Walker

BRITISH NUCLEAR FUELS LIMITED

Mr Norman Askew, Mr Ted Williams and Mr David Bonser

**LIST OF MEMORANDA INCLUDED IN THE
MINUTES OF EVIDENCE**

Memoranda submitted by:

Greenpeace

LIST OF APPENDICES TO THE MINUTES OF EVIDENCE

Memoranda submitted by:

Department of Trade and Industry

Friends of the Earth

Supplementary Memorandum by Friends of the Earth

Professor Gordon MacKerron

UKAEA

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