

House of Commons
Trade and Industry Committee

**MANAGING THE
NUCLEAR LEGACY:
RESPONSES TO THE
COMMITTEE'S FIFTH
REPORT OF SESSION
2001-02**

First Report of Session 2002–03

*Report, together with
Proceedings of the Committee
and Appendices*

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TRADE AND INDUSTRY COMMITTEE

The Trade and Industry Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department of Trade and Industry and its associated public bodies.

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Richard Burden MP (*Labour, Birmingham Northfield*)
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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 by 'Appendix x'.

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FIRST REPORT

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

MANAGING THE NUCLEAR LEGACY: RESPONSES TO THE COMMITTEE'S FIFTH REPORT OF SESSION 2001-02

I INTRODUCTION

1. In our Fifth Report of the last Session,¹ we welcomed the Government's proposal to establish a Liabilities Management Authority (LMA) to take over responsibility for the management of the UK's civil public sector nuclear liabilities from BNFL and UKAEA. We concluded that the arrangements set out in the White Paper should result in the development of a focussed, long-term clean-up programme and provide the 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.

2. We made clear that, if the Government's strategy is to work, it is essential that the draft legislation necessary to establish the LMA is prepared without delay and introduced at the earliest opportunity. The first task of the LMA must be to produce an independent, authoritative assessment of the extent of the civil nuclear liability. An independent assessment of the value of the assets to be transferred from BNFL to the LMA will be essential to ensure that the terms of the transfer of assets and liabilities represent the best value for money for the taxpayer. Furthermore, the Government must ensure that there is sufficient funding for the Authority to be able to carry out its job effectively. We recommended that a segregated fund to finance the clean-up programme would provide the best assurance that there will be enough money available to allow sensible planning of what will be long-term clean-up operations.

3. Our attempts to address the issue of the transfer of assets from BNFL to the LMA were hampered by the absence of BNFL's accounts for 2002, which were not published until after the House rose for the Summer Recess. In the absence of this information, we identified a number of issues which would need to be clarified in relation to the extent of the assets and liabilities to be transferred to the LMA from BNFL; the transfer of the benefit of commercial agreements to the LMA to contribute to the costs of clean-up of nuclear liabilities; the attribution of clean-up liabilities to and among BNFL's customers; and the recovery of the costs associated with these liabilities.²

4. Since the publication of our Report, BNFL has published its accounts for 2002 and the company has provided answers to our specific questions.³ The Government has submitted its formal response to our Report and that response also addressed our questions.⁴ Taken together, the BNFL and Government responses broadly satisfy our needs in terms of information at this stage. We do, however, have some further comments and have identified certain issues to which we will return at an appropriate time.

¹ Trade and Industry Committee, Fifth Report of Session 2001-02, *Managing the Nuclear Legacy: Comments on the Government White Paper*, HC 1074

² HC (2001-02) 1074, para 40

³ The company's reply is published as Appendix 1 to this Report.

⁴ Published as Appendix 2 to this Report.

II COMMENTS ON THE GOVERNMENT AND BNFL RESPONSES

Transfer of assets to the LMA

5. On the basis of the information available to us at the time, we questioned why the Government proposed to transfer £4.3 billion more in liabilities than assets to the LMA from BNFL, when the BNFL balance sheet showed a surplus of liabilities over assets of only £1.8 billion.⁵ **Both the Government and BNFL have explained that £4.3 billion is the difference between the discounted clean-up liabilities and assets hypothecated to funding clean-up activities.⁶ This will require additional provision from the Exchequer broadly similar in scale to the Magnox Undertaking. While the impact on other public expenditure cannot yet be identified, this should be clearly identified in future Spending Reviews.**

6. While the exact terms of the transfer of liabilities and assets from BNFL to the LMA has still to be negotiated, the Government's response suggests that assets with a positive net book value of £2.5 billion will be transferred to LMA along with liabilities of £4.3 billion.⁷ Taking BNFL's closing deficit of £1.8 billion (as at 31 March 2002) into account, the "New BNFL" would seem to start off without a surplus or deficit on its residual balance sheet, but with limited working capital. **We will expect to see further details of the final balance sheet transfer between BNFL and the LMA in due course.**

BNFL liabilities

7. In our Report, we noted that the DTI's evidence suggested that BNFL nuclear liabilities increased by £4.2 billion between 2000/2001 and 2001/2002.⁸ The BNFL response identifies this as the increase in discounted future lifetime cash expenditure from £15.8 billion to £20 billion, of which £1.8 billion is considered recoverable from customers. **The increase in BNFL-funded liabilities is not, therefore, limited to the £1.9 billion increase attributable to the changes in the Government's historic waste management strategy, as announced by the Secretary of State for Trade and Industry on 28 November 2001,⁹ and confirmed subsequently by DTI officials,¹⁰ but amounts to £2.4 billion.**

Transfer of contracts to the LMA

8. We have been assured that the assets of BNFL's spent fuel and engineering business group will be transferred to the LMA,¹¹ and that the benefit of relevant commercial contracts will be passed to the Authority, although BNFL points out that the detailed arrangements for certain contracts have still to be negotiated. We understand that some of these contracts might have built-in performance-related penalties. It is essential that these penalties are clearly identified during the negotiations on the transfer terms between the Department of Trade and Industry and BNFL. **Once established, the LMA should**

⁵ HC (2001-02) 1074, para 40

⁶ Appendix 1, pp.11-12 and Appendix 2, p.18

⁷ Appendix 2, p.18

⁸ HC (2001-02) 1074, para 37

⁹ HC Deb, 28 November 2001, col 993

¹⁰ HC (2001-02) 1074-II, Q222

¹¹ Appendix 1, p.12 and Appendix 2, pp.18-19

ensure that its service contracts with BNFL or other contractors for the operation of LMA facilities enable the Authority to lay off the risk associated with contingent liabilities such as performance related penalties to those contractors.

Historic liabilities attributable to the Ministry of Defence

9. The Government White Paper explained that financial responsibility for the nuclear liabilities at BNFL sites was split between BNFL itself, the United Kingdom Atomic Energy Authority (UKAEA) and the Ministry of Defence (MoD).¹² In the light of BNFL's revised estimates of the costs of clean-up at its sites, we asked in our Report if the cost of clean-up attributable to the MoD had also increased, and if the MoD commitment to pay the costs of this had also risen.¹³ The BNFL and Government responses indicate that the liabilities attributable to the MoD have increased by £1.2 billion to £6.7 billion (undiscounted).¹⁴ Neither response indicates that the MoD has accepted this estimate, or when it is expected to do so. **We have been told that the UKAEA has examined the justification for this increase, on behalf of the MoD. When available, the results of UKAEA's examination of the MoD nuclear liability managed by BNFL should be made public and if necessary reported in the MOD's accounts, and so made subject to scrutiny by the Defence Committee and the National Audit Office. We should be informed if the MoD, or, indeed, any other customer, disputes the liability attributed to them by BNFL, as a refusal to accept increased liability could have a serious effect on the ability of the LMA to discharge its responsibilities and on the level of funding which it will require.**

¹² DTI, *Managing the Nuclear Legacy - A Strategy for Action*, Cm 5552, July 2002

¹³ HC (2001-02) 1074, para 40

¹⁴ Appendix 1, p.11 and Appendix 2, p.19

III CONCLUSION

10. The establishment of the Nuclear Liabilities Management Authority will represent a significant step towards the development of a properly-focussed long-term programme to deal with the civil nuclear legacy. If the LMA is to be fully effective, it is essential that the assets and liabilities to be transferred from BNFL are correctly identified. We will monitor the development of legislation to establish the LMA and the negotiations on the terms of the transfer of assets and liabilities from BNFL to the Authority. We intend to return to this issue, and the others identified above, in due course.

MINUTES OF PROCEEDINGS RELATING TO THE REPORT**TUESDAY 19 NOVEMBER 2002**

Members present:

Mr Martin O'Neill, in the Chair

Mr Roger Berry	Mr Andrew Lansley
Mr Richard Burden	Mrs Linda Perham
Mr Jonathon Djanogly	Sir Robert Smith
Dr Ashok Kumar	

Draft Report (Managing the Nuclear Legacy: Responses to the Committee's Fifth Report of Session 2001-02), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 10 read and agreed to.

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

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

Several papers were ordered to be appended to the Report.

[Adjourned till Tuesday 26th November at half-past nine o'clock.]

APPENDIX 1

BNFL's response to the questions raised in the Report from the Select Committee on Trade and Industry: "Managing the Nuclear Legacy: Comments on the Government White Paper"

Please note that paragraph references refer to the Report published on the 24 July 2002. Unless otherwise stated, all references to BNFL's accounts should be taken to mean the Annual Report and Accounts 2002.

Points of clarification

Para 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."

We are unclear as to the derivation of the 70%. BNFL's 2002 accounts show a level of funding of 75% (page 59), calculated as the market value of the Nuclear Liabilities Investment Portfolio (NLIP) plus the Secretary of State's undertaking (total £8,955m) against the future discounted cash expenditure in respect of existing liabilities (£11,999m). This latter figure is derived by taking the discounted Group-funded balance sheet provision (£12,973m) less any remaining depreciation within provisions which is a non-cash item (£974m).

The Committee's figure of 70% may be based on the figure of £12,973 million (i.e. without taking account of future depreciation) which would give a funding level of 69%. However, this derivation is not correct since depreciation does not represent a future cash outlay and, therefore, should be excluded.

Alternatively it may be derived by taking the £8,955 million funding against the total future lifetime cash expenditure that is Group funded (£12,783 million discounted). This derives a funding level of 70%. However this latter figure of £12,783 million is the future discounted lifetime cash expenditure for all Group funded liabilities, based on the current reference case. It therefore includes, for example, the cost of discharging liabilities associated with fuel not yet used in Magnox reactors. Standard accounting practice dictates that the company should not yet provide for such items as this as the fuel is not yet irradiated. (However we know that we are planning to use this fuel in future and so include it in our liability cash flow number so as to be open about the potential total future liabilities).

The level of funding has reduced, from 88% in 2001. However, it is worth noting that this is due solely to an increase in the liabilities, not a decrease in the funds (which were valued at £8,955 million in 2002 compared to £8,538 million in 2001).

“The 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;”*

The increase of £4.2 billion represents the increase in the total discounted future lifetime cash expenditure from £15.8 billion to £20 billion. It therefore includes amounts recoverable from customers — the BNFL funded liabilities have increased from £10.4 billion to £12.8 billion, some £2.4 billion.

The majority of the £2.4 billion increase (i.e. £1.9 billion) is accounted for by the change in strategy for dealing with historic wastes at Sellafield.

- (ii) *“that a total of £23 billion liabilities is proposed to be transferred to the LMA; this includes £3 billion of UKAEA liabilities;”*

The £23 billion is the discounted amount that is being transferred to the LMA from both BNFL (£20 billion) and UKAEA (£3 billion).

- (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;”*

Further explanation of this is provided in response to Para 40 below.

- (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.”*

The customer-funded share of total future discounted liabilities has increased by £1.8 billion from £5.4 billion to £7.2 billion.

Note 15 to the accounts identifies that this **has** triggered an increase in amounts recoverable from customers, based on existing liabilities, of £1.3 billion from £5.4 billion to £6.7 billion.

Responses to specific questions raised in report

Para 40

- “(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.”*

The figure of £1.8 billion represents the net asset deficit facing the BNFL Group at 31 March 2002. The figure of £4.3 billion has been derived as shown below by extracting the key components that relate to liabilities and their associated assets.

	£Bn
Total Liabilities (total discounted future cash expenditure)	(20)
Assets to fund liabilities	
Magnox undertaking	4.8
NLIP (market value)	4.2
BNFL Customers	6.7
Total assets	15.7
Net Surplus	(4.3)

However there are several major components **not included** in this table, not least of which are substantial tangible fixed assets. The division of these assets will be determined as part of the process of developing proposals for restructuring. As DTI explained in their evidence to the Committee, this has to “balance between ensuring that New BNFL as a business has enough operating cash to operate, but also making sure that we [the LMA] have as many of the assets as possible to fund the liabilities” (see examination of witnesses, question 240). Further, a strong New BNFL is important to deliver shareholder value for the Government.

“(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?”

These assets are being 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?”

The intention is that the benefit of relevant commercial contracts will be passed to the LMA. The detail of the arrangements for dealing with certain commercial contracts, notably relating to Thorp and SMP, has still to be determined.

“(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?”

Yes. The cost of clean up attributable to MoD on an ongoing basis has increased from £5.5 billion to £6.7 billion (undiscounted). This is in line with the increase in the total customer share of liabilities of approximately 22% (undiscounted) as can be seen in the response to Para 39(i) above.

The increases have been communicated to the MoD and included in the Forward Cost Estimate provided to them. UKAEA has also conducted a detailed review of the historic waste strategy on behalf of themselves and the MoD. Discussions regarding forward cost estimates and cost recovery from MoD and UKAEA are a normal part of BNFL’s interface with these customers and a requirement of the commercial arrangements in place.

“(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?”

Increases in customer funded liabilities have been discussed earlier.

BNFL, as a commercial organisation, has many different contract terms in place with customers who fund aspects of liabilities on BNFL’s sites. These range from cost plus to fixed price. The terms of the individual contracts determines whether the increased costs may be recovered from the customer.

When contracts are signed, an appropriate allowance for liabilities and associated risks is included, based on the best estimates available at the time.

Supplementary information relating to the examination of witnesses (Questions 260-279)

Question 262

“Mr Askew, could you comment on the £6 billion increase of the clean-up since the Secretary of State first made her announcement in November? Why do you think this is? Can you given an explanation?”

The figure of £6 billion represents the gross undiscounted increase in the nuclear liabilities between 2001 and 2002, which totalled £40.5 billion at the end of March 2002. This total includes £27.2 billion BNFL funded liabilities and £13.3 billion funded by customers, mainly MOD/UKAEA. These are shown in Note 26a to the accounts.

These figures are discounted for balance sheet purposes to reflect the long delay before much of the expenditure occurs. This is reflected in the BNFL balance sheet which shows £13 billion of discounted provisions.

The £6 billion increase followed a fundamental review and revision of lifetime costs relating to the strategy for dealing with historic waste management at Sellafield. The fundamental change following the review was to assume in the figures interim safe and passive storage for waste, based on 100 years. This replaced the previous assumption based on the availability of an underground disposal facility being available in the medium term.

I would note that this increase has not arisen since the Secretary of State’s November announcement. The statement (Hansard, 28 November 2001, column 993) referred to an increase of £1.9 billion. This figure represents the Group’s discounted share of the increases arising from the historic waste management review discussed above.

Question 263

“How confident are you this figures is accurate or could be higher, or could go off as days go by?”

The company has made its estimates by making assumptions about the likely safety and environmental requirements for the discharge of nuclear liabilities. The process takes into account known and foreseeable developments in technology, and uses this as a basis for estimating costs over a significant time period. This process is inherently uncertain and historic wastes related to military and early civil nuclear programmes are unclear on quantities and composition. The numbers are therefore the best judgement on the

assumptions made. The estimates would change if different assumptions and risks *[sic]* were made, and with changes in regulatory requirements.

The inherent uncertainty in the estimates is highlighted on several occasions by BNFL and our auditors in the 2002 accounts (page 24, 'Background to nuclear liabilities'; page 32, 'Independent Auditors Report'; and Note 26a).

Question 274

"Lastly, when you take a decision to close these stations [Calder and Chapelcross], to what extent are ministers involved? Do you have to get their permission, because it has been put to us this afternoon that one of the most compelling arguments in closing all of the Magnox fleet is that it may become rather colder in the winter than anticipated with the absence of this generating capacity?"

The decision to close Calder and Chapelcross was taken following a detailed review of the economics of each station. The conclusion to close these two stations early was discussed with ministers before any announcement was made.

Regarding the latter point, then BNFL will continue to operate the existing Magnox stations within the stated lifetimes, whilst it remains safe and economic to do so.

The issues regarding generating capacity and global warming are real but separate issues. I would encourage you to read BNFL's submission to the energy review for our views on these issues.

Questions 278 and 279

"Moving away from accounts, I have asked on a number of occasions if anybody can tell us more about what the contribution to the fund in future might be from the commercial assets, and probably you know those better than anybody else. What is your view of that potential contribution? Is there likely to be any surplus from continued operation of those assets?"

"Is there some way in the short time available to us of determining maybe when your accounts emerge, because they are not transparent in relation to your particular operation in the way that you could isolate any particular contribution that could come from those assets."

Any contribution to the fund must be based upon the cash generating capacity of the business.

The attachment summarises the movements in the Nuclear Liabilities Investment Portfolio (NLIP) in the last 2 years. This highlights the extent to which liabilities discharge was effectively funded by operational cashflows over this period — a total contribution of some £540 million.

BNFL's balance sheet at 31 March 2002 showed cash and liquid resources of £5.9 billion. However a substantial part of this, some £4 billion, is the NLIP. Of the remaining £1.8 billion of cash and current asset investments, the vast majority is set aside for specific purposes, principally liability related (e.g. gilts and captive insurance companies).

It is unlikely that further deposits will be made in to the fund this year. Clearly when it comes to the actual formation of the LMA, as already noted by DTI (see response to Para 40(i)), the split of resources must ensure that New BNFL is a viable organisation.

Nuclear Liabilities Investment Portfolio

		Year Ending 3/31/01 £M	Year Ending 3/31/02 £M
Opening Balance per Audited Accounts	<i>(i)</i>	3,887	3,815
Profit on sale of Investments		25*	30*
Investment Income	135*		134*
Indexation/amortisation	69		29
	<i>(ii)</i>	<u>204</u>	<u>163</u>
		4,116	4,008
Liabilities discharged	<i>(iv)</i>	(412)*	(414)*
Funding from Operations	<i>(v)</i>	<u>111*</u>	<u>429*</u>
Closing Balance per Audited Accounts	<i>(i)</i>	<u>3,815</u>	<u>4,023</u>

Notes

- (i) Per BNFL 2001 ARA
- (ii) Investment Income per Note 6 BNFL 2001 ARA. Indexation and amortisation relates to valuation adjustments and do not give rise to cash movements until such time as the investment matures or is liquidated.
- (iii) The investment income reflected is stated gross of corporation tax. The attributable tax charge has not been deducted from the value of the NLIP but has been offset by operational losses incurred elsewhere in the Group. This charge equates to circa £40 million.
- (iv) This is the actual cash expended in discharging nuclear liabilities including the relevant capital expenditure.
- (v) This reflects the extent to which the NLIP was effectively funded by operational cashflows.
- (vi) The items marked * are summed together in the Annual Report and Accounts and appear as an overall £141 million reduction in NLIP (note 12f p 63 2001 ARA refers) and in 2002 these total an overall increase of £179 million in the NLIP.

APPENDIX 2

WHITE PAPER ON MANAGING THE NUCLEAR LEGACY

GOVERNMENT RESPONSE TO REPORT FROM HOUSE OF COMMONS
TRADE AND INDUSTRY COMMITTEE

- (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 problem associated with the civil nuclear legacy can be put in place as soon as possible.”* (paragraph 20).

The Government welcomes the Committee’s endorsement of the approach set out in the White Paper. As the Committee notes, the Government’s objective in establishing the Liabilities Management Authority (LMA) is to bring a much sharper and stronger strategic focus to bear on nuclear clean-up and to drive work forward.

Legislation will be introduced at the first available opportunity. In the meantime, the Liabilities Management Unit (LMU) has been established within the DTI to prepare the ground for the LMA focusing particularly on:

- Acquiring a detailed knowledge and understanding of BNFL and UKAEA liabilities, and management arrangements for dealing with them, which can be passed on to the LMA. The intention is to produce a comprehensive catalogue detailing the full extent and nature of the liabilities for which the LMA will be responsible.
- Developing provisional baseline strategies setting out the scope, schedule and costs involved in cleaning up each of the sites for which the LMA will be responsible. The ultimate objective is that the LMA should be able to put in place whole life remediation plans for each site. These plans will, in turn, provide the basis for contracts with site licensees specifying the work to be carried out within defined periods.
- Taking action to promote competition for nuclear clean-up with a view to establishing a viable long term supply chain. This will involve an evaluation of the current capability in the supply chain, development of contracting strategies and action to ensure that potential contractors have the information they need to take decisions on whether to enter the market.
- Working with BNFL to improve its performance as a liabilities manager. The LMU will develop key performance indicators (KPI) and monitor BNFL’s performance against them.

The LMU will be discussing its work with stakeholders who will have the opportunity to contribute to its thinking. The DTI would be pleased to give the Committee a report on progress.

- (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).

The Government agrees with the Committee. The White Paper underlines the importance of the LMA maintaining close and effective working relationships with the nuclear regulators based on their common interest in the progressive reduction of hazard potential, improved environmental outcomes and safe, secure, effective and timely discharge of liabilities. In conjunction with the regulators, the DTI is now developing draft Memoranda of Understanding setting out the basis of these relationships and how they will work in practice. The draft Memoranda will be published so as to give stakeholders an opportunity to comment.

The development of draft contracts and appropriate monitoring arrangements is a core element of the LMU’s work programme. As the White Paper explains, in taking this work forward, it will be drawing not just on nuclear experience in the UK and overseas, particularly in the US, but on experience in other sectors, e.g. the offshore oil and gas industry.

- (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 to the taxpayer.”* (paragraph 22).

The Government agrees with the Committee. The White Paper underlines the Government’s commitment to the development of a competitive market for site management services consistent with safety, environmental and other regulatory requirements. It goes without saying, however, that any prospective site licensee must have the technical and management skills required to carry out the role and responsibilities of a nuclear site licensee and be fully accountable for operations on site. The LMA will also want to ensure that regulators and stakeholders are regularly involved in consideration of possible changes to site management arrangements and how such changes might be implemented before any decision to make a change is taken.

- (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).

The Government agrees with the Committee. This is one of the main reasons why, in the interim, the DTI has established the LMU.

As noted above, the LMU’s work programme includes producing a catalogue detailing the full extent and nature of the liabilities for which the LMA will be responsible. The results of this work will be subject to assessment by an independent third party. The assessment report, and the LMU’s own work, will be made available to stakeholders in line with the Department’s commitment to encouraging and facilitating stakeholder participation in the development of the LMA and the new arrangements for legacy management set out in the White Paper.

- (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).

The Government agrees that the LMA must be able to attract the people it needs to do its job effectively. As the White Paper makes clear, it is also committed to the LMA having the authority and management freedom it needs to deliver. Whilst the LMA will be accountable to Ministers and subject to management and other controls designed to ensure that it achieves best value for money, implementation of its plans, once approved by Ministers, will be a matter for management.

- (f) *“Contrary to our expectations and BNFL’s evidence to us, the 2002 BNFL accounts were not available to the Committee for its deliberations 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 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 the questions in paragraph 39.”* (paragraph 41).

The Government notes the comments in these paragraphs of the report. The DTI will be pleased to give further evidence as necessary. BNFL published its results on 16 July and its full Annual Report and Accounts in August. The Government understands that BNFL is separately providing its own response to the Committee providing detailed explanation and clarification of specific points raised on its accounts.

- (h) *“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.”*

As the Department explained in its Memorandum of 16 July, £4.3 billion is the difference between discounted clean-up liabilities of some £23 billion and assets hypothecated to funding clean-up, valued in BNFL’s books at £18.7 billion. These assets include the Magnox undertaking (£4.8 billion), the Nuclear Liabilities Investment Portfolio (NLIP £4.2 billion) and contributions from customers, including MoD and UKAEA.

The £4.3 billion differences does not take account of other items on BNFL’s balance sheet with a positive net book value of £2.5 billion - ie fixed assets (£6.7 billion) and working capital (£1.8 billion) less long term creditors (£4.4 billion) and other provisions (£1.5 billion). The closing deficit of the BNFL balance sheet is, therefore, £1.8 billion.

When the LMA is set up, it will take on financial responsibility for the clean up of relevant BNFL sites and have the benefit of both the NLIP and other relevant financial assets, including proceeds from commercial contracts, and related property and operational fixed

assets including land, buildings, plant and machinery. The precise details of these adjustments will be settled in due course. The aim will be to ensure that all assets relevant to clean up are available to the LMA for that purpose and that it is adequately resourced for the scale of its task. Work is being taken forward at this stage with a view to ensuring that the legislation makes full provision for what is required.

- “(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?*”

The LMA will take on legal and financial responsibility for all the assets and associated liabilities at Sellafield and other relevant BNFL sites including the assets necessary for safe management and operation of those sites.

As noted above, the precise detail of the balance sheet restructuring will be finalised as part of the process of setting up the LMA.

- “(iii) *Will BNFL be able to transfer the benefit of commercial agreements to recover the costs of clean-up of nuclear liabilities to LMA?*”

Yes. The intention is that the benefit of relevant commercial contracts will be passed to the 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?*”

The increase in clean-up liabilities between 2000/2001 and 2001/2002 was primarily due to the review of the historic waste management strategy. MoD are financially responsible for a large proportion of the historic waste. Costs attributable to MoD have gone up from £5.5 billion to £6.7 billion undiscounted.

- “(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).

As explained in (iv) above, the primary cause of the increase between 2000/2001 and 2001/2002 was the review of the historic waste management strategy. The decision to bring forward the closure dates for Calder Hall and Chapelcross was also a contributing factor. As noted above, a large proportion of the additional cost involved falls to MoD. UKAEA also has a significant share. Where relevant, costs fall to other customers in accordance with contractual arrangements.

- (i) *“We strongly support the creation of a system which would offer certainty over funding for nuclear clean-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).

The Government notes the Committee’s preference for a segregated fund. Ministers will be considering responses to the White Paper with a view to taking the final decisions by

The Government agrees with the Committee that the institutional arrangements which flow from the process to develop a strategy for the long term management of radioactive waste (Managing Radioactive Waste Safely, or MRWS) will be central to the future work of both Nirex and the LMA. On 29 July 2002 the Secretary of State for Environment, Food and Rural Affairs [HLDebs Cols 566-569] and the Deputy Minister for Environment and Rural Development in the Scottish Executive [S1W-27786] announced the results of the first consultation phase of MRWS and the next steps in the process, including that an independent body will be in place by the end of year to oversee the review process and seek the views of interested stakeholders, the public and government departments. The MRWS timetable will be revised to a four rather than five stage process and more detailed proposals on the process will be published in due course. It is against the background of this process that the question of the independence of Nirex (or any successor bodies) should be addressed.