

Nuclear Free Local Authorities **RADIOACTIVE WASTE POLICY** Briefing on the Government Review

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GOVERNMENT SEEKS VIEWS ON MANAGING THE ‘NUCLEAR LEGACY’

The Government has published a White Paper setting out its proposed strategy for a multi-billion pound restructuring of public sector nuclear liabilities¹. This centres on the creation of a Liabilities Management Authority (LMA), which will be responsible to Government for managing the ‘nuclear legacy’.

The White Paper describes the ‘nuclear legacy’ as facilities developed in the 1940s-60s to support Government research programmes (particularly at Sellafield, Dounreay and Harwell), along with the Magnox nuclear power stations and associated facilities at Sellafield. According to the White Paper, this legacy represents about 85% of total UK nuclear liabilities².

The Government proposes to set up the LMA because the management of these liabilities requires “a much sharper and stronger strategic focus” than can be provided by the current operators, BNFL and the UKAEA. It sees the LMA setting “the right framework for systematic and progressive delivery of the clean up programme”. To help secure public confidence, the White Paper makes strong commitments to openness, transparency, and to engagement with stakeholders.

Stakeholder engagement has already informed preparation of the White Paper which, to varying degrees, reflects initial inputs from environmental groups and the Nuclear Free Local Authorities Secretariat³. The Government has now invited further views on its proposals.

Local authorities are key stakeholders. Speaking for their communities, local authorities have a vital role in helping to shape the new arrangements for liabilities management. This briefing discusses these proposals to assist local authorities to prepare their responses. These should be sent to the DTI by 18 October⁴.



THE LOCAL GOVERNMENT VOICE ON NUCLEAR ISSUES

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THE ROLE OF THE LMA

The LMA's main intended role is to develop and oversee the implementation of a strategy for dealing with public sector nuclear liabilities.

This is a challenging role. Many of these liabilities were created in the 1940s, 50s and 60s, when the focus was on the rapid development and application of nuclear technology for civil and weapons purposes, rather than on longer-term implications. As a result, there are few reliable design drawings to guide decommissioning for a range of plants, and limited information about the wastes stored in a number of facilities. These uncertainties add to the complexity of dealing with nuclear liabilities. In many instances, the first task is to characterise the wastes. Once this is done, a plan for dealing with a facility can be developed, which then has to be woven into the restoration plan for the site as a whole. In addition, priorities have to be established for each site, and interdependencies between different operations and sites have to be identified and managed.

Against this background, the Government expects the main functions and duties of the LMA to be to:

- take legal and financial responsibility for legacy sites⁵;
- hold site management to account for performance against clear objectives;
- put in place comprehensive long term plans for the clean-up of legacy sites;
- ensure that short term priorities for each site are clearly identified;
- ensure the skills and resources required for clean-up are available and can be sustained;
- manage the competing demands of different sites to ensure effective use of resources;
- exploit synergies between sites; and
- draw on best practice overseas and in other sectors.

The White Paper explains that the LMA will not directly manage the sites for which it is responsible. Instead, it will contract with site licensees who will be responsible for delivering an agreed programme. The rationale is that:

The separation of strategy and planning from implementation will enable the LMA to focus on its strategic role and to use the best of what the public and private sectors have to offer in driving clean up forward.⁶

The role of site licensees will be to:

- manage sites in accordance with regulatory requirements;
- work closely with the LMA and regulators to develop and update long term site plans;
- implement short term work programmes for delivering priorities identified in the plans;
- work with sub-contractors to plan and carry out individual projects; and
- be held to account by the LMA for performance against their contracts.

Initially, site management contracts will be held by the current site operator. However, the Bill setting up the LMA will include provisions to introduce competition for these contracts. Indeed, the White Paper states that one of the LMA's guiding principles will be "competition - so as to make the best possible use of the best available skills".

CONTRACTORISATION, COMPETITION AND SAFETY

The emphasis on contractorisation and competition raised strong concerns during initial consultation with environmental groups⁷. Consultees argued that opening up site management to competition would compromise safety because contractors would be seeking to undercut one another and maximise profit. The point was made that safety must come first, and that this was the key to public confidence⁸.

In response, the DTI has stated that the LMA will:

*.. pay close attention to safety, security and environmental performance when awarding or extending contracts. Poor performance on any of these parameters could result in early termination of a contract. In addition, contracts could require safety objectives to be met before contractors are eligible for bonuses or impose penalties if objectives are not met.*⁹

The DTI says that these measures are intended to meet concerns that safety standards might slip, and that the aim is to enhance safety and environmental performance, not the reverse. It adds that past experience with contractorisation is being carefully reviewed by the Liabilities Management Unit (LMU) within the DTI, which has the task of preparing the ground for the LMA.

The form of the LMA's contracts with site licensees is intended to have a significant influence on safety and environmental performance. Indeed, the White Paper states that: "Contracts will provide for the sharing of business risk, set key performance indicators and establish payment mechanisms within a framework aimed at incentivising licensees to deliver specific outcomes safely and at best value."¹⁰

Although the DTI's emphasis on incentivisation to achieve safety objectives is welcome, further steps should be pursued to help generate confidence amongst stakeholders and the public. In particular, LMU progress in reviewing past experience and developing baseline strategies for contractorisation should be opened up to a wider range of stakeholders. This might be done, for example, by inviting stakeholder participation at workshop or panel reviews of the LMU's work on this issue.

FORM AND CONSTITUTION OF THE LMA

The Government intends to establish the LMA as a Non-Departmental Public Body (NDPB), so that it is not directly part of Government, but responsible to it. The rationale is that this will enable the LMA to have a substantial amount of management freedom, whilst ensuring a clear line of public accountability.

The LMA will be directed by a Board with the brief to: provide strategic leadership; challenge the management to deliver; and ensure that it is focused and incentivised. The Board will be accountable to Ministers for the preparation of the LMA's strategies and work programmes and for the achievement of annual performance targets.

On Board membership, the Government's intention is that this should include people with:

- nuclear skills;
- knowledge of regulatory and environmental issues; and
- business experience of building and maintaining strong safety cultures and managing large and complex programmes.

The White Paper explains that the implementing legislation will not require specific skills or interests to be represented on the Board because this would limit flexibility and run the risk that the Board will not be able to have the optimal mix of skills and experience.

Initial consultation with environmental groups made it clear that composition of the Board is seen as an important public confidence issue. In particular, consultees emphasised that membership should be such as to ensure a strong environmental challenge to senior LMA management¹¹. The White Paper's reference to including people with "knowledge of regulatory and environmental issues" acknowledges this call, but is unlikely to meet concerns that stakeholder representation should not be tokenistic. Such concerns need to be taken into account when the Board is being appointed.

Consultees also stressed the need for there to be credible, independent and transparent processes for appointments to the Board, review of its performance and replacement of membership. In response, the White Paper explains that appointments will be made by Ministers according to rules set out by the Office of the Commissioner for Public Appointments. These rules embody a series of principles, including that selection is to be strictly based on merit, no appointment will be made without some form of independent scrutiny, and the principles of open Government must be applied.

The White Paper adds that:

- the recruitment process will be open and transparent, including the advertising of posts and making job descriptions and selection criteria publicly available;
- like other NDPBs, the LMA's activities and accounting will be subject to scrutiny by the National Audit Office, the Public Accounts Committee and other relevant Select Committees; and
- Ministers will have the power to dismiss Board members on grounds of misbehaviour or on the basis of any condition set out in contracts.

Finally, the DTI has stated that composition of the Board and related issues around terms of appointment and external review of Board performance are ones on which it would welcome further views¹².

On accountability to Government, the White Paper states that this will be achieved through an annual meeting at which Ministers will: review the LMA's strategies and work programme; take stock of its performance to date; and set new performance measures for the year ahead. Subject to its proposed work programmes being approved, the LMA will then have the authority to implement them within agreed financial limits.

Although it is important to have mechanisms to ensure accountability, the commitment to an annual Ministerial review will raise concerns about potential for the LMA's work to be subject to undue political delay or short-termism. Ensuring that these reviews take place when required, and that decision documents are published promptly thereafter, would help meet such concerns.

OPENNESS AND TRANSPARENCY

The White Paper states that the Government regards openness and transparency as "fundamental to the successful operation of the LMA". It adds that:

*From the outset it will therefore be a champion of public information - visible, accessible, providing clear and comprehensive information about its activities consistent with security requirements and necessary commercial confidentiality ..*¹³

In addition to this in-principle commitment, the White Paper includes some practical examples of how openness and transparency will be pursued in practice. These include commitments to publish:

- the Management Statement and Financial Memorandum setting out how the LMA will exercise its functions and its relationship with Government¹⁴;
- Memoranda of Understanding between the LMA and regulators, setting out the basis of their relationship and how it will work in practice¹⁵;
- information about the incentivisation structures and performance measures written into contracts between the LMA and site licensees¹⁶;
- site plans for long-term clean up¹⁷;

- information about the financial and operational performance of THORP and SMP and the rationale for keeping the plants open¹⁸;
- information on progress with return of materials and wastes arising from the reprocessing of overseas customer's spent fuel¹⁹; and
- the openness and transparency objectives set by Government, and reports of the LMA's performance against them²⁰.

These commitments demonstrate that the Government is serious about pursuing openness and transparency. However, as environmental groups have argued²¹, there are likely to be points of conflict over what information should be withheld on commercial-in-confidence or security grounds²². Environmental groups have therefore suggested that there should be a mechanism for arbitration, such as a sub-group of the LMA Board, which could review appeals against a refusal to release particular information²³. In response, the DTI has stated that this is an issue “for further consideration with stakeholders, including potential contractors²⁴”.

Environmental groups have also made a range of other suggestions for practical initiatives. These include:

- developing a web-based inventory of liabilities (type, scale, location, management programme, costs, funding, safety issues, and environmental impacts);
- securing independent peer review of the interpretation of environmental data before release;
- developing and publishing a skills and contractor database, including progress in developing the supply base and the status of contracts;
- issuing regular progress reports and/or a newsletter, covering the performance of existing assets, site strategy updates, project updates, costs and funding updates, incident reports, regulatory developments and consultation responses;
- publishing all safety cases, periodic reviews and long-term safety reviews²⁵; and
- facilitating ‘whistle-blowing’ by providing a mechanism which enables workers to inform the Board of serious problems on the ‘shop floor’.

In response, the DTI has stated that it will take account of such proposals “when considering how to put flesh on the approach set out in the White Paper”, and that this is “an area for on-going discussion between stakeholders, DTI and, in due course, the LMA itself”²⁶. During these discussions, the DTI should itself be seen to be championing openness and transparency. This approach should be pursued throughout the period of setting up the LMA and, in particular, apply to the preparatory work of the LMU.

IMPACT ON BNFL

The creation of the LMA will trigger a fundamental restructuring of BNFL²⁷. The White Paper states that the aim of this is threefold:

- to make the LMA responsible for all those activities and assets which are integral to, or may be required for, the on-going management of its liabilities;
- to set the platform for competitive site management; and
- to create the right framework for the future development of BNFL's commercial businesses²⁸.

On the latter aim, restructuring will involve the creation of a new company - currently called 'New BNFL' - which will be owned by the Secretary of State, and include a utility product and services business and a government contracting business. The existing company - BNFL plc - and its subsidiary Magnox Electric plc will continue in being as site licensees. BNFL plc will be owned by New BNFL and operate, initially at least, under contract to the LMA²⁹.

Although welcoming the intention to provide a clear national focus for tackling the nuclear legacy, environmental groups have expressed concern that the LMA is being created to "bail out" BNFL, to make the company attractive to City investors, and to pave the way for new nuclear power stations³⁰. In response, the DTI has stated that the "LMA is not designed as a mechanism to rescue BNFL", and that the new build issue is not within the scope of the White Paper, but is being considered in a separate consultation exercise³¹.

Whilst it may be true that the LMA is not *designed* as a mechanism to rescue BNFL, the huge transfer of liabilities away from BNFL will certainly have that effect. Whether restructuring will also lead to privatisation and new nuclear build depends on a range of other factors, including the scale of financial assets that the company retains after transfer of liabilities and assets to the LMA. This latter issue is discussed further below.

On the potential for privatisation, the White Paper states that the Government will next consider the future of BNFL in 2004/05. At that time, it will decide whether the company's target of a move into the private sector via a public private partnership (PPP) is in the best interests of the taxpayer and the effective management of nuclear liabilities. It is clear, however, that this is the Government's preferred course of action:

*The challenge for BNFL is to demonstrate in the course of the next three years that it can be, and should be, the supplier of choice to the LMA for the management of the (Sellafield) site and to seize the opportunity for a PPP.*³²

OPERATION OF THORP AND SMP

Although THORP and the SMP are not part of the 'nuclear legacy', legal and financial responsibility for these plant are to be transferred to the LMA. The White Paper states that this is because of the integrated nature of the Sellafield site and the regulatory and managerial need for the site to be treated as a whole³³.

The transfer of these plant presents a challenge for the LMA, particularly if it is to achieve public confidence. Environmental groups have argued that: continuing to operate them will attract controversy and opposition; creating more waste by continued operation undermines public confidence in liability management; and that the disadvantages of continued operation are greater than any benefit associated with future cash generation³⁴. Against this background, these groups argued that the LMA should play a role in the re-negotiation of contracts between BNFL and its customers to end reprocessing in THORP and MOX fuel manufacture in the SMP.

Although asserting that all existing contracts will be honoured, the White Paper sets out a series of commitments which offer prospect of improvement in the way in which decision-making on future operation will be handled. These are:

- *Priority to clean-up*: THORP and SMP will be operated by the site licensee under contract to the LMA. Under the terms of the contract, the licensee will be incentivised to maximise returns to the taxpayer consistent with regulatory requirements and the delivery of the agreed clean up programme for the site. If there is any conflict between the two - for example in use of shared operational facilities - it will be resolved by giving priority to clean-up³⁵.
- *Changes to contracts*: Existing contracts will remain with BNFL plc as site licensee. Any changes or variations to those contracts will require the approval of the Secretary of State acting on advice from the LMA. Approval would not be given unless the principle of priority to clean-up is satisfied³⁶.
- *Proposals for new contracts*: These will also require approval by the Secretary of State³⁷. Approval would only be given if the contract was: consistent with clean-up plans; expected to make a positive return to the taxpayer; and consistent with the UK's environmental objectives and international obligations.
- *Annual review of the case for continued operation*: the LMA will keep the case under review. This review will consider: prospective income from future operation; prospective operational costs; any additional waste management costs; assessment of the potential costs of earlier than planned closure; contingencies to cater for uncertainties in prospective income or costs; and potential effect on agreed clean-up programmes³⁸.
- *Publication of information*: the White Paper states that the basis on which information about the operation of THORP and the SMP is provided will be "critical to the credibility of the LMA as an open and transparent organisation"³⁹. It then states that the LMA's annual report and accounts will therefore include specific information, consistent with the requirements of commercial confidentiality, on the financial and operating performance of THORP and SMP and the rationale for keeping the plants open.

Taken as a whole, these commitments offer potential for more robust and transparent decision-making on the future of THORP and the SMP. The need to ensure that this potential is achieved provides reason for stakeholders to engage positively with the LMA.

LIABILITY ESTIMATES

The White Paper reveals that the current estimate for dealing with public sector civil nuclear liabilities is a staggering £47.9 billion⁴⁰. This breaks down as follows:

PUBLIC SECTOR CIVIL NUCLEAR LIABILITIES (Undiscounted, March 2002)		
Sites	Organisation	Cost Estimate (£ billion)
Sellafield (including Drigg)	BNFL	27.5
Magnox	BNFL	12.0
Springfields, Capenhurst and overseas	BNFL	1.0
BNFL sub-total		40.5
Dounreay	UKAEA	3.9
Harwell	UKAEA	0.8
Winfrith, Culham, Windscale and other	UKAEA	2.7
UKAEA sub-total		7.4
Total		47.9

This shows that Sellafield accounts for over 57% of the total figure, followed by the Magnox stations at nearly 25%, and Dounreay at just over 8%.

The White Paper states that although these figures represent best estimates based on current knowledge, various factors could lead to increases, including better definition of what is involved and changing regulatory and policy requirements.

During initial consultation on the LMA, one environmental group suggested that it was possible that BNFL had purposely underestimated the scale of its liabilities, and that a formal review of the company's accounting practices should be undertaken prior to the transfer of liabilities to the LMA to establish whether this was indeed the case⁴¹.

In response, the DTI explained that one of the LMA's immediate priorities will be to review liability estimates and the assumptions behind them to reduce uncertainty. In doing so, "the LMA will take account of the lessons learned from past experience," including those contained in recent critiques⁴². It added that the LMU has already started to address these issues.

This commitment begs a number of questions: what lessons have been learnt from past experience, and how will these be taken into account in the future? In order to help generate confidence in the new arrangements, the LMU's work on liability estimation should be opened up to review by a wider range of stakeholders so that satisfactory answers to these questions can be provided.

SOURCES OF FUNDING

The White Paper also discusses current and future funding sources. On current funding, it explains that financial responsibility for BNFL liabilities is currently split between its customers, the company and the taxpayer:

- *Customers*: around 12% of the liabilities on BNFL sites (around £5 billion) are covered by contracts with commercial companies in the UK and overseas.
- *Company*: the company has a portfolio of investments known as the Nuclear Liabilities Investment Portfolio (NLIP), which was established in 1996-97 and as at March 2002 had a market value of £4 billion.
- *Taxpayer (UKAEA/MoD)*: 20% of BNFL liabilities (around £8.2 billion) are to be funded directly by the taxpayer via UKAEA and the Ministry of Defence (MoD) which retained financial responsibility for certain liabilities at BNFL sites following BNFL's formation in 1971.
- *Taxpayer (Magnox Undertaking)*: the Magnox Undertaking was put in place in 1998 as part of a reorganisation of the nuclear industry. Under its terms, the Government agreed to make a series of payments based on the profile of expected expenditure on Magnox liabilities. Payments start in 2008 and are to be paid annually to 2116. The discounted value of the Undertaking at March 2002 was £4.8 billion.

UKAEA liabilities are wholly funded by payments from the DTI and MoD. Budgets for these payments are determined every three years as part of the Government's spending cycle review.

On funding sources for the LMA, during initial consultation environmental groups expressed the in-principle position that funding from the industry should be maximised, so as to reduce the drain on the public purse. This view was informed by a strong sense that BNFL should not be allowed to escape financial responsibility for the liabilities that it has created⁴³. More specifically, it was suggested that funding for the LMA should come from: transfer of the NLIP; income from the continued operation of existing assets⁴⁴; a cash equivalent to the Magnox Undertaking; and the proceeds of any eventual privatisation of the restructured BNFL.

The White Paper confirms that the LMA will receive three sources of funding:

- the transfer of assets in the NLIP;
- surpluses from the operation of the LMA's commercial assets; and
- cash which would otherwise have been paid to BNFL under the terms of the Magnox Undertaking.

The DTI has added that the "suggestion that proceeds from any sale of BNFL should be used for clean up is noted"⁴⁵.

In addition to the NLIP, BNFL also possesses substantial liquid assets in the form of investments, short-term deposits and cash at bank and in hand. The company's latest Annual Report and Accounts puts these assets at £1.85 billion⁴⁶. The future of these assets came under scrutiny during the recent

Parliamentary Trade and Industry Committee (TIC) examination of Government's White Paper, when it was suggested that they might also be transferred to the LMA. In response, Anne Lambert, the Head of the DTI Nuclear Liabilities and BNFL Directorate, explained that the transfer agreement will need to strike a balance between ensuring that new BNFL has enough cash to operate successfully and that the LMA has as much cash as possible to fund its liabilities. Lambert also confirmed that the liquid assets would not be ignored in seeking to strike the right balance⁴⁷.

In their final report, TIC recommended that it was essential that:

*.. an independent assessment is made of the value of the assets to be transferred from BNFL to the LMA .. to ensure that the terms of the transfer of assets and liabilities represent the best value for money for the taxpayer.*⁴⁸

There is clearly merit in this recommendation from a public confidence point of view.

In addition, the DTI should make a formal commitment to:

- **maximise the amount of BNFL's liquid assets transferred to the LMA, and provide a clear justification for the level to be transferred;**
- **consult stakeholders on a draft transfer agreement, which takes into account the independent assessment called for by the TIC; and**
- **ensure that the LMA receives the proceeds of any eventual privatisation of the restructured BNFL .**

Combined with the proposal above that the LMU's work on liability estimation be opened up to review by a wider range of stakeholders, these commitments could contribute substantially to the generation of stakeholder confidence in the financial aspects of the Government's proposals.

FUNDING MECHANISMS

The White Paper invites comments on two possible funding options, "each of which would represent a radical departure from conventional arrangements for the funding of Government programmes". It states that the purpose would be to: underline a commitment to clean up and build public confidence; give the LMA the flexibility needed to drive forward the clean up programme; and encourage competition by giving companies confidence that funding will be available when needed.

The two options are:

- *A Segregated Fund*: this would be akin to a 'pension fund' which holds investments. The fund would be set up in statute and operate under the control of the LMA or a trustee body. An initial endowment would be BNFL's NLIP. Annual payments from Government would be subject to Parliamentary approval through the normal supply process. The fund would be kept within a target level to ensure it could support expenditure over several years. The fund would be subject to NAO audit and annual reporting.

- *A Segregated Account*: established by legislation, this would be akin to a ‘savings account’ within the Government’s Consolidated Fund, which is kept by the Treasury. The account would be credited with payments in, such as BNFL’s NLIP, and would be debited for expenditure in discharging liabilities. Annual credits from Government would be subject to the Parliamentary Supply Estimates process, and the account would be kept within a target level to ensure it could support expenditure over several years. The fund would also be subject to NAO audit and annual reporting.

The White Paper states that the Government’s preference is for the segregated account, because a segregated fund would be an exception to normal Government accounting rules and be more complex to operate. **There are, however, a number of powerful reasons for favouring a segregated fund:**

- **it would be made up of a real “savings pot” of money;**
- **the assets in the fund would be isolated and managed separately from wider Government funds; and**
- **the LMA could have control over drawing down monies to fund its work programme.**

As a result, the segregated fund would provide a more transparent funding route and is likely to engender greater public confidence. A similar conclusion was reached by the TIC⁴⁹.

BUILD UP OF THE FUND

The White Paper states that further detailed work is required to determine the size of the fund, but that the aim would be to create a rolling fund capable of supporting LMA expenditure over several years. It then explains that:

Since liabilities expenditure will be incurred over several decades or longer and liabilities estimates will change with time, the Government does not believe that it would be cost-effective to provide for a 100% of expenditure at the outset and this is not required to meeting the Government’s objectives.⁵⁰

Although this position is reasonable on practical grounds, the White Paper fails to consider the implications of the principle of intergenerational equity for build up of the fund. This point has, however, been raised by environmental groups during initial consultation. Several consultees argued that the initial endowment into the fund should be as large as possible, and that the full fund should be built up as soon as possible to ensure compliance with the principle of intergenerational equity. Some suggested that there should be a 25-30 year target for putting full funding in place, on the grounds that this period corresponds approximately to a generation. In response, the DTI has stated that it would welcome further views⁵¹.

This briefing has already made proposals for ways of increasing initial payments into the fund (see page 10). The DTI should make a public commitment to these proposals at the earliest opportunity. There is also a case for annual payments from Government to be set at a level which would enable the full fund to be built up over a period which pays due regard to the principle of intergenerational equity. To aid further discussion of what this should mean in practice, the DTI should provide estimates of the annual Government payments that would be

required in different scenarios, including for a range of potential fund build-up periods (eg 10, 25, 50 and 75 years).

FUTURE ENGAGEMENT WITH STAKEHOLDERS

The White Paper makes a strong commitment to active engagement with stakeholders, particularly at a local level in decisions about the clean up of individual sites. It states that: “the Government will expect major decisions to be taken only in the light of full consultation with stakeholders”⁵². This expectation will be backed up by specific legal obligations on the LMA to consult widely on the way in which it intends to discharge its functions.

In the meantime, the DTI is:

- arranging discussions with stakeholders on the White Paper, including a second round of consultation with environmental groups; and
- commissioning an independent review of current engagement practices in the UK and overseas, with a view to informing the LMA’s thinking.

These initiatives are welcome. This briefing demonstrates that the views of stakeholders are being addressed and, in some cases, acted upon. In addition, explanations are being offered where comments or proposals have not been taken on board.

A good example of views being addressed concerns the Local Liaison Committees (LLCs) at major nuclear sites. During initial consultation, environmental groups expressed the strongly held view that there should be a fundamental reform of LLCs. Criticisms of current arrangements included that: site operators manipulate discussion; site operators want to avoid proper local scrutiny; the LLCs just rubber stamp operator views; local council representation needs supporting and strengthening; little or no opportunity is provided for discussion of wider stakeholder or public concerns; and arrangements for LLCs are inconsistent across the UK⁵³. In response, the White Paper explains that the review of current engagement practices will include an assessment of the function and operation of the LLCs with a view to identifying improvements.

CONCLUSIONS AND RECOMMENDATIONS

This briefing has discussed the Government’s proposals for the LMA. It has identified the following conclusions and recommendations:

- *Contractorisation and Safety*: the DTI’s emphasis on incentivisation in contracts to achieve safety objectives is welcome. However, further steps should be pursued to help generate stakeholder confidence. In particular, LMU progress in reviewing past experience and developing baseline strategies for contractorisation should be opened up to a wider range of stakeholders. This might be done, for example, by inviting stakeholder participation at workshop or panel reviews of the LMU’s work on this issue.

- *Composition of the LMA Board:* Initial consultation with environmental groups made it clear that this is seen as an important public confidence issue. In particular, Board membership should be such as to ensure a strong environmental challenge to senior LMA management. The White Paper's reference to including people with "knowledge of regulatory and environmental issues" acknowledges this call, but doesn't ensure that stakeholder representation will not be tokenistic. Such concerns need to be taken into account when the Board is being appointed.
- *Political Accountability:* Although it is important to have mechanisms to ensure accountability, the commitment to an annual Ministerial review will raise concerns about potential for the LMA's work to be subject to undue political delay or short-termism. Ensuring that these reviews take place when required, and that decision documents are published promptly thereafter, could help meet such concerns.
- *Openness and Transparency:* White Paper commitments demonstrate that the Government is serious about pursuing openness and transparency. However, there are likely to be points of conflict over what information should be withheld on commercial-in-confidence or security grounds. There should therefore be a mechanism for arbitration, such as a sub-group of the LMA Board, which could review appeals against a refusal to release particular information. In addition, during discussions about how to put flesh on the commitments in the White Paper, the DTI should itself be seen to be championing openness and transparency. This approach should be pursued throughout the period of setting up the LMA and, in particular, apply to the preparatory work of the LMU.
- *Impact on BNFL:* Whilst it may be true that the LMA is not *designed* as a mechanism to rescue BNFL, the huge transfer of liabilities away from BNFL will certainly have that effect. Whether restructuring will also lead to privatisation and new nuclear build depends on a range of other factors, including the scale of financial assets that the company retains after transfer of liabilities and assets to the LMA.
- *THORP and SMP:* The White Paper contains commitments that offer potential for more robust and transparent decision-making on the future of THORP and the SMP. The need to ensure that this potential is achieved provides reason for stakeholders to engage positively with the LMA.
- *Liability Estimates:* DTI statements beg a number of questions: what lessons have been learnt from past experience, and how will these be taken into account in the future? In order to help generate confidence in the new arrangements, the LMU's work on liability estimation should be opened up to review by a wider range of stakeholders so that satisfactory answers to these questions can be provided.
- *Sources of Funding:* The DTI should make a formal commitment to maximise the amount of BNFL's liquid assets transferred to the LMA, and provide a clear justification for the level to be transferred. It should also consult stakeholders on the draft liability and asset transfer agreement (which should take into account the independent assessment called for by the TIC). In addition, the Government should commit to ensuring that the LMA receives the proceeds of any eventual privatisation of the restructured BNFL.
- *Funding Mechanism:* There are a number of powerful reasons for supporting a segregated fund: it would be made up of a real "savings pot" of money; the assets in the fund would be isolated and managed separately from wider Government funds; and the LMA could have control over drawing

down monies to fund its work programme. As a result, the segregated fund would provide a more transparent funding route and is likely to engender greater public confidence.

- *Fund Build-Up*: Annual payments from Government should be set at a level which would enable the full fund to be built up over a period which pays due regard to the principle of intergenerational equity. To aid further discussion of what this should mean in practice, the DTI should provide estimates of the annual Government payments that would be required in different scenarios, including for a range of potential fund build-up periods (eg 10, 25, 50 and 75 years).
- *Stakeholder Engagement*: DTI initiatives are welcome. This briefing demonstrates that the views of stakeholders are being addressed and, in some cases, acted upon. In addition, explanations are being offered where comments or proposals have not been taken on board.

ENDNOTES

¹ DTI, 'Managing the Nuclear Legacy: A Strategy for Action', Cm 5552, July 2002. Nuclear liabilities are the costs involved in: the treatment and management of radioactive wastes; the decommissioning of nuclear facilities; and the environmental remediation of nuclear sites.

² The LMA will not be responsible for the private sector civil nuclear liabilities owned by British Energy, nor for nuclear liabilities arising from military programmes (other than those arising from past use of facilities at UKAEA and BNFL sites).

³ F Barker, 'The Views and Concerns of Environmental Groups', First Phase Report to the DTI, April 2002. The NFLA Secretary and Legal Adviser were amongst those consulted prior to the preparation of the White Paper.

⁴ Responses should be sent to Richard Griffin, DTI, Nuclear Liabilities and BNFL Directorate, Room 146, 1 Victoria Street, London, SW1H 0ET (richard.griffin@dti.gsi.gov.uk).

⁵ These include BNFL's Sellafield, Capenhurst, Magnox and Drigg sites, and the UKAEA's Dounreay, Harwell and Winfrith sites.

⁶ DTI, as above, Cm 5552, para 3.8.

⁷ F Barker, as above, paras 5.8-5.12.

⁸ There is evidence that environmental group concerns reflect a wider public unease. See, for example, the final report of the ISOLUS 'Front End Consultation'. This identifies public concerns about the potential conflict between contractorisation and safety in the management of laid up nuclear submarines (<http://www.lancs.ac.uk/users/csec/isolus/isolusfinal.pdf>).

⁹ DTI, 'DTI Reponse to "The Views and Concerns of Environmental Groups"', attachment to letter to environmental group consultees, 4 July 2002.

¹⁰ DTI, as above, Cm 5552, para 3.11.

¹¹ F Barker, as above, para 5.5.

¹² DTI, as above, 4 July 2002.

¹³ DTI, as above, Cm 5552, para 3.24.

¹⁴ DTI, as above, Cm 5552, para 4.5.

¹⁵ DTI, as above, Cm 5552, para 3.22.

¹⁶ DTI, as above, Cm 5552, para 3.11.

¹⁷ DTI, as above, Cm 5552, para 3.12.

¹⁸ DTI, as above, Cm 5552, para 5.24.

¹⁹ DTI, as above, Cm 5552, para 5.24.

²⁰ DTI, as above, Cm 5552, para 3.23.

²¹ F Barker, as above, paras 7.2 - 7.3.

²² It should be noted that the recent report from the Director of Civil Nuclear Security to the Government states that; "we recognised after the attacks last September in the United States that the balance between providing information of legitimate public interest and protecting the national interest against terrorism and proliferation may need to be re-considered. I am chairing an expert group composed of representatives from the main operating companies and the industry's regulators to take this forward." 'The State of Security in the Civil Nuclear Industry and the Effectiveness of Security Regulation', Director of Civil Nuclear Security, October 2000 - March 2002.

²³ F Barker, as above, para 7.3.

²⁴ DTI, as above, 4 July 2002.

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- ²⁵ There is currently a lack of openness and transparency in nuclear safety regulation. To rectify this, it might be necessary to amend Section 28 of the Health and Safety at Work Act to allow the Nuclear Installations Inspectorate to share information with the LMA that is currently the licensees. The White Paper acknowledges that “more needs to be done to ensure that there is .. an open and transparently applied regulatory system.” DTI, as above, Cm 5552, para 7.4.
- ²⁶ DTI, as above, 4 July 2002.
- ²⁷ The Government does not intend to make any changes to the operating structure of the UKAEA or ownership of its sites. However, the LMA will take on financial responsibility for UKAEA liabilities, and the UKAEA will manage the liabilities under performance-based contracts with the LMA. In the longer-term, if the UKAEA fails to deliver, it is likely that licensee companies will be created for UKAEA sites and contracts awarded by competitive tender.
- ²⁸ DTI, as above, Cm 5552, para 5.5.
- ²⁹ The White Paper states that there is no prescribed timetable for introducing competition for site management: “The LMA will look at the position of each site on its merits. It will consult the nuclear regulators and local stakeholders before any decision is taken to change site management arrangements.” DTI, as above, CM 5552, FAQ 3.
- ³⁰ F Barker, as above, para 4.7.
- ³¹ DTI, as above, 4 July 2002. See also, ‘Government launches consultation on energy policy’, New Nuclear Monitor No 4, June 2002.
- ³² DTI, Cm 5552, para 5.34.
- ³³ DTI, as above, Cm 5552, paras 1.7 and 5.13.
- ³⁴ F Barker, as above, para 4.5.
- ³⁵ DTI, as above, Cm 5552, para 5.15.
- ³⁶ DTI, as above, Cm 5552, para 5.18.
- ³⁷ For THORP, this applies to all new contracts. For SMP, it only applies to contracts beyond the scope of the company’s economic case for operation, based on the manufacture of MOX fuel using the plutonium arising from existing THORP reprocessing contracts with overseas customers.
- ³⁸ DTI, as above, Cm 5552, FAQ 12, p47.
- ³⁹ DTI, as above, Cm5552, para 5.24.
- ⁴⁰ DTI, as above, Cm 5552, Figure 1, p18.
- ⁴¹ F Barker, as above, para 6.5.
- ⁴² DTI, as above, 4 July 2002. The DTI made specific reference to M J Sadnicki, ‘Examination of BNFL Reports and Accounts’, March 2002.
- ⁴³ F Barker, as above, para 6.4.
- ⁴⁴ Support for this position was highly qualified because consultees agreed that the closure of THORP, the SMP and the Magnox stations should be bought forward.
- ⁴⁵ DTI, as above, 4 July 2002.
- ⁴⁶ BNFL, ‘Annual Report and Accounts 2002’, p22.
- ⁴⁷ Select Committee on Trade and Industry, Minutes of Evidence, Examination of Witnesses, 9 July 2002, paras 231 - 239.
- ⁴⁸ TIC, ‘Managing the Nuclear Legacy: Comments on the Government White Paper’, Fifth Report of Session 2001-02, Volume 1, 23 July 2002, p5.
- ⁴⁹ TIC, as above, para 42.
- ⁵⁰ DTI, as above, Cm 5552, para 6.18.
- ⁵¹ DTI, as above, 4 July.
- ⁵² DTI, as above, Cm 5552, para 3.24.
- ⁵³ F Barker, as above, para 5.17.