

WRITTEN MINISTERIAL STATEMENT

MALCOLM WICKS: MINISTER OF STATE FOR ENERGY

27 FEBRUARY 2008

**ANNOUNCEMENT REGARDING AN INDEMNITY TO BE GIVEN BY THE NUCLEAR
DECOMMISSIONING AUTHORITY (NDA) IN RELATION TO THE CONTRACTS
RELATING TO THE LOW LEVEL WASTE REPOSITORY (LLWR) AT DRIGG**

I am announcing that I have, today, laid a Departmental Minute before the House regarding the granting of an indemnity related to nuclear occurrences forming part of new contracts for the LLWR at Drigg

The NDA proposes to grant an indemnity against uninsurable claims from nuclear incidents that fall outside the regime offered by the Nuclear Installations Act 1965 and the Paris and Brussels Conventions to the contractor (and limited specified affiliates) who will operate the LLWR Site Licence Company. At present any such uninsurable claims are borne by the NDA. Given the low probability of a claim being brought the NDA has assessed that the benefits of engaging the contractor outweigh the small risk that the indemnity may be called.

A key element of the NDA's strategy has been to use competition to improve the management and operation of its sites. The LLWR contracts will be the first to be awarded as a result of competition

Copies of the Departmental Minute relating to this indemnity have been placed in the libraries of the House and will be posted on the Department of Business, Enterprise and Regulatory Reform website at www.berr.gov.uk

Departmental Minute

Low Level Waste Repository

Contractual Indemnities

1. It is the normal practice, when a government department proposes to undertake a contingent liability in excess of £250,000 for which there is no specific statutory authority, for the department concerned to present to Parliament a Minute giving particulars of the liability created and explaining the circumstances; and to refrain from incurring the liability until fourteen parliamentary sitting days after the issue of the Minute, except in cases of special urgency.
2. The Nuclear Decommissioning Authority ("NDA") proposes to grant an indemnity against uninsurable claims arising from a nuclear incident that fall outside the protections offered by the Nuclear Installations Act and the Paris and Brussels Conventions to the contractor (and limited specified affiliates) who will operate the Low Level Waste Repository Site Licence Company (the Parent Body Organisation). In migrating the Parent Body Organisation for LLWR from public sector to private sector, the contract strategy has been to follow a policy of using commercially available insurance to cover any risks unless the insurance is unavailable or represents poor value for money and this position has been maintained wherever possible.
3. A low probability risk has been identified and currently there is no commercial insurance available to cover this risk. The following paragraphs explain this risk.
4. In the UK claims relating to third party damage arising out of nuclear occurrences are regulated by the Nuclear Installations Act 1965. Under this Act, with some few exceptions, all liability is channelled exclusively to the operator and therefore no-one else can be liable in the UK. Currently the third party liability of UK nuclear operators under the Act is capped at £140m, with this cover for NDA sites being provided by insurance from the commercial market. Once this cap has been reached the Act provides that public funds can be made available to meet claims for compensation in respect of damage caused by nuclear occurrences.
5. The Nuclear Installations Act implements the Paris and Brussels Conventions on third party liability in the field of nuclear energy. Amongst other things, these Conventions provide that jurisdiction over actions concerned with damage caused by nuclear incidents will lie in the country where the incident occurs. The Parent Body Organisation's shareholders and affiliates include persons who do not come from such a country.
6. There is therefore a residual risk that the courts of a country who is not party to the Conventions may accept jurisdiction to determine liability in the event of a nuclear incident. There is currently no commercial insurance available to cover this potential liability. The Parent Body Organisation cannot accept this uninsurable liability.
7. The indemnified parties are to be indemnified for claims arising as a result of property damage, damage to human health plus the heads of damage which the amending protocols of the Paris Convention introduces: cost of measures of reinstatement of significantly impaired environment; loss of income from use of impaired environment and the cost of preventative measures.
8. Given the low probability of a claim being brought, the NDA has assessed that the benefits of contracting with the Parent Body Organisation outweigh the small risk that this indemnity may be called upon.
9. Furthermore, because of the nature of nuclear activities and the historically very low occurrence of incidents giving rise to claims, the maximum figure for the potential liability is impossible to quantify.
10. If the liabilities outlined in paragraph 7 above are called, provision for any payment will be sought through the normal supply procedure.
11. The indemnity is limited in time to a period of 30 years from the expiry of the contract.
12. The Treasury has approved the proposal in principle. If, during the period of 14 parliamentary sitting days beginning on the date on which the minute was laid before Parliament a Member signifies an objection by giving notice of a Parliamentary Questions or by otherwise raising the matter in Parliament, final approval to proceed with incurring liabilities will be withheld pending examination of the objection.