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## JOINT WRITTEN REPRESENTATION OF THE NUCLEAR DECOMMISSIONING AUTHORITY AND MAGNOX LIMITED

### 1. EXECUTIVE SUMMARY

- 1.1 The Nuclear Decommissioning Authority ("**NDA**") is a statutory corporation established by the Energy Act 2004. On 3 December 2004, the Secretary of State for Trade and Industry made Directions to the NDA in respect of the existing Sizewell A Nuclear Site (the "**Sizewell A Directions**"), the effect of which is to give the NDA statutory responsibility for the decommissioning and cleaning-up of the existing Sizewell A nuclear site (the "**Sizewell A Nuclear Site**")<sup>1</sup>.
- 1.2 Decommissioning activities at the Sizewell A Nuclear Site are carried out on behalf of the NDA by the site tenant, Magnox Limited ("**Magnox**"), being a wholly owned subsidiary of the NDA, in accordance with detailed lease and contractual arrangements with the NDA. Magnox is also the holder of the nuclear site licence for the Sizewell A Nuclear Site, granted pursuant to the Nuclear Installations Act 1965.
- 1.3 The Sizewell A Nuclear Site is situated adjacent to the existing Sizewell B nuclear site (the "**Sizewell B Nuclear Site**"), which is currently owned and operated by EDF Energy Nuclear Generation Limited ("**EDF NGL**"). The Sizewell B Nuclear Site is currently generating electricity and is situated between the Sizewell A Nuclear Site and the location of the proposed Sizewell C Nuclear Generating Station.
- 1.4 The NDA is a Category 1 person, and Magnox is a Category 1, Category 2 and Category 3 person in respect of a number of plots of land identified in NNB Generation Company (SZC) Limited's (the "**Applicant**") Book of Reference, and in respect of which the Applicant is seeking the acquisition of all interests and rights and the extinguishment and discharge of all private rights. Both the NDA and Magnox are, therefore, "Affected Persons".
- 1.5 While the NDA and Magnox have registered individually as Interested Parties, it is their intention that they will act jointly where practicable, in order to assist the Examination. This Written Representation has been prepared on that basis.
- 1.6 The NDA and Magnox confirm the following:
- 1.6.1 Commercial discussions with EDF NGL, as owner and operator of Sizewell B Nuclear Site, have commenced regarding parts of plot MDS/05/06, being the car park, and the entirety of plot MDS/05/07. It is noted that parts of MDS/05/06 have now been removed from the Order Limits as part of the changes made by the Applicant to the Application on 22 January 2021.
- 1.6.2 Neither NDA nor Magnox has had discussions with the Applicant regarding other land plots where the Applicant is seeking compulsory acquisition and/or the extinguishment of the NDA and/or Magnox's interests in the Application as made.
- 1.6.3 The NDA and Magnox note Article 26(2)(a) of the draft Development Consent Order ("**Draft DCO**") which precludes the undertaker from acquiring compulsorily any interests in any of the land plots detailed in column (2) of Part 1 of Schedule 15 of the Draft DCO, namely MDS/04/09, MDS/04/10, MDS/05/02, MDS/05/03, MDS/05/04, MDS/05/06, MDS/05/07, MDS/05/08, MDS/05/09, MDS/05/13, MDS/06/01 and MDS/06/02. Whilst the NDA and Magnox welcome Article 26(2)(a), its meaning is open to interpretation and the Explanatory Memorandum offers no

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<sup>1</sup> The Sizewell A Directions came into force on 1 April 2005

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assistance in respect of this part of the Article and this requires remedy, certainty and protection for NDA and Magnox.

- 1.6.4 The NDA and Magnox similarly note Article 30 of the Draft DCO which, notwithstanding Article 26(2)(a), permits the undertaker to acquire compulsorily the existing rights, create and acquire new rights and impose such restrictive covenants as are described in the Book of Reference. This power applies to those plots referred to above in paragraph 1.6.3 as well as additional plots which the NDA and/or Magnox have an interest in. As noted above, the NDA and Magnox have had no discussion with the Applicant about any rights that the Applicant may be seeking to acquire compulsorily.
- 1.6.5 In any event, the NDA and Magnox both emphasise their opposition to the acquisition of any land, or the extinguishment of any rights etc, in any land plots which are:
- (a) within the boundary of the nuclear site licence, held by Magnox, for the Sizewell A Nuclear Site. Regardless of Article 26, the NDA and Magnox are of the opinion that land plots MDS/05/06 and MDS/05/07 should be excluded from the Book of Reference altogether. Inclusion of these plots is wholly inconsistent with the purpose of the strict regulatory regime established by the nuclear site licence and the Nuclear Installations Act 1965, and that as such it would not be in the public interest. The NDA and Magnox also note in this context section 151(a) of the Planning Act 2008 which expressly prohibits a Development Consent Order from excluding or modifying the application of the Nuclear Installations Act 1965. The NDA and Magnox are also concerned over the implications of these powers for those plots that abut the nuclear site licence area, being plots MDS/05/02 and MDS/05/13 and would welcome urgent clarification and understanding from the Applicant over how the powers in the Draft DCO could affect both the nuclear site licence and those plots that abut the nuclear site licence; and
  - (b) land which the NDA has responsibility for decommissioning and clean-up in accordance with the Energy Act 2004 and the Sizewell A Directions, being land plots MDS/05/06 and MDS/05/07.
- 1.7 On the basis of the above, the NDA and Magnox are not yet satisfied that the Sizewell C Nuclear Generating Station can be constructed and operated in accordance with the Applicant's application proposals in a manner which adequately ensures the safe, secure and environmentally-sound decommissioning of the Sizewell A Nuclear Site.
- 1.8 The NDA and Magnox are of the view that, although they are not statutory undertakers (in the traditional sense) they do have statutory functions and the NDA is a statutory corporation and both have regulatory responsibilities in respect of the Sizewell A Nuclear Site, and therefore Protective Provisions should be included in the Draft DCO in order to preserve and protect their respective abilities to effectively carry out their statutory functions and regulatory responsibilities. In particular, the Protective Provisions will need to ensure that access is maintained at all times for all emergency, operational and user purposes and be in accordance with all safety and emergency response requirements in order to satisfy the demands placed upon the NDA and Magnox by the nuclear site licence and wider regulatory regime, as well as in the public interest.
- 1.9 The NDA and Magnox confirmed that they intend to attend the Compulsory Acquisition Hearings.

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## 2. NDA AND MAGNOX – CONTEXT

- 2.1 The NDA is a statutory corporation established by the Energy Act 2004<sup>2</sup>. The NDA is responsible for ensuring that the UK's legacy nuclear sites are decommissioned and cleaned-up safely, securely, cost-effectively and in a manner that protects people and the environment.
- 2.2 The NDA's principal function, as established by Designating Directions made by the Secretary of State pursuant to section 3 of the Energy Act 2004, is to secure the decommissioning and cleaning-up of those nuclear sites and installations for which it has designated responsibility.
- 2.3 On 3 December 2004, the Secretary of State for Trade and Industry made the Sizewell A Directions. The Sizewell A Directions (a copy of which is included at **Appendix 1** to this Written Representation) give the NDA statutory responsibility for the decommissioning and cleaning-up of the Sizewell A Nuclear Site, the geographical extent of which is more particularly defined in Schedule 1 and Annex A to the Sizewell A Directions.
- 2.4 Decommissioning activities at the Sizewell A Nuclear Site are carried out on behalf of the NDA by the site tenant, Magnox, being a wholly owned subsidiary of the NDA, in accordance with detailed lease and contractual arrangements with the NDA. Magnox is also the holder of the nuclear site licence for the Sizewell A Nuclear Site, granted pursuant to the Nuclear Installations Act 1965.

## 3. NATURE OF NDA AND MAGNOX LAND AND INTERESTS AFFECTED

- 3.1 The NDA is a Category 1 person, and Magnox is a Category 1, Category 2 and Category 3 person in respect of a significant number of plots of land identified in the Applicant's Book of Reference.
- 3.2 The NDA and Magnox note that the Applicant is seeking the following powers over land in respect of which the NDA and Magnox is a Category 1 or Category 2 person:
- 3.2.1 *Class 1 – acquisition of all freehold and leasehold interests;*
- 3.2.2 *Class 4 – override easements and other rights and extinguishment of all private rights.*

### Class 1

- 3.3 The NDA and Magnox note Article 26(2)(a) of the Draft DCO which precludes the undertaker from acquiring compulsorily any interests in any of the land plots detailed in column (2) of Part 1 of Schedule 15 of the Draft DCO, namely MDS/04/09, MDS/04/10, MDS/05/02, MDS/05/03, MDS/05/04, MDS/05/06, MDS/05/07, MDS/05/08, MDS/05/09, MDS/05/13, MDS/06/01 and MDS/06/02.
- 3.4 Clarity is required as to why the Applicant may need to acquire the plots detailed in column (2) of Part 1 of Schedule 15 to the Draft DCO, given that Article 26(2) of the Draft DCO does not preclude acquisition of those plots by agreement and commercial discussions are only progressing regarding plot MDS/05/07.
- 3.5 The NDA and Magnox are also of the view that the protection afforded to the Sizewell B Nuclear Site in Article 26(2)(b) of the Draft DCO should be extended also to the Sizewell A Nuclear Site (e.g. all operational land). We would also comment that Article 30 should be made subject to Article 26, so that the undertaker can avoid having to acquire an interest in land under Article 26 where a restrictive covenant under Article 30 can provide the necessary

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<sup>2</sup> The NDA's sponsoring Government Department is HM Department for Business, Energy and Industrial Strategy

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protection / powers. This ensures a proportionate exercise of compulsory acquisition of powers.

- 3.6 The NDA and Magnox are of the view, as noted in further detail in paragraph 4 below, that Protective Provisions are required in the Draft DCO in order to reflect and maintain principles of co-operation and co-existence in a safe, clear and effective way.

#### **Class 4, and interaction with Nuclear Site Licence and Sizewell A Directions**

- 3.7 The NDA and Magnox note Article 30 of the Draft DCO which, notwithstanding Article 26(2)(a), permits the undertaker to acquire compulsorily the existing rights, create and acquire new rights and impose such restrictive covenants as are described in the Book of Reference. This power applies to those plots referred to above in paragraph 3.4 (save if Article 26(2)(b) applies it would appear, but not clear) as well as additional plots which the NDA and/or Magnox have an interest.

- 3.8 The NDA and Magnox note, in particular that certain of the NDA and/or Magnox land plots over which the Applicant is seeking Class 4 powers are situated within:

3.8.1 the boundary of the nuclear site licence for the Sizewell A Nuclear Site, for which Magnox has regulatory responsibility as the nuclear site licensee; and

3.8.2 the designated boundary of the Sizewell A Nuclear Site (the principal nuclear site), for which the NDA has statutory responsibility for decommissioning and cleaning-up in accordance with the Energy Act 2004 and the Sizewell A Directions,

being plots MDS/05/06 and MDS/05/07.

- 3.9 The NDA and Magnox do not agree with the Applicant's proposals to obtain Class 4 powers in respect of any land that is within the boundary of the nuclear site licence, held by Magnox, for the Sizewell A Nuclear Site. The NDA and Magnox are of the view that the compulsory acquisition of any rights etc in such land by the Applicant would be wholly inconsistent with the purpose of the strict regulatory regime established by the nuclear site licence and the Nuclear Installations Act 1965, and that as such it would not be in the public interest. The NDA and Magnox also note in this context section 151(a) of the Planning Act 2008 which expressly prohibits a Development Consent Order from excluding or modifying the application of the Nuclear Installations Act 1965, which we believe the effect of the current drafting would do.

- 3.10 The NDA and Magnox do not agree with the Applicant's proposals to obtain Class 4 powers in respect of any land for which the NDA has statutory responsibility for decommissioning and cleaning-up in accordance with the Energy Act 2004 and the Sizewell A Directions as this would produce potential conflict with the legal obligations and duties in relation to decommissioning and clean-up.

- 3.11 The NDA and Magnox therefore are of the view that land plots MDS/05/06 and MDS/05/07 should be excluded from the Book of Reference altogether. The NDA and Magnox are also concerned over the implications of these powers for those plots that abut the nuclear site licence area, being plots MDS/05/02 and MDS/05/13 and would welcome urgent clarification and understanding from the Applicant. As plots MDS/05/02 and MDS/05/13 abut the nuclear site licence area, as a minimum a Co-operation Agreement is required (or in absence of such a satisfactory agreement direct provisions) to ensure that neither party impacts on the other parties' obligations under its licence. This is discussed further below.

- 3.12 Neither the NDA nor Magnox has seen any reporting or evidence that the Applicant has undertaken diligent enquiry as to why the relevant Class 4 powers are required, or indeed how the compulsory acquisition of Class 4 powers may affect more widely the ability of the NDA and Magnox to carry out their respective statutory functions and regulatory

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responsibilities. As such, the NDA and Magnox are now carrying out that diligence themselves based on the published application.

- 3.13 The NDA and Magnox welcome the Applicant's intention to include a new Article 26(2)(c) in the next Draft DCO to preclude the compulsory acquisition of any rights required by the NDA and Magnox to carry out their regulatory responsibilities and statutory functions, but await the detail and understanding of the effects of these proposed changes, reserving their position.

#### 4. **PROTECTIVE PROVISIONS AND SITE CO-OPERATION**

- 4.1 The NDA and Magnox note that neither is a "statutory undertaker" (as defined in Part XI of the Town and Country Planning Act 1990) for the purposes of the Planning Act 2008. As already defined and set out NDA is a Statutory Corporation.

- 4.2 The NDA and Magnox are, however, Category 1 and Category 2 persons in respect of a significant number of land plots identified in the Applicant's Book of Reference, including land plots where the NDA has statutory functions and Magnox has regulatory responsibilities. As such, the NDA and Magnox are firmly of the view that Protective Provisions should be included in the Draft DCO for the purposes of preserving and protecting their respective abilities to carry out their statutory functions and regulatory responsibilities and to reflect agreement reached on the exercise of compulsory acquisition powers.

- 4.3 The NDA and Magnox acknowledge the potential complexities associated with three licensed nuclear installations being situated in close proximity, and indeed the potential for operations on one site to compromise the ability of the other sites to ensure compliance with regulatory requirements – notably in areas relating to site access, transport, construction activities, environmental and consequential safety plans. In this context, the NDA and Magnox strongly emphasise the need to ensure that a Nuclear Site Licensees' Co-operation Agreement(s) is entered into between the NDA, Magnox, the Applicant and EDF NGL in order to ensure that there is in place a contractual framework which seeks to avoid conflict between the Sizewell A Nuclear Site, the Sizewell B Nuclear Site and the proposed Sizewell C Nuclear Generating Station, and to ensure that the relevant legal obligations of all parties are not compromised. The proposed compulsory acquisition of any NDA / Magnox land interests or rights must not override the provisions of this Co-operation Agreement, and indeed any future acquisition (including voluntarily) of land or interests by the Applicant must be conditional upon compliance with it, and such principles should be reflected in the Protective Provisions and any transfer provisions.

- 4.4 At this stage, and on the basis of the Applicant's current proposals, the NDA and Magnox are not yet satisfied that the Sizewell C Nuclear Generating Station can be constructed and operated in accordance with the Applicant's application proposals in a manner which adequately ensures the safe, secure and environmentally sound decommissioning of the Sizewell A Nuclear Site.

- 4.5 The NDA and Magnox have jointly engaged legal representation in this regard.

#### 5. **STATEMENT OF COMMON GROUND**

- 5.1 In light of the above, the NDA and Magnox are in the process of discussing the terms of a Statement of Common Ground with the Applicant.

- 5.2 The NDA and Magnox have provided feedback by email on 26 May 2021 and 28 May 2021 (to the Applicant on a draft Statement of Common Ground).

Sizewell C Nuclear Generating Station Development Consent Order  
Written Representation of Nuclear Decommissioning Authority and Magnox Limited

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**Appendix 1**

**Sizewell A Directions**

# **ENERGY ACT 2004**

## **Directions to the Nuclear Decommissioning Authority (the NDA) in respect of the Sizewell A Nuclear Site**

Made under sections 3, 4 and 16 of the Energy Act 2004

## **SIZEWELL A SITE SUMMARY**

*This summary is not part of the direction*

This summary is only intended to provide background information in respect of the Sizewell A Nuclear Site. It sets out the nature of the cleaning-up or decommissioning work that may be carried out on the site. However, subject to Ministerial agreement it is for the NDA, following consultation, to determine what the cleaning-up or decommissioning objectives for the site will be and to describe these objectives in its strategy.

Under the Energy Act 2004 where the NDA has been given a responsibility it can secure that such a responsibility is carried out by others.

Sizewell A is the site of an operational Magnox power station. Magnox reactors, named after the magnesium alloy used to make the fuel can containing the uranium fuel, were built in the late 1950s and 1960s and were the first commercial nuclear electricity generating stations in the UK. In accordance with the Site Lifecycle Baseline, Sizewell A Power Station, which started operation in 1966, is currently planning to continue electricity generation until 2006.

Defuelling is the first major activity following permanent cessation of electricity generation. The used, or spent nuclear fuel is removed from the site and transported to Sellafield for reprocessing. This includes all the fuel in the reactors as well as the fuel remaining in the irradiated fuel storage pond at the time of shutdown. In addition to the main activity of fuel removal, other actions are taken during the defuelling period to take out of service systems and plant that are no longer required to remain operational.

Care & Maintenance Preparation, during which there is a significant amount of dismantling, demolition and waste management work, will be able to start before defuelling ends. It is planned that the reactor building) and the major plant within it will not be dismantled during this phase, as deferring dismantling will result in a considerable reduction in radioactivity levels.



## 1. Citation and Interpretation

The Direction may be cited as the NDA Designation of Sizewell A.

Words and expressions used in this Direction that are defined in the Energy Act 2004 “the 2004 Act” have the same meaning as in that Act.

For ease of reference the following definitions from the 2004 Act are set out:-

“cleaning-up” and “decommissioning”	in relation to a site or installation, includes— (a) the treatment, storage, transportation and disposal of hazardous material and of other matter and substances that need to be dealt with or removed in or towards making the site or installation suitable to be used for other purposes; and (b) the construction of buildings and other structures to be used in connection with the cleaning-up or decommissioning of the site or installation;
“facility”	includes a business or other undertaking and installations, vehicles or other property comprised in or used for the purposes of a business or other undertaking;
“hazardous material”	means— (a) nuclear matter; (b) radioactive waste; and (c) any other article or substance that has been and remains contaminated (whether radioactively or chemically) as a result (within the meaning of section 36 of the 2004 Act) of nuclear activities;
“installation”	includes buildings, structures and apparatus (whether or not fixed to land);
“NDA facility”	means a facility which— (a) is being or has been used for or in connection with the storage, disposal or treatment of hazardous material; and (b) is a facility for the operation of which the NDA has or has had a responsibility;
“nuclear installation”	means— (a) an installation which is situated in or on a principal nuclear site but is not comprised in an NDA facility;

(b) pipes, conduits and other apparatus which are not situated in or on a principal nuclear site but are connected to an installation falling within paragraph (a);

“principal nuclear site”	means the whole or a part of a site of any of the following descriptions— (a) a site in respect of which a nuclear site licence is or is required to be in force; (b) a site in respect of which such a licence would be required to be in force if the licensing requirements of the 1965 Act applied to the Crown; (c) a site not falling within paragraph (a) or (b) in or on which there is an NDA facility; (d) a site on which there is an installation used for practical research into the production of energy by the fusion of atomic nuclei; (e) a site which has been a site falling within paragraphs (a) to (d) but which, without being such a site, remains contaminated (whether radioactively or chemically) as a result of nuclear activities carried on while it was such a site or before it became one;
“site”	includes— (a) land within the United Kingdom; (b) an area of territorial waters adjacent to the United Kingdom; (c) the seabed and subsoil in any such area;
“treat”	in relation to any matter or substance, includes processing and reprocessing (including any use as a material in a process for the manufacture of nuclear fuel), and cognate expressions are to be construed accordingly.

The Interpretation Act 1978 shall apply for the interpretation of the Direction as it applies for the interpretation of an enactment, except that words and expressions used in the Direction that are defined in the 2004 Act shall have the same meaning as in the 2004 Act, and where any word or expression is defined in both the Interpretation Act 1978 and the 2004 Act, the meaning attributed to such word or expression in the 2004 Act will prevail.

References in the Direction to paragraphs and Schedules are to paragraphs of and Schedules to the Direction. References to sections are to sections in the 2004 Act.

## **2. Direction**

Under section 3(3) the Secretary of State gives the NDA this Direction for the purposes set out in paragraph 3 below.

### **3. Designation**

(1) The sites, installations and facilities in column 2 of Schedule 1 and described in column 3 shall be designated to the NDA for the purposes set out in column 4.

(2) The installations listed in Schedule 2 shall not be decommissioned until the time specified set out in Schedule 2.

(3) Under section 4 the NDA is given the additional responsibilities set out in Schedule 3.

(4) The NDA shall comply with the directions set out in Schedule 4.

### **4. Commencement**

(1) The Direction shall come into force on 1 April 2005.

(2) This Direction is made on 3 December 2004.

Signed:

On behalf of the Secretary of State for Trade and Industry

**SCHEDULE 1****Designated Responsibilities**

<b>No</b>	<b>Site/Installation/Facility</b>	<b>Description</b>	<b>Designation purpose (paragraphs of section 3(1) of the 2004 Act)</b>
1	The Sizewell A Nuclear Site (the principal nuclear site)	Land situated near Sizewell in the Suffolk Coastal District in the County of Suffolk shown outlined in red on drawing referenced PS\NLIC\SIZEA\95\02 dated 05/03/96 and entitled "Sizewell A Nuclear Site Licence Area", Nuclear Site Licence Number 51 - Annex "A" <sup>1</sup>	(c) the cleaning-up of the principal nuclear site <sup>2</sup>
2	Reactor Plant & Building and associated electricity generating installations	Electricity generation	(a) operation pending decommissioning
3	Fuel Route Plant & Buildings	Fuel transfer system, cooling ponds, flask handling and dispatch used in fuel management associated with operational refuelling and defuelling	(d) operation for the treatment, storage and transport of hazardous material
4	Miscellaneous Contaminated Plant & Buildings	Plant and buildings including but not limited to: active waste treatment systems, active drains, active laboratories, laundries etc	(d) operation for treatment, transport and disposal of hazardous material
5	Waste Management Facilities	Processing, storage, transport and disposal of liquid and solid waste	(d) operation for treatment, storage, transport and disposal of hazardous material
6	Pipes, conduits and other apparatus	Including but not limited to: mains water, cables and apparatus for interconnection with	(b) decommissioning  (d) operation for transport and disposal

<sup>1</sup> Nuclear site licences are granted under section 1(1) of the Nuclear Installations Act 1965 c.57.

<sup>2</sup> Section 3(6) of the 2004 Act provides that unless the direction provides otherwise, the designation of a principal nuclear site for cleaning-up is to have the effect of including a designation to decommission every installation situated in or on that site.

		National Grid, cooling water supply, communications and sewage not situated in or on the principal nuclear site but which are connected to buildings, structures and apparatus in or on the principal nuclear site	of hazardous material
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## **SCHEDULE 2**

### **Installations in respect of which decommissioning is postponed until the specified time**

1. Such installations necessary to operate the Sizewell A Power Station as required in item 2 of Schedule 1 until such duty ceases in accordance with Schedule 4, or in accordance with any modification to this Direction or any other direction given by the Secretary of State under section 16(3) of the Energy Act 2004.
2. All such installations as are needed to support operations on the Sizewell B power station until such time as the agreements under which such installations are so utilised are terminated.
3. All installations (whether or not fixed to the land) on the principal nuclear site including but not limited to: sewage, drainage, effluent discharge, electricity, water, gas or which form part of an electronic communications network<sup>3</sup> operated by a person, other than the person in control of the principal nuclear site, for as long as such services are needed to supply the principal nuclear site or to provide services to users outside the principal nuclear site (i.e. cut across the site).
4. All installations utilised for or occupied by persons other than the person in control of the principal nuclear site until such time as the agreements (including any new agreements) under which such installations are occupied are terminated, or otherwise come to an end.
5. All installations necessary to operate the facilities as required in Schedule 1 (under a section 3(1) designation) until such time as such facilities are no longer needed in order to fulfil NDA operational or clean-up functions.

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<sup>3</sup> As defined in section 32(1) of the Communications Act 2003 (c. 21).

## **SCHEDULE 3**

### **Additional Responsibilities under section 4 of the 2004 Act**

1. To manage the foreshore/beach adjacent to the principal nuclear site.

## **SCHEDULE 4**

### **General/Specific Directions given under section 16(3) of the 2004 Act**

1. The NDA shall operate the Sizewell A Power Station (including all installations required to interconnect to the National Grid) until 31 December 2006, or such other date as agreed with the Secretary of State.



ANNEX A

