Consultation on the implementation of changes to the Paris and Brussels Conventions on nuclear third party liability

24 January 2011 - 28 April 2011

Responses from members of the public

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O Tickell
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EA Wheal
A Zelter
Anonymous

W Allison – 25 February 2011

Dear Sirs
The consultation questionnaire does not give the option to object in principle to these safety increases. I have no vested interest in any green movement, any nuclear business or in the safety industry. However as an academic nuclear and medical physicist I am informed and feel obliged to raise objection. I have examined the extent, justification and reality of the dangers of nuclear radiation to human life, and set these out in accessible form for general consumption in "Radiation and Reason: the Impact of Science on a Culture of Fear" (see below for website. I will gladly arrange for a copy of the book to be sent to those interested on request, or it may be found on Amazon). Current radiation safety levels and regulations are already quite unjustifiable and not in the public interest - although they are not aware of this.That they are frightened by nuclear technology is not denied, but they need not be. Reassurance requires public education not further legal regulation as here proposed. That it is international simply compounds the problem.
Yours faithfully
Wade Allison

J Amos - 21 April 2011

Dear Sir or Madam,

The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

There are nuclear plants in the UK closer to major cities than Fukushima is to Tokyo, so the human impacts and costs in this country could be even greater when an accident occurs.

Currently nuclear operators in the UK have liability capped at £0.6bn or at most £1.1bn. This is a tiny % of the likely Fukushima costs. No other industry is allowed to operate with this level of uncovered risk. BP has been required to establish a $20bn (£12.3bn) fund for compensation to victims of last year's oil spill.

As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours,

Juliet Amos

P Anderson – 22 April 2011

Dear Sir or Madam,

The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

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As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours,

Peter Anderson

C Aris – 16 April 2011

I am no insurance expert, but these proposals would seem to be difficult to implement.

Proposals 1 and 2 appear, at first glance, to be quite reasonable. At the time of nuclear build, the developer can assess the risks and the compensation liability and make plans accordingly. But thereafter, is the developer entitled to object to any development within the 'area' (whatever that is or may be changed to) in order to protect their liability assessment, or will they then be covered against any changes?

Only proposal 3 is fixed and finite it seems.

Are similar third part liabilities to be placed on other developers within the power industry? Is the wind industry going to be made liable for supply intermittency, which if unmitigated could lead to serious losses and fatalities?

Capell Aris

C Bates – 25 April 2011

Dear Sir/Madam

I am emailing, as and individual, with regard to the Nuclear Insurance Consultation. My views are as follows:

- The consultation needs to be halted. The Government cannot continue with its 'business as usual' approach for the nuclear industry in the UK. It is a nonsense to continue with proposals without regard to major events such as those at Fukushima.
- The Government must reconsider its consultation proposals which were published before the tragedy in Japan.
- The Government has called for a review of nuclear safety in the UK because of the situation in Japan. No review of the financial implications - for the taxpayer, local authorities and emergency services - has been called for with regard to the financial impact of a nuclear accident.
- We need information. A revised consultation should only be published once a detailed picture of the extent of the financial impact of Fukushima is known.
- It is vital to stop now and reassess whether the proposals on the level of insurance cover, the legislative arrangements, and the financial security of nuclear companies can be deemed 'fit for purpose' for the coming decades.
- Pushing ahead with changes to the nuclear liability laws, without first considering the full financial impact on the ability of a company to pay - or Government to pick up additional costs - is not acceptable.
- It is some time since the nuclear liability laws have been publicly consulted, yet DECC has not even suggested one stakeholder event on this issue. It has not engaged with the communities and local authorities most likely to be directly affected in the event of a nuclear accident. Any subsequent consultation should be undertaken with full and open public engagement nationally and locally.
- Due time should be given to engagement on such consultations. It is highly unlikely most emergency services - or other relevant organisations with legal responsibility to respond to an accident - have had time to even consider the current consultation.

- The Government must also engage - transparently - with the emergency services and other agencies that may be involved in preventing: loss of life and personal injury; loss of or damage to property; reinstatement of the impaired environment or applying preventative measures - which may also subsequently be involved in insurance claims, or aspects of them, under revised laws.

Yours sincerely

Clive Bates

J Birch – 16 April 2011

Dear Sir/Madam,

Thank you for having a public consultation about the **Implementation of changes to the Paris and Brussels Conventions on nuclear third party liability.**

As someone living in Britain, I would like to point out that the current assessed damages for Japan have already reached $133 billion and that major cities in the U.K. are nearer to some nuclear power plants than in Japan.

I fail to see why the nuclear power industry should be absolved from complete liability for any accidents. Maybe other industries are exempt, but I don't know of them and I for one don't want any nuclear power in this country. No other industry that I know of can inflict damage to the environment and people who will can last for thousands of years and genetically, millions of years.

Yours faithfully,

June Birch

S Bolt – 27 April 2011

I am writing in response to the Paris and Brussels Conventions on nuclear third party liability. It is my view that the consultation should be halted. It is impossible for the British government to continue with a 'business as usual' approach for the nuclear industry after the catastrophic events at Fukushima.

I believe that a revised consultation should only be published once a detailed picture of the extent of the financial impact of Fukushima is known. It is vital to reassess whether the proposals on the level of insurance cover, the legislative arrangements, and the financial security of nuclear companies can be deemed 'fit for purpose' for the coming decades.

Pushing ahead with changes to the nuclear liability laws, without first considering the full financial impact is not acceptable. I am concerned that an unrealistic level of insurance will be set and that additional costs will be borne by British taxpayers. This is unacceptable.

Sophie Bolt

D Carson - 15 April 2011

Dear sirs,

Re. "A significant increase in the financial liability of the operator from currently £140 million to €1200 million"

This is a joke. A catastrophic failure of a nuclear reactor, such as is happening at Fukushima, would cost European society hundreds of billions of euros.

A full and realistic liability should be placed on the owners and operators of nuclear reactors. To do otherwise is to allow a distortion of the energy market in favour of a highly dangerous, toxic source at the expense of clean, safe renewable energy.

Yours sincerely,

Mr. D. Carson

C I Clowes – 13 April 2011

- Thank you for the opportunity to respond. The situation has changed considerably since the consultation process began and we would urge the following. The current consultation needs to be halted. The Government cannot continue with its 'business as usual' approach for the nuclear industry in the UK. It is a nonsense to continue with proposals without regard to major events such as those at Fukushima
- The Government should now reconsider its consultation proposals post-Fukushima
- The Government has called for a review of nuclear safety in the UK because of the situation in Japan. No review of the financial implications - for the taxpayer, local authorities and emergency services - has been called for with regard to the financial impact of a nuclear accident.
- We need information. A revised consultation should only be published once a detailed picture of the extent of the financial impact of Fukushima is known.
- It is vital to stop now and reassess whether the proposals on the level of insurance cover, the legislative arrangements, and the financial security of nuclear companies can be deemed 'fit for purpose' for the coming decades.
- Pushing ahead with changes to the nuclear liability laws, without first considering the full financial impact on the ability of a company to pay - or Government to pick up additional costs - is not acceptable.
- It is some time since the nuclear liability laws have been publicly consulted on, yet DECC has not even suggested one stakeholder event on this issue. It has not engaged with the communities and local authorities most likely to be directly affected in the event of a nuclear accident. Any subsequent consultation should be undertaken with full and open public engagement nationally and locally.
- Due time should be given to engagement on such consultations. It is highly unlikely most emergency services - or other relevant organisations with legal responsibility to respond to an accident - have had time to even consider the current consultation.
- The Government must also engage - transparently - with the emergency services and other agencies that may be involved in preventing: loss of life and personal injury; loss of or damage to property; reinstatement of the impaired environment or applying preventative measures - which may also subsequently be involved in insurance claims, or aspects of them, under revised laws.

Thank you,

Carl Iwan Clowes

P Conway – 23 April 2011

Dear Sir or Madam,

The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

There are nuclear plants in the UK closer to major cities than Fukushima is to Tokyo, so the human impacts and costs in this country could be even greater when an accident occurs.

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As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours,

Patricia Conway

M Davey – 27 April 2011

Dear Sirs and Madams,

I request that you to call a halt to the government's current consultation on new proposals for nuclear insurance and areas of claim in the UK in the event of an accident for the following reasons:

The consultation was launched before Fukushima.

It is not reasonable to carry on with a 'business as usual' approach to nuclear power here given what has happened in Japan.

It is not very often that nuclear insurance laws come up for review. Events in Japan make it all the more important to stop now and reconsider nuclear insurance rather than pushing ahead with outdated proposals.

Yours sincerely,

Mary Davey

The Fairbairns – 28 April 2011

Insurance costs for a nuclear accident are impossibly large. We should not build them in the first place, especially after the recent disaster in Japan.

From: The Fairbairns

L Fulford – 26 April 2011

CONSULTATION ON INSURANCE FOR THE NUCLEAR INDUSTRY

I feel it would be irresponsible to conclude the consultation on the levels of insurance needed by the nuclear industry without taking into account the full concequencies of the Fuchushima nuclear accigent in Japan. This incident is in a highly populated area, It has caused the evacuation of a large area around the plant and it is likely that people will not be allowed to return to these area's for a long time to come. The are also long term implications to farming all over north Japan, presumably industries that are in the exclusion zone will have to re-locate. Everyone and every industry thats affected will require compensation. I am pertty sure the levels of insurance you are proposing will not cover these costs..

The nuclear industry should carry the full costs of any accident and have appropriate insurance to cover this. I object very strongly to any government making up the difference if the claims exceed the limts of insurance taken out by the nuclear industry. This does not happen with any other industry.

The effects on the health of populations affected by the radioactive fallout from incidents such as Fuchushima and Chernobyl are still not clear. From the studies that have read on the health effects of Chernobyl it appears that the dose per person is based on the levels of radioactive fallout recieved. They also appear to treat the dose as if it is an external dose. From these dose levels they calculate the levels of cancers and deaths likely to have been caused by the fall out. In the case of Chernobyl this appeared surprisingly small. In Wales experts in the field have attribruted two or three deaths and a handfull of cancers to the fallout from Chernobyl. I think there is a problem with this type of approach. People are not just being exposed to a bit of Beta, Gamma or Alpha radiation they are absorbing radioactive isotopes in thier food and drinks and perhaps breathing a small amount as well. They are absorbed into the bodies organs where it is difficult to assess the damage they are doing. So despite claims that this radioactive fallout has had little effect on human health, there has been major effects on health in the population of the UK in the last thirty years. We know that cancer rates have increased dramatically. Breast cancer is up by 80% and some cancers ; Melanoma, non hodgkins lymphoma, prostate, testicular, kidney and multiple mycloma are all up 100% or more(source Office of national statistics). Cancer Reseach UK state that Cancer rates in Wales are significantly high than in other parts of the country. Radioactive contamination from Chernobyl was also significantly higher in Wales than other parts of the UK.

Eventually a proper sudy of the health of effects of Chernobyl may be carried out, looking at the well documented distribution of Radioactive fallout over various regions of Europe and comparing it with the levels of Birth defects, cancer rates etc over the last 25 years in and outside these regions. It is a obvious study to carry out and i cannot understand why it has not already been done.

Hopefully full and proper follow up studies will be carried out on the population of Japan and a better method of establishing the damage done the human body by ingested radioactive isotopes, which may or may not show a link with the increased birth defects and cancer rates. If a link is established claims for compensation against the nuclear industry could be very high.

To sumarise my concerns:

The conclusions of the consultation should be delayed to take into account the full conseqenciees of the Fuchushima nuclear accident

The proposed limits of laibility are to low and will not cover the cost of any large scale incidents like Fuchushima

The industry should bear the full costs of any incident no matter how big

There is clearly a debate to be had on how the health affects from fallout from nuclear accidents are accessed. Proper and unbiased studies need to be carried out. This could possibly lead to a escalation of compensation claims against the nuclear industry.

Thank you for allowing me to express my concerns.

Les Fulford

C Gifford – 20 April 2011

The following is my response to the consultation on the nuclear industry's proposed extended but partial liability for injury and loss. This submission is particularly addressed to the questions raised in Chapters 8 and 9 of the consultative document; viz, Levels of Liability and Availability of Insurance. I am a Chartered Mining Engineer, formerly HM District Inspector of Mines and Quarries, writing as an individual.

Mr Justice Sullivan in the High Court on 15 February 2007 ruled that the government's second consultation on energy policy was "seriously flawed" and thus "unlawful". There had been no consultation at all, he said, because the government had provided information "wholly insufficient for the public to make an intelligent response." With such a stricture it is surprising that the government has not learned the need for meaningful information to make a consultation effective. It is incredible that this consultation, albeit planned before the Fukushimo disaster, should proceed without even the Chief Inspector's interim report to the Secretary of State on the lessons to be learned from the Fukushimo disaster and the implications for the building of new reactors and spent fuel stores.

An estimate attributed to Reuters of the liability created by the four Fukushima reactor and spent fuel store failures is $133bn. Such information, and any better information, is relevant to this consultation. If the operators' insurance liability is limited to Euro 1.2bn as is proposed – less than 1% of a possible total liability –the Japanese public as taxpayers will be finding the other 99% . A government that has assured us that new build will be without cost to the taxpayer owes the public the time and the information to "make an intelligent response".

Nuclear new build assessment is on hold until we have the report of the Chief Inspector of Nuclear Installations, Dr Weightman and his advisers. This consultation should also be suspended until the relevant information can be provided. That information should include the estimated actuarial cost to the taxpayer of the proposed insurance waiver in the event of a similar disaster in the UK caused, for example, by widespread power supply failure or terrorism.

The assumption that insurers can be found for even capped liabilities that extend far into the future has to be questioned. The banks on which the insurance industry relies were unable to remain viable in the current financial crisis without taxpayer support. If realistic and reliable insurance for the nuclear power industry can not be found the obvious conclusion must be accepted: that the industry is not viable or sustainable, financially, socially or environmentally, and that new build should not proceed.

Christopher Gifford

U Grant – 15 April 2011

If I have a car I have to have an insurance covering my liabilities. Without insurance I am not allowed to drive the car.

If the nuclear industry cannot find an insurance company willing to fully cover the installation it must not be permitted to run the nuclear power station.

Best wishes,

Ulla Grant

P Griffiths – 28 April 2011

Dear Sir

If the plan is to limit the Nuclear generators to an insurance liability of less than one tenth the estimated cost of the Fukushima disaster this is surely a subsidy to the industry and I understood, as such, against Government policy.

P. Griffiths

J Hammond – 28 April 2011

Dear Madam/Sir,

I am writing to respond to the consultation on implementing the amendments to the Paris Brussels convention on third party nuclear liability.

Firstly I am fully in favour of the requirements to extend the geographical areas of liability - I heard someone claiming Britain was not affected by Chernobyl. We had rain containing radioactivity which is still detectable in parts of Cumbria and Wales.

I am also in favour of increasing the categories of claimable harm as we still do not know the degree to which long term low level and higher dose radiation causes lung cancers, heart disease, and other ailments.

I note that the upper limit of liability has been increased but only to 1.2 billion Euros. The BP oil spill liability is at least 20 billion, and the Japanese liability for Fukoshima is estimated at about 133billion Euros. The limit needs to be more in line with these figures.

I also note that Chris Huhne suggested that if the companies could not get adequate cover the government would underwrite this. I regard this as a direct subsidy and a way of making an unviable industry profitable at tax payers´ and potential victims´ expense.

Chris Huhne also suggested that the government might buy or continue to buy highly radioactive material that the industry doesn´t know how to dispose of. This is not a suitable use of tax payers money and a dangerous and dsishonest policy. It creates an unfair advantage for a highly risky nuclear industry in comparison to other renewable sources, of which there are many.

I am opposed to the generation of power through nuclear technology, but if it is going to be continued with power stations already constructed the industry should insure itself adequately and all methods of storing and reprocessing waste should also be fully insured.

Yours Sincerely,

Julia Hammond

C Head – 15 April 2011

Dear Sir/Madam,

In response to your consultation about nuclear third party liability, I am copying a letter from today's Guardian:

> *An estimate of the cost of compensation to Fukushima victims of $133bn has been reported by Reuters (Japan raises nuclear alert, 12 April).*
>
> *The UK has nuclear sites closer to major cities than Fukushima is to Tokyo, so costs could be even greater here. So it's scandalous that*
>
> *nuclear operators are being allowed to cap their liability at €0.7bn or at most €1.3bn – barely 1% of the possible Fukushima compensation.*
>
> *No other industry is allowed to do this: BP has a $20bn fund for compensation to victims of last year's oil spill. Why should nuclear be let off?*
>
> *The industry says the public have a poor perception of risk. That although a nuclear accident could be catastrophic and cause us to lose our*
>
> *homes and towns, the chances of it happening are so small that we should not worry about it. How strange then that their shareholders*
>
> *are not willing to accept the same small risk that they might lose their money.*
>
> *A more suitable measure would be to remove the protection of limited liability from the owners and directors of these companies*
>
> *in the event of a major accident. If we are to lose our homes, they should too, not walk away with bonuses and pensions intact*
>
> *as the bankers did. Readers may like to make their own views known to the Department of Energy and Climate Change*
>
> *nuclear third party liability consultation, which ends on 28 April.*
>
> Donald Power
>
> *London*

I fully support the comments made by the writer of this letter: ***Why should nuclear be let off?***

Yours faithfully,
C. Head

M Higham – 20 April 2011

Dear Sir,
I am appalled to read that you are proposing that nuclear operators should be allowed to cap their liability at Euros 0.7bn or Euros 1.3bn in the event of a nuclear accident. This is in direct contrast to the estimate of the cost of compensation to the Fukushima victims, which has been reported as $133bn. Our nuclear sites are closer to major cities that Fukushima is to Tokyo and therefore costs could be even greater here. Other industries are not allowed to cap their liabilities at this low level, as evidenced by the $20bn fund for compensation that BP has had to provide for compensation to vicims of their oil spill last year.
It would seem eminently better to remove the protection of limited liability from the owners and directors of these companies in the event of a major accident. If, as the industry says, the risk of an accident is very small then they should be willing to share in this small risk by instituting this measure and not having the protection of limited liability.
Yours,
Marilyn Higham (Mrs)

M Hill – 25 February 2011

My response relates only to the proposals for nuclear waste disposal facilities given in Chapter 11 of the consultation document.

My understanding is that Government proposes to leave all radioactive waste disposal facilities outside the licensing regime in the Nuclear Installations Act 1965 (NIA65) and to bring disposal facilities for higher activity wastes (HAW) into the NIA65 liability regime. This is to be achieved by bringing all radioactive waste disposal facilities into the NIA65 regime initially, then seeking from the Nuclear Energy Agency (NEA) a formal exclusion for UK low level waste (LLW) disposal facilities. If and when NEA grants the exclusion, UK legislation would be amended to implement it.

I do not believe that this is the best course of action, for the following reasons.

Geological Disposal Facilities for HAW

It seems self-evident that any future UK geological disposal facility (GDF) for HAW will need to be subject to the nuclear safety regulatory regime and thus will need to be licensed under NIA65. This will particularly be the case for a GDF containing high level waste and/or spent fuels. Continuing to leave GDFs outside the licensing regime fails to give the Health and Safety Executive (HSE) (and, in due course, the Office for Nuclear Regulation, ONR) a clear regulatory locus during the development of such facilities. It could also be seen as being inconsistent with the 2008 Managing Radioactive Waste Safety (MRWS) White Paper (Cm 7386) and regulators' documents about how they will regulate a GDF[1].

Bringing GDFs into the NIA65 liability regime is not, in my view, advisable until there has been international resolution of the question of when the period of liability for a disposal facility ends. Disposal facilities differ from other nuclear facilities in that they are not decommissioned but closed and when they are closed the wastes, and hence the liability, remains. It cannot have been the intention of the 2004 Protocol to the Paris Convention that the owner or operator of a disposal facility would need to make financial provisions for damage claims throughout the post-closure period of the facility. Indeed, the NEA website states that a disposal facility could be excluded in the post-closure phase when it "no longer poses a significant risk and is therefore no longer under active surveillance". However, there seems to be no formal international agreement that the period of liability ends when a disposal facility ceases to be under active institutional controls.

Until there is such international agreement, it would be difficult to include in UK law any indication of when the liability period for a GDF ends. The result could be that the impression is given that the owner or operator will need to make financial provisions for damage claims indefinitely. This could adversely affect public acceptability of any proposal to establish a GDF at a specific site.

In addition, because the Government's proposals would not separate the licensing and liability regimes in NIA65, any GDF that was licensed could never be delicensed. This situation would be inconsistent with the fundamental principle that, beyond a limited period of institutional control, regulation of this type of facility should not be required.

Disposal of HAW on Existing Nuclear Licensed Sites

There are three situations in which HAW might be disposed of or considered to be disposed of on an existing nuclear licensed site:

- in situ disposal (i.e. leaving below-ground radioactive structures in place and regarding them as disposal facilities)

[1] For example, the Environment Agency and Northern Ireland Environment Agency Guidance on Requirements for Authorisation (GRA) for GDFs issued in 2009.

- closing an existing disposal facility, leaving the HAW in place (e.g. the Dounreay Shaft)
- constructing a new HAW disposal facility on an existing nuclear licensed site (e.g. a near-surface disposal facility for short-lived or low toxicity HAW, as envisaged under Scottish HAW policy).

In all three situations the current status of the disposal facilities in regard to licensing is unclear: the facilities are or would be on a nuclear licensed site but are not licensable under NIA65 as disposal facilities. The Government proposals would do nothing to clarify the position. In addition, they would bring the facilities into the liability regime, without resolving the issue of the end of the period of liability. This would have the disadvantage noted above for GDFs in terms of public acceptability. It could also make it impossible to delicense the part of the site on which the facility is located. This might rule out what, in other respects, are attractive decommissioning and HAW management options.

Near-Surface Disposal Facilities for HAW Outside Existing Nuclear Licensed Sites

The Government proposals would mean that any new near-surface disposal facility for HAW outside an existing nuclear licensed site would be within the liability regime but its position under the licensing regime would be unclear. This could adversely affect public acceptability of any proposal to establish a new near-surface disposal facility for HAW in two ways. One relates to the impression of indefinite financial provisions for damage claims mentioned above. The other is that it would not be clear at the outset how such a facility will be regulated.

LLW Disposal Facilities on Existing Nuclear Licensed Sites

Under the Government proposals there appear to be two ways in which the land containing a LLW disposal facility on an existing nuclear licensed site[2] could be delicensed:

- the operator removes all the wastes and any contamination, so as to meet the current HSE delicensing criteria
- HSE decides that there are no longer any licensable activities occurring at the site of the facility and that the risks posed by the facility are sufficiently low.

The second mechanism would only be feasible if NEA acceded to the UK request to exclude LLW disposal facilities from the Paris Convention. It would also require HSE to make major changes to its delicensing policy and guidance. These changes would be needed so as to avoid inconsistencies between the delicensing approach for radioactively contaminated land, which is currently based on low residual risk and, in effect, no residual liability, and the delicensing approach for LLW disposal facilities, which would be based primarily on low residual risk. It is unclear whether HSE would feel able to make such changes, given the “no danger” wording in NIA65.

My Suggestions

In my view, it would be best if Government did not make any changes to UK law regarding the liability regime for disposal facilities until it has sought and obtained agreement from NEA that:

- UK LLW disposal facilities can be excluded from the Paris Convention
- for all disposal facilities, the period of liability under the Paris Convention ends when the institutional control period for the facility ends.

I think that, once these agreements have been obtained, Government should amend NIA65 to:

- separate the licensing and liability regimes for all nuclear facilities
- bring HAW disposal facilities into both the licensing regime and the liability regime
- make it clear that all delicensing decisions will be based only on a demonstration that risks will be sufficiently low, not on any consideration of liability

[2] Examples of such LLW disposal facilities are the LLWR and the Dounreay LLW Pits.

- make it clear that the liability period for a disposal facility ends when active institutional controls on the facility cease.

It might be better to take the opportunity to replace NIA65 with modern legislation, rather than to amend it. At the same time as the legislation is changed, HSE/ONR should replace its delicensing policy and guidance.

M Hunter – 27 April 2011

Dear Madam or Sir

The unpredictable and spiralling costs of the Fukushima disaster cause grave concern.

The cost of the natural disaster plus the nuclear damage, not only to the power station but also related costs of evacuating, rehousing, and medically treating and/or compensating large numbers of people, as well as making the environment safe again, can be regarded as almost open-ended.

The nuclear industry must be made liable for these costs. The risk of nuclear generation going badly wrong - though it may not happen often - is potentially so costly that funds to cover it must be put into the equation.

It is urgent that the cap on nuclear operators in the UK be reconsidered to take into account current levels of costs in Fukushima, and indeed BP's similar experience in the Gulf.

If this deters investors, perhaps this is because the real economics show us that it may be a risk too far.

Sincerely

Margaret Hunter

W Irvine – 25 April 2011

Sir, I consider that the proposed changes to third party liabillity leave the public exposed to risk. The level of liabillity is inadequate.

All domestic insurance policies exclude damage caused by radioactive contamination.

yours sincerely

Bill Irvine

WJ Leigh – 14 March 2011

Dear Sir

I attach a Response Form containing my comments on the above Public Consultation.

I make these comments purely as an interested individual - not on behalf of any organisation.

Yours sincerely

W J Leigh

I have not commented on every chapter or issue.

Chapter 4 Categories of damage	We would welcome views on our proposed implementation of the new categories of damage as described in this chapter and as set out in the draft Order. Particular questions you may wish to consider include: a) should particular types of claim be prioritised, and if so, how (see paragraph 4.14) b) should we make provision to deal with the case where a claim is made by a public authority for the cost of reinstating property in respect of which compensation has already be paid to the owner (see paragraph 4.29) c) should "compensatory remediation" be expressly included or excluded from the measures of reinstatement that can be claimed for (see paragraph 4.39) d) should we define what constitutes a "grave and imminent threat" and, if so, how (see paragraph 4.66)?

Response

In paragraph 12 of the Consultation Document you say, rightly, that where there has been a breach of the section 7 duty it will be necessary to ensure that it will not be possible to recover compensation outside of the NIA 65 in respect of the extended definitions of nuclear damage. This prompts me to raise a fairly fundamental question which gave me some cause for concern when advising BNFL, and which

you may wish to consider in the context of the amendments you are proposing. The question is whether the Paris Convention – and the NIA 65 – is intended to create an *exclusive and exhaustive* liability regime.

When referring to an exclusive and exhaustive liability regime, I am not simply talking about the channelling of liability. One or two very brief examples might be given to illustrate the point. If there was a significant uncontrolled release of radioactivity off site, various 'levels' of contamination would likely occur. Some might be held to amount to damage to property giving rise to a breach of duty. But there would no doubt be other property where radio-nuclides (resulting from the incident) would be present but where the Court determined that the 'levels' were not high enough to constitute nuclear damage. We cannot be certain where the all-important 'lines' will be drawn by a Court, but I think we can be certain that some property will be contaminated *but not to a degree sufficient to constitute nuclear damage*. However, people who find themselves in that situation may well still allege that they have suffered loss as a result and will do everything they can to secure compensation. The question is: could they seek compensation *outside* the structure of the NIA 65? [3] As drafted the NIA 65, and the proposed Order, prevent the recovery of compensation outside the Act only when there is a breach of the statutory duty.

So, in the circumstances just described, could third parties sue under normal tort law – and in particular under the law of private (or public) nuisance or trespass? You may think that this is an academic point in that if there is no breach of statutory duty under the NIA 65 then even if a claim outside the Act was allowed and pursued there is little or no prospect of recovering compensation at common law. But note that a number of relevant torts do not rely on proof of actual physical damage and thus the absence of actual material damage to property would not necessarily rule out such common law actions. The presence of unwanted, uninvited radioactive contamination on land or other property falling short of "damage" might be sufficient to create a cause of action.[4] If this were allowed to happen there is a risk that the Convention system would 'unravel': liability could arise outside of the 1965 Act, with no limited liability, no channelling etc and no relevant insurance provisions. That would be a surprising, and perhaps very damaging, result for the nuclear operator and the industry generally.

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[3] Questions as to the 'exclusivity' of internationally agreed liability regimes have arisen and been determined by the Courts in other contexts: see e.g. *Sidhu v British Airways* [1997] 2 WLR 26, a case appertaining the Warsaw Convention. The House of Lords held that where the Convention did not provide a remedy, no remedy was available either under the common law or otherwise.

[4] Much would depend on where the Court fixed the point at which contamination amounted to nuclear damage falling within the NIA 65. In the *Merlin v BNFL* [1990] 3 WLR 383, the 'bar' was set at a seemingly high level: there needed to be evidence of actual physical damage to property. Using this approach significant contamination could be present without property being damaged within the meaning of the NIA 65. Clearly in *Merlin* the judge was reluctant to formulate a 'risk-based' approach. In *Blue Circle* the 'bar' appears to have been set lower, and compensation was recoverable – but note that in this case the plaintiff's case was made easier than it might otherwise have been because the MoD accepted the 'regulatory standard' for clean-up proposed by the Environment Agency. The standard was the 'threshold' for control under the RSA 93 – a much lower standard for intervention than anything contained in guidance appertaining to the contaminated land regime. If the MoD had not agreed to this regulatory standard on the basis that the contamination posed no risk whatsoever to people or wildlife (which was in fact the position) and that no remedial action was necessary, the case may have turned out differently.

Note that the above point is not necessarily limited to radioactive contamination of property. If a major nuclear incident occurred it may well result in actions for psychiatric injury: indeed such claims would probably be the 'first' kind of personal injury claims to arise following any incident – cancer cases can take many years to manifest. But although we can probably assume that psychiatric illness is personal injury for the purposes of the NIA 65, can we be sure that it can be said to be an injury that is "arising out of or resulting from" the radioactive etc properties of nuclear matter, as required by section 7? It might be argued that psychiatric illness is an injury that arises out of *the fear* of such an injury i.e. the fear of developing a radiation-linked disease (typically a cancer), rather than being caused by the radioactive properties of nuclear material itself (unlike, say, cancer). If such an argument prevailed claimants might attempt to seek redress outside the framework of the NIA 65, where Convention principles would not apply.

Similarly, a 'narrow' interpretation of "occurrence" (see further my comments below on this issue) might put the alleged effects of routine occupational on-site exposures outside the scope of the NIA 65, again prompting claims other than under the Act.

Without going into detail, there are quite compelling reasons (in the Official Records) indicating that the Vienna Convention was intended to be an exclusive and exhaustive regime – shutting out "normal tort law". This resulted in Article II.6. That provision was amended by the 1997 Protocol to accommodate the wider meanings of nuclear damage. The Paris Convention does not appear to have a comparable provision, though some might argue that Article 6(c) (ii) is intended to cover the same ground. Equally, one might conclude that it is merely saying what the NIA 65 says: no liability other than under the Convention system once nuclear damage arises.

If you are satisfied that the PC and the NIA 65 are creating an exclusive and exhaustive liability system then you may wish to consider making this absolutely clear in the context of extending the definitions of nuclear damage. In other words, you have a provision in the Order to the effect that where there is an occurrence involving nuclear matter or an emission of radiation in relation to which a licensee (etc) owes a duty under the NIA 65 but such occurrence (etc) does *not* result in a breach of duty, then no liability shall be incurred by any person in respect of that occurrence etc.

I did wonder whether some Articles in the draft Order (e.g. 11A(3) and 11G(3)(b)) might have been intended to get to grips with the above point but this does not seem to be the case. Those provisions seem to be directed at scenarios where a claim could have been made in respect of property damage except for the fact that *the property* in question is excluded from the ambit of the NIA 65. So, for example, the Nuclear Decommissioning Authority cannot sue for loss of income in respect of the contamination of any nuclear installations it owns because such property is "deemed" to be the licensee's and so is taken outside the ambit of the NIA 65.

On the question as to whether you should define "grave and imminent threat", my view is that there should be a 'formal' identifiable point in time at which it is established conclusively that such a state of affairs exists. If this is not done then

identifying the point in time at which the duty was broken (with 'allowable' costs then being recoverable from that point) may become a difficult and contentious question. A great deal of complex evidence may need to be assessed before a Court could say whether an event had reached a point at a particular time which posed such a threat. Given the highly developed regulatory framework, I would suggest that a grave and imminent threat should exist when, and only when, the HSE or the Secretary of State (or perhaps some other suitably qualified person) issues a statement to the effect that such a threat exists.

Similarly, I disagree with your proposal not to require the approval of preventive measures. Where there is an actual or threatened nuclear incident different people may take different action depending on their perception of the same actual risk (indeed you appear to accept this position). But I think that there needs to be some additional 'external' control mechanism as to when the costs of taking preventive measures fall to be considered. This is particularly so given that an individual's perception of risk may well be influenced by extensive – and perhaps misleading - media coverage. For example, against the background of 'sensational' media reporting many people may think it perfectly reasonable and proportionate to jump into their cars and evacuate their homes perhaps for several days or longer. The costs of a mass, largely media-driven, evacuation by local (or maybe not so local) residents could turn out not only to be extremely large but also completely unnecessary. I think preventive measures should be approved by competent authorities, as an additional control mechanism over and above the requirement that the measures must be reasonable etc. Given the robustness of the regulatory regime and the sophistication of emergency planning this should not impede the taking of necessary action: indeed it could facilitate it. Proper guidance and instruction must come from the 'competent authorities' where there is a major nuclear emergency, actual or threatened.[5] Perhaps, exceptionally, approval could be given 'retrospectively' if this is considered appropriate.

There is another reason why I think preventive measures should be approved – this will become clear in relation to my comments on compensation for "loss of income" in the paragraphs below.

As regards compensating for "loss of income" deriving from a direct economic interest in the impaired environment, in order to see how this might work in practice I think it may be helpful to consider how Emergency Orders may be used in the event of a nuclear incident. In the event of a significant accident Emergency Orders are likely to be used extensively, for example, to prohibit various specified activities in designated areas in order to prevent the consumption or movement of food. In a regulatory sense the use of such an Order is a *preventive measure*, and such measures when imposed may well lead to significant financial losses for those affected. However, neither the Consultation Document nor the draft Order seems to contemplate, *loss of income* resulting directly from the implementation of formal *preventive measures* as being recoverable under that 'head' of damage. The emphasis there seems to be on the "costs" of taking preventive measures, although (as you note) the amended Convention does refer to "further loss" caused by such

[5] For example if property needs to be decontaminated *as a preventive measure* e.g. washed down or top-soil removed from land to prevent radiation exposure or the spread of contamination, one would expect directions (and hence approval) on this to come from the regulatory authorities.

measures.

Taking this question further, let us consider the following scenario. Immediately following a nuclear incident which results in an uncontrolled release of radioactivity into the atmosphere an Emergency Order is issued prohibiting the harvesting and movement of crops and the movement and sale of livestock in a broadly drawn designated area. This is done as a precautionary measure. In the event, only one small parcel of land owned by a local farmer is found to be contaminated to the point where it can be said to be damaged or, if it was regarded as "the environment", significantly impaired. [6] In those circumstances would all the people who suffered loss of income as a direct result of the imposition of the Emergency Order, have a valid claim under the NIA 65 (as amended)? I presume (on the basis of the draft Order) that the answer is: only if they have a direct economic interest in any use or enjoyment of the part of the environment that is significantly impaired as a result of the breach. However, in the scenario presented none of the other farmers etc in the designated area suffering financial loss as a result of the Emergency Order would have a direct economic interest in the specific "damaged" small parcel of land (environment). Their loss of income would not derive from a direct economic interest in any use or enjoyment of the affected property, and thus claims for loss of income would remain unsatisfied.

Given that Emergency Orders and related regulatory powers may be used widely in the event of a nuclear incident, this raises the important question as to whether the draft Order should be amended to provide that loss of income *directly resulting from regulatory preventive measures* is recoverable from the operator. As indicated above, the amended Convention provides that compensation should be available not only for the "the costs" of preventive measures but for *"further loss…caused by such measures"*.[7] The Consultation Paper appears to consider that this expression should have a rather limited scope, but could it not include "loss of income" resulting directly from *approved* preventive measures such as Emergency Orders prohibiting or restricting certain activities in defined areas? [8] Such a step would make the NIA 65 compensatory regime far more meaningful to those who suffer financially as a direct result of action taken by regulatory authorities to reduce risks in the event of a nuclear emergency but who suffer no actual damage to their property or have no direct economic interest in any use or enjoyment of that part of the environment which is considered to be significantly impaired.

Moving on, I note that measures of reinstatement are subject to approval by competent authorities. In cases where nuclear liability is disputed by the operator, this approval (and appeals) process will take place only after the Court proceedings are completed and a breach of duty is established. Of course this will not (I presume) preclude regulatory authorities from taking remedial action in accordance with their specific relevant regulatory powers. Thus, intervention might be

[6] I presume that the "environment" includes privately owned property as well as land and water or other parts of the environment which are publicly owned or 'un-owned'.
[7] See Article 1, paragraph vii, 6 of the amended Convention.
[8] Given the significance of this question, would it be advisable to consider (if you have not already done so) the *travaux préparatoires* in relation to the 2004 Protocol in order to understand better whether the expression "further loss" is intended to cover consequential financial loss caused by the implementation of approved preventive measures?

commenced *prior* to the measures being approved and any liability being determined. There is a risk, of course, that if remedial action is taken before liability is established (in cases where liability is disputed) then costs will not be recoverable. However, given that intervention by the regulatory authorities is likely to be a key factor in determining whether a breach of duty has in fact occurred, this risk may be relatively small. The key point I wish to make, however, is that care needs to be taken to ensure that there is a properly designed *interface* between the NIA 65 civil liability regime and the relevant regulatory remediation regimes. If there is a breach of the NIA 65 and remedial costs are recoverable, then the operator should be exclusively liable for those costs (subject to proper exceptions and limitations). In this connection, I am not sure that the Secretary of State should be the sole "appropriate person" in relation to off site occurrences resulting in the contamination of land (see the *Radioactive Contaminated Land (Modification of Enactments) (England) (Amendments) Regulations 2007*). Equally, if it is held that the duties in the NIA 65 have not been breached, then the relevant operator should not be liable for any costs of measures of reinstatement, even if they have already been incurred and were considered necessary at the time.

I'm not sure it would be helpful to prioritize claims. The reason why prioritizing claims is sometimes advocated is, of course, that certain categories of claimants may find that all the funding has been used up. So property claims, which are likely to be made soon after the event, may be dealt with fully and use up all the funds well before any significant personal injury claims are lodged – which may not arise for many years because of the very long latency periods associated with radiation linked cancers. Indeed, I recall that personal injury claims relating to the Windscale Pile Fire in 1957 were crossing my desk well into the 1970's and 1980's. But it seems to me that a 'claim is a claim' and they have to be dealt with as they arise. Raising (significantly) limits of liability and other funding sources (as you are proposing) is the best way to deal with such issues, rather than attempting to 'prioritize' claims and claimants.

Chapter 6 Limitation periods	We would welcome views on our proposed implementation of the revised provisions on limitation periods in the Paris Convention as described in this chapter and as set out in the draft Order. A particular question that you may wish to consider is whether we should apply the 30 year limitation period to claims in respect of injury caused by preventive measures

Response

I agree with the 30 year personal injury limitation period for operators: the previous 10 year period was far too short and in fact operators looked for ways around it to ensure that they retained control over claims which often had high profile public and/or employee relations issues. I think the 30 year period should apply to injury caused by preventive measures: enacting different time periods for personal injuries arising out of the consequences of the same nuclear accident would not be a helpful

development.

However, I am not clear whether you are proposing (see paragraph 6.5 of the Consultation Document) that claims which arise *after* the 30 year period are to be referable to the "appropriate authority". Currently, claims are "not to be entertained" after 30 years, and in my view that should remain the position. *If* you are proposing that such claims can be made to the appropriate authority even after 30 years (and with no further limitation period), then I would disagree with such an approach. The fact that it will be possible for personal injury claims (subject to your deliberations regarding personal injury caused by preventive measures) to be brought against the responsible nuclear operator within the exceptionally long 30 year period should provide sufficient protection for claimants.

Chapter 7 – Liability during transport	We would welcome views on our proposed implementation of the change to the Paris Convention regarding liability for transport of nuclear substances and the other related matters as discussed in this chapter and set out in the draft Order. In particular, we would welcome views on the options set out in paragraphs 7.11 and 7.12. Is it common for nuclear substances to transit a licensed site while *en route* from one nuclear installation to another?

Response

The carriage provisions of the NIA 65 as currently drafted are complex – the proposed amendments take matters to a whole new level of complexity for those responsible for arranging commercial transactions. The key to at least a glimmer of understanding is to grasp that the provisions specify the circumstances where the licensee is fixed with liability and then identify the circumstances where that liability is removed e.g. it is passed to another Convention operator. To be fair, I think the draft provisions do this. But 'practitioners' – especially the commercial teams - will have a real problem with the level of complexity in the draft Order. Frankly, they will be totally confused. *A Guidance Note is absolutely essential.*

One particular reason why a Guidance Note is essential is that during the time I was advising, a widespread belief existed (which I think will probably still exist today) that liability – what we called "the nuclear risk" in material – could be transferred not only between Convention operators when dealing with shipments between Convention countries but also where shipments were coming from, or being shipped to, Non-Convention countries. I often stressed that the better view was to regard agreed transfers of nuclear risk from one Convention operator to another as possible only in respect of shipments *between* Convention countries. In such circumstances nuclear risk can be transferred by agreement between Convention operators - and not necessarily just the sending or receiving operator. This appears still to be the case – subject to the 'direct economic interest' test.

The current NIA 65 is quite clear regarding shipments from a Non Convention country to the UK (e.g. shipments of irradiated fuel from Japan to the UK). See existing section 7(2)(b)(ii): nuclear risk is placed on the licensee. However, as I say, many people in the Industry (particularly in Western Europe) argued that the PC did not prohibit a Convention operator agreeing to transfer risk to another Convention operator when material was being despatched from a Convention country to a non-Convention country. To give just one example of what often happened in practice: if, say, French-owned uranium was being sent by a French nuclear operator to a UK operator for processing and was then to be sent from the UK to the USA for enrichment, the commercial contract between the French and UK operators would provide that the 'nuclear risk' remained with the French operator for the whole duration of the carriage (except when it was on the UK site and finally entered into US territorial waters). Thus, the French operator took (and insured) the nuclear risk when the material (after being processed in the UK) was being transported from the UK to the USA for enrichment. Note that in this situation there is no doubt that the French operator had what you are now calling a "direct economic interest" (incidentally I never came across any practice of trying to 'forum shop' for lower limits). Indeed, the position was often more complex than this – for example, the uranium might be owned by a Spanish operator who wished to take nuclear risk even though he was not a sending or receiving operator.

The point is that we now seem to have moved to a position where it is clear that nuclear risk cannot be transferred by agreement from one Convention operator to another (even where that other has a "direct economic interest") in cases where material is being sent to a Convention country from a Non Convention country or from a Convention country to a Non Convention Country. I say this principally because the transfer of risk provisions in the draft Order coupled with the requirement for "a direct economic interest" are not applicable to the cases I have just described. If this is right (and the intention) then practitioners (particularly the commercial managers) need to understand clearly what is and is not permissible in terms of transferring and placing nuclear risk during the carriage of nuclear materials.

A related thought is whether the contents of the Certificate of Financial Security (COF's) should be expanded to require the responsible operator to state (where this is needed) the nature of his "direct economic interest".

I would have thought it quite unusual for nuclear material simply to be stored temporarily en route at a nuclear installation – normally material arrives for processing, treatment or actual storage (rather than a mere 'stop-over'). But of course it may happen from time to time. I do, however, have reservations about the proposed changes. On-site occurrences should in my view be the responsibility of the operator of the relevant installation. Creating a system where one first asks if an occurrence on a UK nuclear site was caused, or perhaps 'sparked-off', by material held in transit is introducing a preliminary inquiry with unknown levels of evidential complexity that we can do without. This is so especially when one considers that if material stored temporarily in transit is in fact the cause of the occurrence then different liability limits may apply.

This observation prompts me to suggest an alternative approach which you might consider. The UK operator of the site remains responsible (as now) for incidents on his site even if the material which causes the incident is stored on site temporarily (in the course of transit). However, the site operator's limit of liability is applied to *all* on site incidents. If this were done we could say, with justification, that this approach more than meets the direct economic interest test – the 'mischief' which that requirement is aimed at is avoided by providing that the UK operator's (significant) limits are applied to *all* UK on site incidents. Given that this would not really be doing anything new, in terms of current practice (i.e. operators remain liable for on-site occurrences), UK site operators should not have grounds for objection.

Financial liability levels	We would welcome views on our proposed implementation of the revised financial liability levels as described in this chapter and set out in the draft Order. In particular, we would welcome views on: a) the likely impact of increasing the standard liability level to €1200 million as compared to €700 million; b) the proposal to set a reduced level specifically for low-risk transport and to use the criteria in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009. Is this a practical solution? Would it add significant administrative burdens? Are there alternative criteria that could be used to identify low-risk transport?

Response

My only comment relates to your possible use of the 'packaging regulations' as a basis for distinguishing between 'low' risk and (what presumably you might call) 'higher' risk transports. My understanding is that the fundamental approach to nuclear transport is that safety is designed into the transport package. In effect, it is not a probabilistic 'risk-based' approach to safety (unlike nuclear plant operational safety). If this is right then distinguishing between consignments by reference to international (IAEA based) packaging standards in circumstances where you are considering the effects of a breach of containment in terms of the availability of funds, may not be appropriate. The 'packaging' specifications and designs for massive irradiated fuel flasks, for example, are in place to ensure containment in all credible accident scenarios. So simply applying a higher compensation limit to the carriage of irradiated fuel because the packaging requires a 'higher-grade' of robustness in terms of containment (compared to, say, enriched UF6) is not necessarily a valid reason for applying a requirement for higher levels of funding to meet compensation claims.

A key issue is whether UK operators will be put at a competitive disadvantage if higher limits are required for certain transports, in circumstances where a foreign operator would have a lower limit. Should we not consider what limits other countries are intending to apply? And if 'risk' is considered a key factor when determining limits of liability during transport, why should the limits for particular kinds of nuclear material vary as between Convention countries when those risks are regulated by packaging standards which apply internationally?

Having said that, I can see that there may be an 'acceptability' angle to all this. In particular I recall that certain Pacific island countries expressed quite strong concerns regarding transports of irradiated nuclear fuel and MOX fuel in proximity to their countries. They believed an incident – even a fairly minor one – could have an immediate and very damaging impact on their economies, especially their tourist and fishery industries, and they pressed for reassurances on compensation arrangements. The wider geographical scope of the amended PC and NIA 65, together with the wider definition of nuclear damage, may be important elements in trying to provide such reassurance – and obviously such States would prefer to see the higher limit in force. This may pay-off in the longer run if further reprocessing and/or MOX business is sought.

Chapter 10 - Jurisdiction	We would welcome views on our proposed implementation of the Paris Convention changes regarding allocation of jurisdiction, both between Paris countries and within a Paris country, as described in this chapter and set out in the draft Order. In particular, we would appreciate views on: a) whether basing our tie-breaker provisions on the impact of an occurrence, event or breach of duty would be a workable solution – how practicable would it be to measure impact (see paragraph 10.16)? b) whether we need a fall back provision giving jurisdiction to the High Court of Justice (see paragraph 10.17). In addition we would welcome views on our proposed clarification of "occurrence" in new section 26(2A)

Response

Your proposed amendments to the NIA 65 jurisdiction provisions prompt me to raise a particular point. Section 17(1) of the Act provides that "No Court in the United Kingdom...shall have jurisdiction to determine any claim or question ***under this Act*** certified

by a the Minister to be a claim which under any relevant international agreement, falls to be determined by a court of some other relevant territory...". (Emphasis added).

Suppose a major nuclear accident on a nuclear site in another Convention country resulted in a significant release of radioactivity which caused nuclear injury or damage in the UK. Obviously under Convention rules the courts of the country where the relevant installation is situated would have exclusive jurisdiction – and that country's nuclear legislation (implementing the Convention) would apply.

However, in such circumstances could UK citizens attempt to recover compensation in the UK courts, otherwise than under the NIA 65? This would be contrary to the whole basis of the Convention system – but are you absolutely sure that the provisions in section 17(1) of the NIA 65 are sufficiently clear to prevent UK victims from suing other than under the NIA 65 in UK courts? In the scenario just put, "no claim or question" falls to be determined *under the 1965 Act*. No statutory duties are imposed by the 1965 Act on foreign nuclear operators in terms of preventing nuclear incidents on their own (overseas) sites, so no liability could, in any event, arise under the NIA 65. Therefore, it might be argued that the Secretary of State lacks a clear statutory power to prevent common law claims in UK courts by victims who have suffered nuclear damage in the UK, particularly in circumstances where compensation has not been recovered in the foreign court because funding limits have been reached.

It might be argued that the current wording is appropriate because the Convention system and the NIA 65 is intended to be an exclusive and exhaustive regime – see the points made at the beginning of this response. But is this really clear?

I agree with your proposed clarification of "occurrence" – the approach taken in the *Magnohard* case was unnecessary and could lead to confusion and difficulties. However, it is important that a 'narrow' interpretation of "occurrence" is not adopted in relation to breach of duties. Without going into detail it would be wrong to adopt an approach which limits an occurrence to an "accident" or uncontrolled release of radioactive material. Routine emissions of radiation as a result of normal operations on-site can equally be said to be an occurrence. If this were not so, radiation exposures received routinely (and within permissible limits) over many years as a result of working on a licensed site would not fall within the 1965 Act. This would mean that workers who claimed that illness (typically cancer) had been caused by such occupational radiation exposure would not be able to rely on the 1965 Act. (Incidentally, the Radiation Worker Compensation Scheme works on the assumption that occupation radiation exposure incurred on nuclear sites falls within the ambit of the NIA 65.) Query therefore whether it would be worthwhile to make it absolutely clear that "any occurrence" on the licensed site includes all operations and all acts on the site and is not confined to abnormal occurrences or accidents.

One final thought which may be relevant in the context of 'occurrences'. Given that the definition of nuclear damage is being widened, does any limitation need to be applied to deal with 'historic' contamination of the environment i.e. that happening before the operator owed a specific duty not to damage (i.e. significantly impair) the environment? I am thinking, for example, of the presence of long-lived radio-nuclides on the bed of the Irish Sea as a result of discharges (intended and unintended) from the Sellafield site over the last 50 plus years, and which may be added to, but probably only very marginally in terms of radiological significance, in the future.

W J Leigh

March 2011

B Leslie – 15 April 2011

It is reported that the estimated cost of compensation resulting from the nuclear disaster at Fukushima will be in the order of $133 billion.

In view of this, I suggest that to limit the nuclear power companies' liability to only €0.7 or even €1.3 billion is totally inadequate, and taxpayers should not be called on to shoulder cost of the potentially huge excess; the industry should be liable for all risks, and in light of this, should rethink the advisability of continuing to expand.

Brian Leslie

B Loudon – 20 April 2011

Dear Sir or Madam,

The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

There are nuclear plants in the UK closer to major cities than Fukushima is to Tokyo, so the human impacts and costs in this country could be even greater when an accident occurs.

Currently nuclear operators in the UK have liability capped at £0.6bn or at most £1.1bn. This is a tiny % of the likely Fukushima costs. No other industry is allowed to operate with this level of uncovered risk. BP has been required to establish a $20bn (£12.3bn) fund for compensation to victims of last year's oil spill.

As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours,

Bridget Loudon

C Macintosh 21 April 2011

Dear Sirs,

An estimate of the compensation to Fukishima victims of $133 bn has been reported by Reuters (Japan raises nuclear alert, 12th April '11). The UK has nuclear sites closer to major cities than Fukishima is to Tokyo, so costs could be even greater here.

I therefore consider it t be scandalous that nuclear operators are being allowed to cap their liability at € 0.7bn or at most €1.3bn- barely 1% of the possible Fukishima compensation. No other industry is allowed to do this. BP has a $20bn fund for compensation of the victims of last years oil spill.

Of course the Nuclear industry will argue that the public has a poor perception of the risks, which they maintain statistically are small (though in truth the total damage continues for decades, as cancers can take 20 years to develop and the causes of mutations and miscarriages cannot be absolutely proven). But if the risk is as slight as they would have us believe, why should the share-holders not be willing to accept the supposedly small risk that they might loose their money? And why should the directors and owners of such companies be allowed the protection of limited liability for catastrophic risks they seek to assure us are negligible?

Yours sincerely

Catherine Macintosh

A & E Mack – 25 April 2011

We wish to formally object to the proposal by the British government that the construction and energy companies be exempt from any meaningful liability in the event of a large scale nuclear accident.

It is absolutely scandalous that nuclear operators are being aloud to cap their liability at a derisory £140 million when the cost of any serious accident would run into hundreds of billions.

The estimated cost so far of the Fukushima disaster stands at £100 billion but is likely to keep rising.

The 'New (supposedly) Safe Confinement' building at Chernobyl is set be £1.4bn alone ~ adding to the cost already of tens of billions of pounds. The barefaced and shameless deception by the British Government in order to facilitate the nuclear industry undermines the most basic principles of democracy.

We would be extremely grateful if you could acknowledge receipt of our objection.

Andrew & Elaine Mack

V Mainwood – 27 April 2011

I am most concerned that this consultation is being carried out at this particularly crucial time in the history of nuclear safety. Now that the Generic Design Assessments in the UK have been put back a year, awaiting Mike Weightman's reportage in September, it is surely necessary to await his views. It is also necessary to review the experience of the Fukushima disaster. For example, it has been reported that exports to Russia from Japan have been radioactively contaminated.

http://www.wddty.com/japanese-exports-contaminated-by-radiation-from-nuclear-meltdown.html

This gives an indication that there are many areas of life, hitherto unknown or unreported, which may alter any framework of nuclear liability.

Tomorrow's deadline is surely going to foreclose the consideration of a great deal of empirical experience that the Japanese situation may subsequently reveal.

Please delay consideration of nuclear liability until more facts and trends are evident.

Yours sincerely,

Val Mainwood

M&G Margolis – 18 April 2011

Rather than fill in the whole form, we wish to say just that the amount of compensation payable by nuclear operators – which we see may be increased to 1200m euros – is totally inadequate. Unfortunately, this has been only too clearly shown by the situation at Fukushima.

In our view, the risks involved in nuclear power are huge and insurmountable. We do not need nuclear, quite the opposite. What is needed is minimisation of our energy use and concentration of investment in genuine renewable sources, such as solar, wind and wave power.

Sincerely

Malcolm and Gia Margolis

F Martin - 20 April 2011

Dear Sir or Madam,

The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

There are nuclear plants in the UK closer to major cities than Fukushima is to Tokyo, so the human impacts and costs in this country could be even greater when an accident occurs.

Currently nuclear operators in the UK have liability capped at £0.6bn or at most £1.1bn. This is a tiny % of the likely Fukushima costs. No other industry is allowed to operate with this level of uncovered risk. BP has been required to establish a $20bn (£12.3bn) fund for compensation to victims of last year's oil spill.

As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours, Fleur Martin

B Norris – 6 April 2011

Dear Sir/Madam

My submission for the new build nuclear build in the UK.

The levels of liability are plainly massively insufficient ,incapable of covering the most basic of liability for new build nuclear. placing the overwhelming majority of the costs on the UK taxpayer is clearly unjustified ,especially as present nuclear power generators are presented with £3,43 billion extra under the new energy bill before parliament.

International ratings agencies could downgrade UK finances to cover for this unexpected extra subsidy for private power companies.An extra £70 -£80 billion per reactor is unsustainable for the UK government/taxpayer to bear.

At Fukushima, "compensation claims for radiation damage caused by the accidents could reach 11 trillion yen, or around €91.8 billion, using figures contained in a Bank of America briefing note.

A true level of £70 -£80 billion per reactor is for the profit making power company to shoulder.The nuclear industry will already be compensated with large financial guarantee's to encourage the new build under the new energy bill.

Their is no justification for such a large amount of burden to be carried by the taxpayer.

--
Yours sincerely,

Bryan Norris

D Packham – 26 April 2011

1 **Chapter 4** **Categories of damage**	We would welcome views on our proposed implementation of the new categories of damage as described in this chapter and as set out in the draft Order. Particular questions you may wish to consider include: a) should particular types of claim be prioritised, and if so, how (see paragraph 4.14) b) should we make provision to deal with the case where a claim is made by a public authority for the cost of reinstating property in respect of which compensation has already be paid to the owner (see paragraph 4.29) c) should "compensatory remediation" be expressly included or excluded from the measures of reinstatement that can be claimed for (see paragraph 4.39) d) should we define what constitutes a "grave and imminent threat" and, if so, how (see paragraph 4.66)?
Response	As it has been said endlessly by the present and previous government that "there will be no public subsidy for nuclear power", it is essential that the liabilities of the nuclear power industry are not limited. The disasters at Chernobyl and Fukushima were both contained, and could easily have been much worse. It is clear that limiting liabilities of nuclear operators constitutes a "blank cheque" signed by the public, a clear public subsidy. Thus there should be no limit and no prioritisation is needed
2 **Chapter 5** **Geographical Scope**	We would welcome views on our proposed implementation of the revised geographical scope of the Paris Convention and the Brussels Supplementary Convention as described in this chapter and as set out in the draft Order. Particular questions you may wish to consider include: a) should we align our legislation with the Paris Convention by deleting current section 13 (2) of the 1965 Act. Would any important protections be lost (see paragraph 5.13)? b) how should we define who should be treated as a UK "national" for the purposes of section 16A (see paragraph 5.21)?

Response	Nuclear operators must be liable for damage beyond our national boundaries.
3 **Chapter 6** **Limitation periods**	We would welcome views on our proposed implementation of the revised provisions on limitation periods in the Paris Convention as described in this chapter and as set out in the draft Order. A particular question that you may wish to consider is whether we should apply the 30 year limitation period to claims in respect of injury caused by preventative measures (see paragraph 6.6).
Response	Bearing in mind the very long half-lives of many of the radio isotopes (and of their daughters) a time limitation should be out of the question.
4 **Chapter 7** **Liability during transport**	We would welcome views on our proposed implementation of the change to the Paris Convention regarding liability for transport of nuclear substances and the other related matters as discussed in this chapter and set out in the draft Order. In particular, we would welcome views on the options set out in paragraphs 7.11 and 7.12. Is it common for nuclear substances to transit a licensed site while *en route* from one nuclear installation to another?

Response	The transport of nuclear substances is a special problem and full liability must be carried by the nuclear operators and must not be transferable to other parties, e.g. a transport company.
5 **Chapter 8** **Financial liability levels**	We would welcome views on our proposed implementation of the revised financial liability levels as described in this chapter and set out in the draft Order. In particular, we would welcome views on: a) the likely impact of increasing the standard liability level to €1200 million as compared to €700 million; the proposal to set a reduced level specifically for low-risk transport and to use the criteria in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009. Is this a practical solution? Would it add significant administrative burdens? Are there alternative criteria that could be used to identify low-risk transport?
Response	As it has been said endlessly by the present and previous government that "there will be no public subsidy for nuclear power", it is essential that the liabilities of the nuclear power industry are not limited. The disasters at Chernobyl and Fukushima were both contained, and could easily have been much worse. It is clear that limiting liabilities of nuclear operators constitutes a "blank cheque" signed by the public, a clear public subsidy. Moreover nuclear waste will be a problem for more than 100,000 years. Someone will have to pay for its storage, for monitoring and for dealing with problems such as leakage over this entire period. Unless this is to constitute another unlimited public subsidy, the nuclear industry must deposit very large funds with the public authority for this purpose.
6 **Chapter 9 – Availability of insurance/financial security**	We would welcome views on the availability of insurance or other financial security. In particular, we would welcome views on: a) what forms of alternative financial security should be acceptable and over what classes of liability might alternative forms of financial

	security be appropriate? b) how Government should assess operators' proposals for alternative financial security arrangements? In addition, we would welcome views on the Government stepping in as a last resort to fill any insurance gap. How should Government calculate the charge for this?
Response	There must by **no question** of the government's having to fill any insurance gap. "There will be no public subsidy for nuclear power".
7 **Chapter 10 - Jurisdiction**	We would welcome views on our proposed implementation of the Paris Convention changes regarding allocation of jurisdiction, both between Paris countries and within a Paris country, as described in this chapter and set out in the draft Order. In particular, we would appreciate views on: a) whether basing our tie-breaker provisions on the impact of an occurrence, event or breach of duty would be a workable solution – how practicable would it be to measure impact (see paragraph 10.16)? b) whether we need a fall back provision giving jurisdiction to the High Court of Justice (see paragraph 10.17). In addition we would welcome views on our proposed clarification of “occurrence” in new section 26(2A) of the 1965 Act.
Response	No comment
8 **Chapter 11 – nuclear waste disposal facilities**	We would welcome views on our proposals for implementing the Paris Convention requirements in respect of nuclear waste disposal facilities. In particular, we would welcome views on the number of commercial waste disposal facilities who may be affected by the proposed changes and how they may be affected.

Response	As the 1999 report by the Geological Society of London and the British Geological Survey on Radioactive Waste Disposal made clear no entirely satisfactory storage method is yet available: "total exclusion of potentially harmful radionuclides from the environment cannot be indefinitely guaranteed". "Over very long time-scales, radionuclides from any UK surface or deep disposal facility located onshore will eventually discharge into subsurface waters and then to the sea" and further "Some aspects of geology can only be assessed with limited precision. It is not possible to make direct measurements of properties that provide a complete coverage of the volume of rock around a repository or that cover the time scales (hundreds of thousands of years) over which a repository will be required to function" Moreover nuclear waste will be a problem for more than 100,000 years. Someone will have to pay for its storage, for monitoring and for dealing with problems such as leakage over this entire period. Unless this is to constitute another unlimited public subsidy, the nuclear industry must deposit very large funds with the public authority for this purpose.
9 **Chapter 12** **Representative actions**	We would welcome views on our proposals for implementing the new Paris Convention requirements in respect of representative actions.
Response	

M Parker – 27 April 2011

Dear Sir/Madam,

I am concerned that the consultation on nuclear insurance is continuing unabated despite the tragic events at Fukushima. The unfolding tragedy in Japan and the consequences are paramount to this consultation as they demonstrate all too graphically the complex consequences of a nuclear accident.

I understand the Government has called for a review of nuclear safety in the UK as a result of the situation in Japan. However I am concerned that this does not include a review of the financial implications of nuclear accidents, eg to the taxpayer, to the NHS, to local authorities or to the emergency services. It is clear that considerably more in depth information is needed and that this will only be available once a detailed picture of the extent of the financial impact of the nuclear accident in Fukushima is known.

It is obviously essential to have all the information on the full financial implications of a nuclear accident before considering any changes to the nuclear liability laws. Continuing with the consultation without knowing the costs that both the company concerned and the Government will be facing is simply not acceptable, and neither is pushing ahead with changes to the nuclear liability laws, without first considering the full financial impact on the ability of a company to pay - or what additional costs the Government will have to pick up.

I ask you therefore to halt this consultation, and when the facts and figures are in hand, to open up the consultation and engage everyone concerned, including the communities and local authorities in the potential fall-out zones, the emergency services, and all bodies and organisations who would be involved in the clean-up operation and the rebuilding of the affected area. This would naturally need time for a series of local and national consultation events, and after witnessing the shocking events in Fukushima, who can argue that this is not the very least we can do to prepare ourselves for a similar catastrophe?

Yours sincerely,

Marit Parker

M Poteliakhoff – 22 April 2011

Dear Sirs,

I have recently returned from Japan, having been there at the start of the Fukushima disaster. I continue to follow the unfolding consequences on NHK World TV. The evacuation zone has just been extended. Cattle left untended in the zone are dying, farmers cannot plant rice and fishermen are unable to fish. It is anticipated the compensation bill will reach $133 bn (Reuters, Japan raises nuclear alert, 12th April '11). So far there have been four major nuclear power station disasters, 2 in the ex Soviet Union, one in the USA and one in Japan. All of these disasters were unexpected and had different causes. It cannot be claimed that the day to day safety record of UK nuclear power is any better than that of these countries, with fairly frequent low level incidents continuing to be reported. At some point there is likely to be a major disaster in this country, so how can it possibly be justified to cap nuclear industry liability at € 0.7bn or at most €1.3bn- barely 1% of the possible Fukushima compensation? No other industry is allowed to do this and BP has a $20bn fund for compensation of the victims of last year's oil spill.

Please register my objection to any limitation in the liability of nuclear power station operators.

Yours sincerely,

Michael Poteliakhoff

D Power – 13 April 2011

Dear Sir/Madam,

An estimate of the cost of compensation to Fukushima victims of $133 billion has been reported by Reuters. The UK has nuclear sites much nearer to London than Fukushima is to Tokyo, meaning that a far larger population could be affected here than have been so far in Japan, and costs could be even greater.

It is therefore scandalous that nuclear operators are being allowed to cap their liability at 0.7bn Euros or at most 1.3bn - barely 1% of the possible Fukushima compensation. No other industry is allowed to do this: BP is has a $20bn fund for compensation to victims of last year's oil spill. Why should nuclear be let off?

The nuclear industry frequently asserts that the public have a poor perception of risk. Their argument is that although a nuclear accident could indeed be catastrophic and cause us to lose the very homes and towns we live in, the chances of it happening are so small that we should simply not worry about it. How strange then that their shareholders are not at all willing to accept the same small risk that they might lose their money.

A more appropriate adjustment to the law would be to remove the protection of limited liability from the owners and directors of these companies in the event of a major accident. If we are to lose our homes then they should too, not walk away with bonuses and pensions intact as the bankers did.

Yours faithfully
D. Power

T Richards – 27 April 2011

Hi

I am writing to you to object to the continuation of the Nuclear Insurance consultation, especially because of the need to rethink what would be needed if a similar accidents hapened here.

I am a law lecturer and believe that if you go ahead then it would be a decision that should be challenged by political and legal means.

Your sincerely,

Tim Richards

L Rogers – 27 April 2011

The Convention for Nuclear Safety is to review its policies in August

2012 following the catasrophe in Japan. We should not be trying to create policy on the costs of nuclear power until all available evidence from Japan has had a chance to be reviewed. How do we know what the possible costs might be, otherwise?

This consultation process on the reisions of the Paris and Brussels Conventions has to be halted.

A review of the financial implications, for the taxpayer, local authorities and emergency services, of a nuclear accident needs to be carried out, alongside a credible, independent review of safety of current reactors, as well as any new designs. This review needs to be transparent and independent.

We need to reassess a nuclear company's ability to pay, in the event of an accident. Why should the taxpayer foot the bill, especially when Government are so insistent that the nuclear power industry is to receive no public subsidy?

Linda Rogers

L Rose – 21 April 2011

Dear Sir or Madam,

The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

There are nuclear plants in the UK closer to major cities than Fukushima is to Tokyo, so the human impacts and costs in this country could be even greater when an accident occurs.

Currently nuclear operators in the UK have liability capped at £0.6bn or at most £1.1bn. This is a tiny % of the likely Fukushima costs. No other industry is allowed to operate with this level of uncovered risk. BP has been required to establish a $20bn (£12.3bn) fund for compensation to victims of last year's oil spill.

As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours,

Mr Lee Rose

A Schuman – 28 April 2011

Sirs,

I list below the reasons why this current consultation must be put on hold, - clearly it cannot go ahead under the present circumstances:

- The consultation needs to be halted. The Government cannot continue with its 'business as usual' approach for the nuclear industry in the UK. It is a nonsense to continue with proposals without regard to major events such as those at Fukushima.
- The Government must reconsider its consultation proposals which were published before the tragedy in Japan.
- The Government has called for a review of nuclear safety in the UK because of the situation in Japan. No review of the financial implications - for the taxpayer, local authorities and emergency services - has been called for with regard to the financial impact of a nuclear accident.
- We need information. A revised consultation should only be published once a detailed picture of the extent of the financial impact of Fukushima is known.
- It is vital to stop now and reassess whether the proposals on the level of insurance cover, the legislative arrangements, and the financial security of nuclear companies can be deemed 'fit for purpose' for the coming decades.
- Pushing ahead with changes to the nuclear liability laws, without first considering the full financial impact on the ability of a company to pay - or Government to pick up additional costs - is not acceptable.
- It is some time since the nuclear liability laws have been publicly consulted on, yet DECC has not even suggested one stakeholder event on this issue. It has not engaged with the communities and local authorities most likely to be directly affected in the event of a nuclear accident. Any subsequent consultation should be undertaken with full and open public engagement nationally and locally.
- Due time should be given to engagement on such consultations. It is highly unlikely most emergency services - or other relevant organisations with legal responsibility to respond to an accident - have had time to even consider the current consultation.
- The Government must also engage - transparently - with the emergency services and other agencies that may be involved in preventing: loss of life and personal injury; loss of or damage to property; reinstatement of the impaired environment or applying preventative measures - which may also subsequently be involved in insurance claims, or aspects of them, under revised laws.

We have just recognised that 25 years since Chernobyl exploded there are continuing casualties, the area surrounding the plant is a desert, and the children being born in the surrounding districts from parents who were affected are themselves affected. How can you expect an insurance to cover such unpredictable promblems?

Anne Schuman

R Street - 27 April 2011

To the manager of the DECC consultation.

The government has asked for responses to its consultation on insurance for the nuclear power industry.
However in the light of the accident in Japan at the Fukushima plants, it is now necessary to completely revise any plans.The consultation should be halted.

The Government cannot continue with its 'business as usual' approach for the nuclear industry in the UK. It is a nonsense to continue with proposals without regard to major events such as those at Fukushima.

The Government has called for a review of nuclear safety in the UK because of the situation in Japan. No review of the financial implications - for the taxpayer, local authorities and emergency services - has been called for with regard to the financial impact of a nuclear accident.

We need information. A revised consultation should only be published once a detailed picture of the extent of the financial impact of Fukushima is known
How can there be changes to the nuclear liability laws, without first considering the full financial impact on the ability of a company to pay - or Government to pick up additional costs - is not acceptable.
To date there has been no consultation period with the general public and especially those communities likely to be affected by an accident at a nuclear power station.

In addition the government needs to involve the emergency services and other agencies involved with safety who may be involved in claims.

I look forward to hearing from you,

Yours faithfully,

Rae Street

S Thompson – 15 April 2011

Dear Sirs

I am a resident living within 5 miles of the existing nuclear power station at Oldbury in S. Glos and the proposed site up river at Shepperdine. I strongly object to this consultation proceeding further, it must be halted for the following reasons:

- The Government cannot continue with its 'business as usual' approach for the nuclear industry in the UK. It is a nonsense to continue with proposals without regard to major events such as those at Fukushima.
- The Government must reconsider its consultation proposals which were published before the tragedy in Japan.
- The Government has called for a review of nuclear safety in the UK because of the situation in Japan. No review of the financial implications - for the taxpayer, local authorities and emergency services - has been called for with regard to the financial impact of a nuclear accident.
- We need information. A revised consultation should only be published once a detailed picture of the extent of the financial impact of Fukushima is known.
- It is vital to stop now and reassess whether the proposals on the level of insurance cover, the legislative arrangements, and the financial security of nuclear companies can be deemed 'fit for purpose' for the coming decades.
- Pushing ahead with changes to the nuclear liability laws, without first considering the full financial impact on the ability of a company to pay - or Government to pick up additional costs - is not acceptable.
- It is some time since the nuclear liability laws have been publicly consulted on, yet DECC has not even suggested one stakeholder event on this issue. It has not engaged with the communities and local authorities most likely to be directly affected in the event of a nuclear accident. Any subsequent consultation should be undertaken with full and open public engagement nationally and locally.
- Due time should be given to engagement on such consultations. It is highly unlikely most emergency services - or other relevant organisations with legal responsibility to respond to an accident - have had time to even consider the current consultation.
- The Government must also engage - transparently - with the emergency services and other agencies that may be involved in preventing: loss of life and personal injury; loss of or damage to property; reinstatement of the impaired environment or applying preventative measures - which may also subsequently be involved in insurance claims, or aspects of them, under revised laws.

Yours sincerely,

Sarah Thompson

O Tickell – 19 April 2011

In response to this consultation,

http://www.decc.gov.uk/en/content/cms/consultations/paris_brussels/paris_brussels.aspx

I would like to express my view that there should be no limit to the liability of nuclear plant operators as regards the payment of compensation to individuals and businesses in regard to damage resulting from releases of nuclear radiation whether during the course of normal operation or during accidents.

To limit the liability of nuclear operators would represent a subsidy, at public cost, to those nuclear operators.

Rather than that, the operators should make provision for any conceivable level of payment in compensation through a combination of providing surety, and insurance cover.

Current estimates of the cost of the Fukushima catastrophe exceed $100 billion. A nuclear catastrophe on such a scale occurring in the UK may be considered improbable, but is certainly possible. In that event, to burden the Government with losses on such a scale, or to leave those harmed uncompensated, would represent an intolerable public cost.

This would also be in breach of Government promises that there will be no public subsidy to nuclear power.

Sincerely,

Oliver Tickell

M Toomey – 28 April 2011

Dear Sirs/Madam

This consultation paper needs to be halted immediately - the Government cannot carry on with their previous proposals for new Nuclear Power Stations to be built in the U.K. to last for 50 years - 2061. Their proposals include a new 'Moax' (not sure of right spelling) just know that a Moax Nuclear Power Station uses new technology which has not been used anywhere in the World yet. Will take twice as long to build and cost more than expected because of this situation.

This consultation must be reconsidered - it was written before the terrible earthquake, tsunami and major Nuclear incident at Fukushima, in Japan (another Island) Nuclear Reactor in March this year. It will never be made safe, no answer has been found, radiation going into the sea. The cost of making the Site safe: loss of productive land; compensation payments: land remediation: loss of capital: loss of capital value of reactor: loss of replacement energy source and no other source in view because solar panels, PV tiles, Wind Turbines in the sea have not been used: importing of food: loss of stocks and shares e.g.investors in Japan and investors in the Car Industry which was transferred to Japan.

Climate Change has to be considered going into 2061. Nuclear Power Stations are built by the Sea/River so the reactor can be cooled down. If radiation goes into our Sea it will surround us and no one will attempt to save as as all the population will be near a burnt out Nuclear Reactor. Over the next 50 years - 2061 - there will be more tsunamis (40 ft waves) which cause tremendous damage to the cliffs surrounding our Island already - so a Nuclear Power Station could be damaged? Waste has to be stored. River water and drinking water will dry up.

A revised consultation should only be published once a detailed picture of the extent of the financial impact of Fukushima is known and Climate Change in the future.

Margaret Toomey

C Way – 21 April 2011

Dear Sir or Madam,

The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

There are nuclear plants in the UK closer to major cities than Fukushima is to Tokyo, so the human impacts and costs in this country could be even greater when an accident occurs.

Currently nuclear operators in the UK have liability capped at £0.6bn or at most £1.1bn. This is a tiny % of the likely Fukushima costs. No other industry is allowed to operate with this level of uncovered risk. BP has been required to establish a $20bn (£12.3bn) fund for compensation to victims of last year's oil spill.

As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours faithfully
Christine Way

EA Wheal – 20 April 2011

Dear Sir or Madam,

The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

There are nuclear plants in the UK closer to major cities than Fukushima is to Tokyo, so the human impacts and costs in this country could be even greater when an accident occurs.

Currently nuclear operators in the UK have liability capped at £0.6bn or at most £1.1bn. This is a tiny % of the likely Fukushima costs. No other industry is allowed to operate with this level of uncovered risk. BP has been required to establish a $20bn (£12.3bn) fund for compensation to victims of last year's oil spill.

As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours,
E A Wheal

A Zelter – 21 April 2011

Dear Sir or Madam,

I believe there should be no subsidies - hidden or open - of the nuclear power industry. The Bank of America – Merrill-Lynch currently estimate the cost of the Fukushima accident could be $130bn (£80bn). This vast sum requires the Japanese Energy Company (TEPCO) and the Japanese Government to manage an energy and financial crisis on top of a natural disaster.

There are nuclear plants in the UK closer to major cities than Fukushima is to Tokyo, so the human impacts and costs in this country could be even greater when an accident occurs.

Currently nuclear operators in the UK have liability capped at £0.6bn or at most £1.1bn. This is a tiny % of the likely Fukushima costs. No other industry is allowed to operate with this level of uncovered risk. BP has been required to establish a $20bn (£12.3bn) fund for compensation to victims of last year's oil spill.

As part of the third party liability consultation I ask that a requirement of this consultation be that nuclear operators in the UK hold a minimum liability of £50bn, and that it is explicit that the liability is defined as unlimited. This is to make sure that costs such as the short-term evacuation, and the longer-term resettlement, environment and health costs do not end up as economic costs for the Government and taxpayer.

Yours sincerely, Angie Zelter.

Anonymous – 28 April 2011

I am responding as an individual to express my concerns to the government. I don't wish to seek attention to myself if my responses might be quoted in the national media or my details obtained by lobbyist organisations or nuclear companies etc. I don't mind the comments being made public or quoted, but I would like my identity to be anonymous.

Consultation questions

1 **Chapter 4** **Categories of damage**	We would welcome views on our proposed implementation of the new categories of damage as described in this chapter and as set out in the draft Order. Particular questions you may wish to consider include: e) should particular types of claim be prioritised, and if so, how (see paragraph 4.14) f) should we make provision to deal with the case where a claim is made by a public authority for the cost of reinstating property in respect of which compensation has already be paid to the owner (see paragraph 4.29) g) should "compensatory remediation" be expressly included or excluded from the measures of reinstatement that can be claimed for (see paragraph 4.39) h) should we define what constitutes a "grave and imminent threat" and, if so, how (see paragraph 4.66)?
Response	a) Priority should be given to members of the public that are severely affected by an incident, ahead of large industries that may suffer loss of business. b) Provision should be made to ensure that the environment is restored. The nuclear operator should pay for the cost of restoring the environment and any further loss of value to the land owner after restoration. It's reasonable that a nuclear operator should not pay twice for the same claim, but the local authority should not be left having to restore the environment without receiving the funds to do so. c) Compensatory Remediation should be included. It may depend on the particular claim. Obviously a land owner, such as a farmer could suffer great loss, if it takes years to restore land to a safe condition for farming. d) It seems reasonable to link the threat to having to follow emergency plans. The enforcement regime for emergency plans should be strict enough that the nuclear operator could be fined for not taking preventative measures, which could exceed compensation that might be needed as a result of executing emergency plans. The regulator would be very lax if nuclear operators were able to risk not taking necessary preventative emergency measures. They should obviously be punished if they don't take necessary emergency measures.

2 **Chapter 5** **Geographical Scope**	We would welcome views on our proposed implementation of the revised geographical scope of the Paris Convention and the Brussels Supplementary Convention as described in this chapter and as set out in the draft Order. Particular questions you may wish to consider include: c) should we align our legislation with the Paris Convention by deleting current section 13 (2) of the 1965 Act. Would any important protections be lost (see paragraph 5.13)? d) how should we define who should be treated as a UK "national" for the purposes of section 16A (see paragraph 5.21)?
Response	a) Passengers on aircraft flying through nuclear radiation should be able to apply for compensation, even if the cloud was not over the UK. The nuclear operator is responsible for the radiation affecting passengers so should pay. b) We should make sure those residents of British offshore islands eg. Isle of Man, Jersey, and Shetlands are covered and there is no ambiguity because of different legislature that they may have compared to the mainland UK. Does section 5.17 cover this?
3 **Chapter 6** **Limitation periods**	We would welcome views on our proposed implementation of the revised provisions on limitation periods in the Paris Convention as described in this chapter and as set out in the draft Order. A particular question that you may wish to consider is whether we should apply the 30 year limitation period to claims in respect of injury caused by preventative measures (see paragraph 6.6).
Response	A preventative measure in itself might be a cause of a serious leak of radiation eg. Sea water used to cool a reactor may result in a hydrogen explosion that results in major damage and radiation leakage beyond the original nuclear accident. The nuclear operator should not be allowed to claim that a preventative measure should limit the time period for a personal injury. We know from Hiroshima and Chernobyl that excess cancers due to radiation can occur much later in life. In a major radiation leak excess deaths due to radiation are to be expected well after 30 years, particularly to young people at the time of the original incident.
4 **Chapter 7** **Liability during transport**	We would welcome views on our proposed implementation of the change to the Paris Convention regarding liability for transport of nuclear substances and the other related matters as discussed in this chapter and set out in the draft Order. In particular, we would welcome views on the options set out in paragraphs 7.11 and 7.12. Is it common for nuclear substances to transit a licensed site

	while *en route* from one nuclear installation to another?
Response	Section 7.11 seems sensible as long as the "operator responsible for the carriage" is as defined in Section 7.3 and not another party. There should be further clarification of temporary storage eg. a time limit after which storage is no longer considered temporary. There should always be a provision to cover liability for nuclear waste. Nuclear operators should not be able to use holding companies or 3rd parties or transfer of waste so that liability for nuclear waste is no longer provided for. Provision should also be made to stop a change of ownership of a nuclear operator eg. to new buyer, holding company, offshore status or registration outside the convention countries, from impacting on the liability of the nuclear operator for any waste.
5 **Chapter 8** **Financial liability levels**	We would welcome views on our proposed implementation of the revised financial liability levels as described in this chapter and set out in the draft Order. In particular, we would welcome views on: b) the likely impact of increasing the standard liability level to €1200 million as compared to €700 million; the proposal to set a reduced level specifically for low-risk transport and to use the criteria in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009. Is this a practical solution? Would it add significant administrative burdens? Are there alternative criteria that could be used to identify low-risk transport?
Response	Since Fukushima may involve final costs over €80,000 million, the standard liability level of even €1,200 million, seems ridiculously low. The UK should follow the example of Sweden, Finland, Germany and Spain in having uncapped liability, whilst ensuring reasonable financial security provisions for which post Fukushima, €1,200 million seems far too low. If other countries have uncapped liability, the UK obviously can too. The UK has its power stations on coastal areas that may be liable to flooding by sea, especially as sea levels are rising. We are also considering up to 3 reactors at some nuclear sites and the nuclear power stations are new designs. There are risks in the UK even if we have a lower probability of earthquakes and tsunami. It is an outrageous subsidy from the UK tax payer to provide unlimited liability to the nuclear industry in the event of an accident. Private Insurance would charge a lot for this, why is the tax payer supposed to do this for free ? Clearly this is a massive subsidy to the nuclear industry. If in any doubt, please ask the Insurance industry to quote for the next €1,000 million liability above the initial €1,200 million. The UK tax payer should charge a fee to nuclear operators for providing unlimited liability, otherwise the Government is clearly breaking its promise to the tax payer.

	In the case of nuclear waste disposal the Government was already considering a 50% uplift on the costs, in return for the tax payer capping waste disposal costs. The Government has already accepted for waste disposal that in return for unlimited liability above the cap, the tax payer should be paid a fee to account for this subsidy to the nuclear operators. Clearly they should apply the same argument to account for the tax payer providing unlimited liability above a cap in the event of a nuclear accident.
6 **Chapter 9 – Availability of insurance/financial security**	We would welcome views on the availability of insurance or other financial security. In particular, we would welcome views on: c) what forms of alternative financial security should be acceptable and over what classes of liability might alternative forms of financial security be appropriate? d) how Government should assess operators' proposals for alternative financial security arrangements? In addition, we would welcome views on the Government stepping in as a last resort to fill any insurance gap. How should Government calculate the charge for this?
Response	Maximum use should be made of insurance provided by the insurance industry. In the event of limitations, such as reluctance of the insurance industry to provide terms longer than 10 years, it should be possible to separate terms so that the insurance industry provides the first 10 years of claims and an alternative scheme provides the next 20 years of claims, though this may substantially increases overall costs. There must be rules how claims should be separated between different types of insurance. An industry pool would be easier to manage if it was just linked to reactors in the UK and not pooling liabilities across countries. An industry pool would give nuclear operators an interest in reporting unsafe operators and practices to the authorities improving overall safety. If the UK tax payer is being asked to cover liability for even part of the initial €1,200 million liability, it really doesn't say much for confidence in nuclear power in the UK and must raise doubts over the choice of nuclear power. It is essential that the UK taxpayer charge for any insurance it has to provide to the nuclear industry otherwise it will end up massively subsidizing the nuclear industry and nuclear operators will have no incentive to seek funding from the insurance industry. If a nuclear operator is having difficulty getting insurance, the UK tax payer charge as a last resort, could be set at a rate above what private insurance the operator has already obtained. If necessary the UK government can test the market, by seeking an insurance quote for a small amount of liability eg, the next €5 million, that the insurance industry may be willing to provide and

	using this rate to base a charge higher than this for the remainder of the €1,200 million. The charge must be reasonably higher or there is no incentive for operators to prefer using the insurance industry and seek a better quotation than from the UK tax payer. If operators provide security for liability, it should not be so correlated as to be severely reduced in the event of an accident.
7 **Chapter 10 - Jurisdiction**	We would welcome views on our proposed implementation of the Paris Convention changes regarding allocation of jurisdiction, both between Paris countries and within a Paris country, as described in this chapter and set out in the draft Order. In particular, we would appreciate views on: c) whether basing our tie-breaker provisions on the impact of an occurrence, event or breach of duty would be a workable solution – how practicable would it be to measure impact (see paragraph 10.16)? d) whether we need a fall back provision giving jurisdiction to the High Court of Justice (see paragraph 10.17). In addition we would welcome views on our proposed clarification of "occurrence" in new section 26(2A) of the 1965 Act.
Response	a) Greatest impact may need clarification eg. one area may have extremely high radiation levels whilst low population, whilst another area may have high population but lower radiation levels. Which is the greatest impact ? I would favour the area where the compensation required is likely to be this highest, as defining the greatest impact. b) It would be clearer to have the High Court of Justice as the fall back even if it can't be envisaged at this point. The interests of victims are best served by speeding up compensation as far as possible if they might be delayed by arguments over jurisdiction.
8 **Chapter 11 – nuclear waste disposal facilities**	We would welcome views on our proposals for implementing the Paris Convention requirements in respect of nuclear waste disposal facilities. In particular, we would welcome views on the number of commercial waste disposal facilities who may be affected by the proposed changes and how they may be affected.
Response	It's a question of degree. All waste sites should be covered by the nuclear regime if they have large volumes of low level waste or have high level waste. A nuclear operator should not be able to dilute waste into large volumes in order to reclassify it as "low level waste" and move it to multiple low level waste sites outside of the nuclear regime. It seems reasonable that sites that have only small amounts of low level waste eg. Scientific or medical samples should not be subjected to the full

	nuclear regime, unless they have high volumes of this waste. If the government is proposing that low level waste sites be kept outside the nuclear regime, there should be a measure of the overall radiation at these sites and of maximum allowed radiation of waste (by density?) that defines these sites and separates them from sites that should be covered by the nuclear regime. On long term geological waste storage I believe that current EU legislation requires waste to be stored in the country that it is produced. If the EU is considered as a whole it may be more desirable to select the most geologically stable waste sites and limit the number of waste sites to make it easier to record historically and for economies of scale. Is this something that should be reconsidered with this legislation? It would mean that the polluting nuclear country does not have the long term responsibility for the nuclear waste, which isn't desirable.
9 **Chapter 12** **Representative actions**	We would welcome views on our proposals for implementing the new Paris Convention requirements in respect of representative actions.
Response	It seems reasonable that the UK enable Representative actions. It is to be hoped that they are reciprocal. If another country can bring representative actions for its citizens in the UK, then the UK should be able to do the same for its citizens in that country.