

**EXPLANATORY MEMORANDUM ON THE PROTOCOL TO AMEND THE CONVENTION OF 31 JANUARY 1963 SUPPLEMENTARY TO THE PARIS CONVENTION OF 29 JULY 1960 ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY, AS AMENDED BY THE ADDITIONAL PROTOCOL OF 28 JANUARY 1964<sup>1</sup> AND BY THE PROTOCOL OF 16 NOVEMBER 1982<sup>2</sup>**

**Title of the Protocol**

Protocol to amend the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 On Third Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982

**Command Paper Number:** 9136

**Subject Matter**

This Explanatory Memorandum refers to the ratification by the United Kingdom of the 2004 Protocol to amend the Brussels Supplementary Convention ("the Brussels Convention") to the Convention on Third Party Liability in the Field of Nuclear Energy ("the Paris Convention").

The Paris Convention establishes a special regime for compensating third parties who suffer damage as a result of a nuclear incident at a nuclear installation or during the transport of nuclear substances to and from that installation. The Brussels Convention was developed and adopted in 1963 as it was recognised that the level of compensation provided under the Paris Convention may not be sufficient to compensate the damage suffered

The Brussels Convention increases the amount of compensation to be made available to victims where the amount called for under the Paris Convention has been exhausted. It does so, first, by requiring the Contracting Party government in whose territory the liable operator's nuclear installation is located to provide funds over and above those which the operator must make available under the Paris Convention and, second, by requiring all Contracting Parties collectively to make available an additional amount of compensation from public funds.

The Brussels Convention does not establish its own liability regime; rather it relies on the liability regime established in the Paris Convention. No country may become or remain a party to the Brussels Supplementary Convention unless it is a party to the Paris Convention<sup>3</sup>. Greece, Portugal and Turkey are party to the Paris Convention but not to the Brussels Supplementary Convention.

The Paris and Brussels Conventions have been amended several times. This amending Protocol to the Brussels Convention was agreed in 2004, at the same time as an amending Protocol to the Paris Convention<sup>4</sup>. The main aim is to upgrade the

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<sup>1</sup> Treaty Series No.44 (1975), Cmnd. 5948

<sup>2</sup> Treaty Series No. 17 (1992), Cm 1832

<sup>3</sup> The Paris Convention Contracting Parties are: Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Turkey and the United Kingdom.

<sup>4</sup> The 2004 Protocol amending the Paris Convention is covered by a separate Explanatory Memorandum.

existing regime to ensure that, in the event of a nuclear incident, an increased amount of compensation will be available to a wider group of claimants in respect of a broader range of damage than is currently the case.

The amendments to the Brussels Convention in the 2004 Protocol are:

- In the first instance the amount of funds to be provided by the Contracting Party government in whose territory the liable operator's nuclear installation is located is the difference between the amount of the operator's liability under its national legislation and €1200 million (to a maximum of €500 million), and
- the additional compensation to be provided by the Contracting Parties collectively is €300m (an increase from the current amount of 125 million Special Drawing Rights<sup>5</sup> (SDRs)).
- under the combined Paris-Brussels international nuclear liability regime therefore a total of €1500 million is available to compensate for damage following a nuclear accident.

### **Ministerial responsibility**

Responsibility lies with the Secretary of State for Energy and Climate Change.

### **Policy Considerations**

#### **(i) General**

The UK has been a signatory to the Brussels Convention since the 1960s. This Protocol brings to the UK the benefits of increased levels of liability for a wider range of damage and UK victims would have more compensation in the event of a nuclear incident in another participating Convention country that affected the UK. The Nuclear Installations Act 1965, which implements the Paris Convention, is the only route through which nuclear third party damage claims can be made in the UK.

#### **(ii) Financial**

In implementing the Brussels Convention the Government is transferring the liability for the first instance of supplementary compensation to most nuclear operators by setting the operator liability at €1200 million. This will be introduced at €700 million and progressively increase by €100m per year over five years to €1200m. The operators of prescribed sites considered as lower risk will have their liability set at a minimum of €70 million, and Government will have contingent liability for any claims from incidents at these sites above this amount up to €1200 million. The second level of supplementary compensation which will increase from 125 million SDRs to €300 million and the UK will be liable to contribute a share to it (approximately €30 - €40 million). These contingent liabilities are not quantified in Government Accounts.

#### **(iii) Reservations and declarations**

No reservations or declarations will be made by the UK when this Protocol is ratified.

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<sup>5</sup> A unit of account defined by the International Monetary fund (IMF) based upon a basket of key international currencies. 1 pound sterling is equivalent to 1.09 SDR (as at 7 September 2015).

## **Implementation**

The amendments in the Protocol will come into force when all of the Contracting Parties have ratified, accepted or approved them.

The UK will implement the Protocol through amendments to the Nuclear Installations Act 1965 by means of an affirmative statutory instrument.

At this stage ratification of the Protocol will be for the UK only. The Crown Dependencies can request that the ratification be extended to them at a later date if they wish. The Brussels Convention does not apply to the UK's overseas territories.

## **Consultations**

A public consultation on the Government's proposals for implementation of the Protocol into UK legislation was carried out in 2011. Key issues raised by consultees were the level of liability and the provision of insurance or other financial security for the increased liability level. The Government intends to implement the proposals taking account of the responses, as set out in the Government response published on 30 March 2012<sup>6</sup>. Officials in other Government Departments have been consulted on the changes in general and in particular those including devolved matters. Government has continued to keep interested parties up to date with progress towards implementation, in particular publishing updated versions of the draft Order annually, most recently in March 2015.



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<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/42757/4874-parisbrussels-government-response-to-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42757/4874-parisbrussels-government-response-to-consultation.pdf)