



Department for
Business, Energy
& Industrial Strategy

NUCLEAR THIRD PARTY LIABILITY

Defining intermediate risk prescribed sites-
further consultation



August 2017

NUCLEAR THIRD PARTY LIABILITY

Defining intermediate risk prescribed sites – further consultation

The consultation and Impact Assessment can be found on the BEIS section of GOV.UK:
<https://www.gov.uk/government/consultations/defining-intermediate-risk-prescribed-sites-further-consultation>

nuclear third party liability

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Any enquiries regarding this publication should be sent to us at parisbrussels@beis.gov.uk .

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General information

Purpose of this consultation

This consultation is seeking views on revised criteria for the definition of intermediate nuclear sites in the draft Nuclear Installations (Prescribed Sites and Transport) Regulations.

Issued: 11 August 2017

Respond by: 15 September 2017

Enquiries to:

Paris Brussels Conventions – International Nuclear Liability Team
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3rd Floor
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Consultation reference: Nuclear third party liability – defining intermediate risk prescribed sites – further consultation

Territorial extent:

The United Kingdom.

How to respond

Your response will most useful it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Electronic responses should be emailed to parisbrussels@beis.gov.uk. Hardcopy responses should be sent to the Paris Brussels Conventions team at the address above.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/defining-intermediate-risk-prescribed-sites-further-consultation>. Hard copies are available by contacting parisbrussels@beis.gov.uk.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: enquiries@beis.gov.uk

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Executive Summary

Proposals for the definition of sites that qualify for a liability level of €160m

This consultation sets out revised criteria for the definition of intermediate nuclear sites in the draft Nuclear Installations (Prescribed Sites and Transport) Regulations. Sites which meet these criteria represent a lower risk of causing significant damage in the event of a nuclear incident. Therefore setting a lower level of liability recognises this lower risk and reduces the cost of operators' mandatory insurance cover in line with this lower risk.

BEIS carried out a consultation in June 2016 on the [draft Nuclear Installations \(Prescribed Sites and Transport\) Regulations](#). These regulations will set out the criteria for those sites to which a lower level of nuclear third party liability applies for claims for damage arising from a nuclear incident.

Responses to the questions on the criteria proposed for defining intermediate nuclear sites raised a number of points. Having considered the responses Government has revised the proposed criteria for the definition of the new intermediate category of prescribed sites and is reconsulting to seek views on the proposed revised definition.

The criteria for inclusion have been amended and expanded so that the category now covers:

- sites which manage bulk quantities of radioactive material where the radionuclide inventory is greater than the criteria for low risk sites, but are not sites for the storage of highly active radioactive waste (e.g. waste from processing used nuclear fuel);
- the national repository for low level waste – as it is a licensed nuclear site.
- former nuclear power generating sites that have been permanently defueled and the spent fuel is stored in accordance with relevant good practices.

This in addition to the types of sites already proposed for inclusion in this category:

- nuclear fuel fabrication plants (does not include plants manufacturing fuel from plutonium or plutonium mixtures);
- uranium enrichment facilities;
- plants for the manufacture of radioactive isotopes for medical, scientific, agricultural and technical uses.

In light of the revised criteria we have also updated the consultation Impact Assessment for intermediate sites

Next steps

The Government will consider carefully the responses to this consultation and review the draft definition in light of these. If necessary the statutory instrument will be revised. We will then publish the Government response to the consultation and, subject to Parliamentary approval, will implement the changes.

Catalogue of consultation questions

Proposals for definition of sites that qualify for a liability level of €160m

Consultation Questions

1.	Do you have any comments on the revised definition for intermediate nuclear sites?
2.	Have you any suggestions for improving the definition?
3.	Do you have any views on, or can you provide any additional data for, the revised Impact Assessment?

Proposals for the definition of sites that qualify for a liability level of €160m

Setting the criteria for intermediate nuclear sites

Background

- 1.1. This consultation seeks views on revised proposed criteria for the definition of intermediate nuclear sites to be included in the draft Nuclear Installations (Prescribed Sites and Transport) Regulations. These regulations will set out the criteria for those sites to which a lower level of nuclear third party liability applies for claims for damage arising from a nuclear incident.
- 1.2. The liability regime that applies to the operators of nuclear installations is set out in the Nuclear Installations Act 1965 (the 1965 Act). The 1965 Act implements the Paris and Brussels Conventions on nuclear third party liability. The 1965 Act has been prospectively amended by the Nuclear Installations (Liability for Damage) Order 2016¹ which, when it comes into force, implements changes to the Conventions. The Conventions are independent of the EU Treaty and Euratom and the UK's obligations will not be affected when the UK leaves the EU. More information about the Conventions and the changes is contained in Annex A.
- 1.3. The Paris Convention allows Contracting Parties to set a lower level of liability for operators of lower risk sites than the minimum amount for standard sites. A standard site would be an operating nuclear power plant or nuclear site with a similar level of risk.
- 1.4. Nuclear operators are required to have insurance or other financial security to cover their third party liabilities under the regime. The operator of a lower risk site is required to provide insurance or other financial security only for the lesser amount. Any claims for damages in excess of the lesser amount would be met from public funds in accordance with the Paris and Brussels Conventions. The purpose of the reduced liability amount is to reduce the burden on the operator of the costs of providing this financial security to a level more in keeping with the risk, not to make less compensation available. The UK has a robust regulatory regime and there have been no known incidents at such sites which have led to claims under the 1965 Act.
- 1.5. The UK already exercises the option to set a lower liability limit for lower risk sites through the existing Nuclear Installations (Prescribed Sites) Regulations 1983. The Government consulted on the replacement to these regulations², including a proposed criteria for the definition for intermediate nuclear sites in summer 2016. The Government's response to the earlier consultation is published in parallel with this consultation paper.

¹ SI 2016/562 <http://www.legislation.gov.uk/id/ukSI/2016/562>

² <http://www.gov.uk/government/consultations/consultation-on-defining-nuclear-prescribed-sites-and-transport>

Defining intermediate nuclear sites

- 1.6. In setting a lower liability of €160m for intermediate sites, the Government recognises that the level of hazard at these sites is lower than that at operating power plants or sites which reprocess spent nuclear fuel and that such sites represent a lower risk of causing widespread damage in the event of an incident.
- 1.7. The responses to the consultation questions on the criteria for defining intermediate nuclear sites raised a number of points about the criteria for the proposed definition. In particular:
 - the criteria were considered too narrow, because they did not take account of the range of decommissioning related activities that take place on some sites and therefore these sites would fall into the standard category even though the risks of such sites are not the same as for operational power plants, or similar high risk sites such as reprocessing sites.
 - the installations at these sites do not achieve a critical nuclear fission reaction, nor do they store or handle the large radioactive inventories associated with operating power reactors, and spent fuel reprocessing plants and their associated facilities.
- 1.8. The Government has revised the criteria to define intermediate sites to address these points. The intermediate category now covers:
 - sites which manage and store bulk quantities of radioactive material where the radionuclide or fissile mass inventory is greater than the criteria for low risk sites (for example, co-located with other intermediate site installations), but are not sites for the storage of highly active radioactive waste (e.g waste from the processing of spent nuclear fuel);
 - the national repository for low level waste – to clarify the position as the site is a licensed site not a relevant disposal site;
 - nuclear power generating sites that have been permanently defueled and the spent fuel is stored in accordance with relevant good practice.
- 1.9. These criteria are in addition to the types of sites already proposed for inclusion in this category, and for which the earlier consultation indicated support:
 - nuclear fuel fabrication plants (does not include plants manufacturing fuel from plutonium or plutonium mixtures);
 - uranium enrichment facilities;
 - plants for the manufacture of radioactive isotopes for medical, scientific, agricultural and technical uses.

Sites reaching a certain stage of the decommissioning process

- 1.10. We have expanded the criteria to cover nuclear power reactors that have reached a certain stage in the decommissioning process. When a nuclear power station ceases electricity production the reactors are shut down and the last load of fuel is usually left in the reactors to allow it to cool for a period of time. The reactors are then finally and permanently defueled and the irradiated spent fuel transferred either to fuel storage

ponds or dry storage. For current closed down reactors the spent fuel is then sent to Sellafield for reprocessing and/or storage. Future nuclear power stations may store spent fuel on site in accordance with relevant good practice³ before final disposal in a geological disposal facility. Work then begins on preparations for putting the sites into long term care and maintenance, including the demolition of buildings and the management of waste, before the sites are finally cleared. As a result of permanent defueling the level of hazard and risk at these sites drops significantly, so including such sites in the intermediate category is considered to be proportionate to the risk such sites represent.

- 1.11. Where a nuclear power plant has ceased operation but has not been permanently defueled, such sites will remain as standard sites with a liability limit of €1200m until they are defueled.
- 1.12. This category of prescribed site is not intended to apply to operating nuclear power stations, and sites (such as Sellafield and Dounreay) that for the time being continue to have a range of activities and radioactive inventories such that it would not be appropriate to have a lower level of nuclear liability.

The revised criteria for defining intermediate sites

- 1.13. The revised criteria for defining intermediate sites are set out below.

Sites prescribed for the purposes of section 16(1)(c) of the Act (intermediate risk nuclear sites)

5. —(1) There is prescribed for the purposes of section 16(1)(c) of the Act any licensed site which—

- (a) has been, but is no longer being used for the generation of electricity, and from which the nuclear fuel has been removed permanently from the reactor and stored safely in accordance with relevant good practices, or
- (b) is used for one or more of the purposes set out in paragraphs (2) – (5), or
- (c) has been, but is no longer being used for one or more of the purposes set out in paragraphs (2) – (5) but which is being decommissioned, or
- (d) would be a site prescribed by regulation 3 but for the limit on the mass of fissile material or the quantity specified in regulation 3(2) or 3(3).

(2) The purpose in this paragraph is installing or operating an installation designed or adapted for the carrying out of any process involved in the manufacture of fuel elements to be used for the production of atomic energy from—

- (a) enriched uranium; or
- (b) any alloy, chemical compound, mixture or combination containing enriched uranium.

(3) The purpose in this paragraph is installing or operating an installation designed or adapted for the treatment of uranium whether enriched or not such as to increase the proportion of the isotope 235 it contains.

(4) The purpose in this paragraph is installing or operating an installation designed or adapted for the carrying on of any process involved in the production from nuclear matter, not being excepted matter, of isotopes prepared for use for industrial, chemical, agricultural, medical or scientific purposes.

³ Relevant Good Practice or RGP derives from nationally and internationally recognised industry standards and practices, and those that have been accepted by the Office for Nuclear Regulation as such (e.g. Safety Assessment Principles (SAPs - <http://www.onr.org.uk/saps/saps2014.pdf>), Technical Assessment Guides (TAGs - <http://www.onr.org.uk/tagsrevision.htm>) and multiple references to the same within.

- (5) The purpose in this paragraph is the operation of a national repository for low level waste.
- (6) In this regulation “enriched uranium” means uranium enriched so as to contain more than 0.72% of the isotope 235.

- 1.14. The criteria for other prescribed sites (low risk nuclear sites, relevant disposal sites) and transport of low risk nuclear matter remain as set out in the response to the earlier consultation and are not affected by these proposals.
- 1.15. The new categories for prescribed sites and transport of nuclear matter as set out in the draft Nuclear Installations (Prescribed Sites and Transport) Regulations will not have effect until the revised nuclear liability regime as a whole comes into force, which is currently expected to occur in July 2018.

Consultation Questions

1.	Do you have any comments on the revised definition for intermediate nuclear sites ?
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2.	Have you any suggestions for improving the definition?
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Intermediate site Impact Assessment

- 1.16. A revised draft Impact Assessment is attached separately at Annex B for the proposal to set a liability limit of €160 million for intermediate sites. The revisions have been made as a larger number of sites will now fall into the intermediate site category under the revised criteria and also to change the counterfactual used for assessing the costs and benefits of this change.

Consultation Question

3.	Do you have any views on, or can you provide any additional data for, the revised Impact Assessment?
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Next steps

- 1.17. The Government will consider carefully the responses to this consultation and review the draft definition in light of these. If necessary the statutory instrument will be revised. We will then publish the Government response to the consultation and, subject to Parliamentary approval, will implement the changes.

Annex A – The Paris and Brussels Conventions

- 1.1. The UK is a contracting party to the Paris Convention⁴ on nuclear third party liability and the Brussels Supplementary Convention⁵ (“the Conventions”) which establish a largely western European framework for compensating victims of a nuclear incident. The regime has been in place since the 1960s and is one of the cornerstones of international nuclear liability law. The Conventions are implemented in the UK by the Nuclear Installations Act 1965 (“the 1965 Act”).
- 1.2. The Conventions are made under the auspices of the Organisation for Economic Cooperation and Development (OECD) and are separate to the UK’s membership of the European Union and Euratom. The UK’s obligations under the Conventions will not be affected by the UK’s departure from the EU and Euratom.
- 1.3. The main objectives of this long-standing special international third party liability regime are:
 - i) to ensure adequate compensation for damage caused to persons, property and the environment by a nuclear incident;
 - ii) to make sure that nuclear operators, who are in the best position to ensure the safety of their nuclear installations and transport activities, assume full responsibility for any breach of duty giving rise to damage (while not being exposed to an excessive liability burden); and
 - iii) to ensure that those associated with the construction, operation or decommissioning of nuclear installations (such as builders or suppliers) are exempt from liability for any such breach.
- 1.4. The Paris Convention establishes certain key principles that include:
 - strict liability of the operator, i.e. liability without having to prove fault;
 - exclusive liability of the operator i.e. no other party (such as supplier or contractor) is liable;
 - the liability of the operator is limited in amount, time and the types of damage that are compensable;
 - an obligation on the operator to cover its liability by insurance or other financial security.

⁴ <http://www.oecd-nea.org/law/paris-convention.html>

⁵ <http://www.oecd-nea.org/law/brussels-supplementary-convention.html>

- 1.5. The Brussels Supplementary Convention (BSC) builds on the Paris Convention, making provision for additional public funds to be made available if the compensation payable under the Paris Convention is insufficient. It does this by increasing the amount of additional compensation provided by the affected contracting party State, and providing for a third tier of compensation based on contributions from the BSC contracting parties.
- 1.6. Amendments to the Conventions were agreed by the Paris and Brussels contracting parties in 2004. They upgrade the existing regime and are intended to ensure that, in the event of a nuclear incident, an increased amount of compensation will be available to a larger number of claimants in respect of a broader range of damage.
- 1.7. In order for the UK to be able to ratify the amendments we have amended the 1965 Act through secondary legislation (the Nuclear Installations (Liability for Damage) Order 2016 (“the 2016 Order”)⁶, made under section 76 of the Energy Act 2004. The 2016 Order will not come into force until the Convention amendments are ratified. It applies to all of the United Kingdom. The changes were subject to a public consultation carried out in early 2011. The consultation summary and the Government response were published on 30 March 2012⁷.
- 1.8. The amendments to the Conventions will come into force once ratified by the contracting parties⁸ to the Conventions. The contracting parties that are also EU member states are required to ratify the amendments to the Paris Convention at the same time. Ratification by contracting parties is currently planned for 1 July 2018.

⁶ SI 2016/562 - <http://www.legislation.gov.uk/id/uksi/2016/562>. An informal consolidated text of the 1965 Act as amended by this Order is available on the Government website at: <https://www.gov.uk/preparing-for-and-responding-to-energy-emergencies>.

⁷ <https://www.gov.uk/government/consultations/compensating-victims-of-nuclear-accidents>

⁸ The countries that have ratified the Paris Convention are Belgium, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, Turkey and the UK. Of the Paris Contracting Parties - Greece, Portugal and Turkey are not contracting parties to the Brussels Convention.

