



Department for
Business, Energy
& Industrial Strategy

NUCLEAR THIRD PARTY LIABILITY

Defining intermediate risk prescribed sites:
Government consultation response



January 2018

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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>

Acknowledgements

BEIS would like to thank all stakeholders who took the time to respond to the consultation.

nuclear third party liability

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General information

Purpose of this consultation

This document sets out the UK Government's response to the consultation on defining intermediate risk prescribed nuclear sites. The definition sets out the criteria for those nuclear sites that qualify for a €160 million liability level which applies for claims for damage made after a nuclear incident. The definition will be included in the Nuclear Installations (Prescribed Sites and Transport) Regulations, to be made under the Nuclear Installations Act 1965, as prospectively amended by the Nuclear Installations (Liability for Damage) Order 2016.

Issued: 5 January 2018

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Consultation reference: Nuclear third party liability – defining intermediate risk prescribed sites:
Government consultation response

Territorial extent:

The United Kingdom.

Additional copies:

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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: beis.bru@beis.gov.uk

Executive Summary

Overview/background

The draft Nuclear Installations (Prescribed Sites and Transport) Regulations set out the criteria for those sites and transport to which a lower level of nuclear third party liability will apply for claims for damage arising from a nuclear incident. Sites that meet these criteria represent a lower risk of causing significant damage in the event of a nuclear incident. Accordingly, 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. An earlier consultation in 2016 on the draft regulations showed that the definitions for intermediate risk sites needed further consideration. The proposed definition was amended to take account of the comments received in the earlier consultation. As the proposed revised definition was significantly different to the original proposal we decided to carry out a focused reconsultation. The proposals for the other categories covered by the draft regulations were not affected by this reconsultation.

Feedback to the consultation

The reconsultation ran from 11 August 2017 to 15 September 2017. The reconsultation was published on the Government website and a link to the document was sent to key stakeholders including nuclear operators, the nuclear industry trade organisation, nuclear insurers, as well as other respondents to the 2016 consultation.

We received 10 responses: these included nuclear operators, a nuclear insurer and a member of the public. A full list of respondents is shown in Annex 1.

Overall, the proposal for the revised definition for intermediate risk sites was welcomed. The most significant comments related to requests for clarity about some subsidiary activities that occur on several sites and whether these fell within the proposed definitions for intermediate sites. In addition, there were comments on future-proofing for the activities to be covered by the national low level waste repository. There were also some comments on the impact assessment.

Structure to the Government response

The response is set out as follows

- A brief description of the proposals consulted on
- A summary of the responses received to the reconsultation
- Our response to the points raised and how we propose to deal with them.

Conclusion and next steps

Following publication of this response we intend to lay the Nuclear Installations (Prescribed Sites and Transport) Regulations in the near future.

Proposals for the definition of sites that qualify for a liability limit of €160m (intermediate risk nuclear sites)

Revising the criteria for intermediate risk nuclear sites

1. BEIS carried out a consultation in June 2016 on the draft Nuclear Installations (Prescribed Sites and Transport) Regulations¹. These regulations 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. Sites which meet these criteria represent a lower risk of causing significant damage in the event of a nuclear incident. 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. The UK has the scope under the Paris Convention (the basis for the nuclear third party liability regime) to set a lower liability limit for lower risk sites and the discretion to determine the classification of such sites (Article 7(b)(i)).
2. The responses to the June 2016 consultation raised a number of points on the proposed definition for intermediate risk nuclear sites. In particular, these were:
 - The criteria were too narrow, because they did not take account of the full range of decommissioning related activities that take place on some sites. Therefore these sites would therefore be covered by the standard site category even though the risk of such sites is not the same as operating power plants or similar high risk sites
 - The policy position of the national low level waste repository wasn't clear
 - The category should also cover nuclear power stations which had reached a particular stage of decommissioning e.g. were permanently defueled.
3. Taking account of these comments Government revised the criteria for defining this category of prescribed sites and reconsulted between 11 August and 15 September 2017 to seek views on the revised definition.
4. The criteria for intermediate risk nuclear sites were amended and expanded so that the category now covers:
 - sites which store radioactive material where the radionuclide inventory is greater than the threshold 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 (rather than a relevant disposal site);

¹ <https://www.gov.uk/government/consultations/consultation-on-defining-nuclear-prescribed-sites-and-transport>

- former nuclear power generating sites that have been permanently defueled and the spent fuel is stored in accordance with relevant good practices.
5. 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.
6. This category of prescribed sites is not intended to cover 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 lower level of liability.

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?
-

Summary of responses

7. In general, the revised criteria/definition for intermediate risk sites was welcomed by the consultation respondents.
8. Specific comments fell into two broad areas: questions about the interpretation of the wider decommissioning activities definition and whether this covered the particular activities on certain sites; and consistency with proposed future waste disposal policy and the future of the national low level waste repository.
9. In relation to interpretation of the revised criteria, some respondents' expressed views as to how they considered their sites would be categorised. They considered that it was not clear whether the drafting of revised regulation 5 covered the management (i.e. activities such as processing and conditioning) as well as storage of radioactive material, in addition to the site's primary activity. Another respondent suggested an amendment to regulation 5(2) so as to just refer to uranium (whether natural or depleted) rather than enriched uranium, because it was not clear to them that this would also allow processing activities associated with uranium.
10. Other comments suggested that the cross reference between regulation 5(1)(d) to regulation 3(2) would also constrain the type of material to be disposed of at the national low level waste repository and therefore have an effect on potential future plans and policy with respect to disposal. The respondents noted that the 2014 Implementing Geological Disposal White Paper states that developments in alternative waste management options should be actively pursued through monitoring of, and participation in, national or international research and development programmes. The respondents went on to state that the Nuclear Decommissioning Authority (NDA) and Radioactive

Waste Management (RWM) continue to review other long-term management options such as near-surface disposal for elements of the inventory of higher activity waste (i.e. that not needing geological isolation). Therefore, the respondents commented, it would be helpful to future proof the repository definition to include near surface disposal. To help to do this it was suggested that regulation 5(5) could be amended so as to refer to the Environment Agency's guidance document "Near-surface Disposal Facilities on Land for Solid Radioactive Wastes – Guidance on Requirements for Authorisation 2009". A final point concerned the position of the low level waste disposal facility near Dounreay and whether this would be considered an intermediate site.

11. One respondent commented that all levels of Government and the public sector need better management in line with the requirements for quality management systems as set out under ISO 9001.

The Government's response

12. In drafting the revised definition we considered the different activities that may be carried out on the various sites that are intended to be covered by this category.
13. The classification of sites as low risk or intermediate is carried out on a site-wide basis, not on an activity basis. Therefore the regulation has been drafted so as to capture specific sites, for example, as defined by the Nuclear Installations Regulations 1971. We have also included a "sweep up" provision to capture other types of sites that would otherwise be classified as low risk sites, but where the mass of fissile material exceeds the level set out in regulation 3(1)(b), or activity levels exceed those set out in regulations 3(2) and/or 3(3) (some minor amendments have been made to the definition of intermediate sites to make this clearer). Accordingly, if a site is licensed to carry out one of the listed activities in regulation 5, no reference to regulation 5(1)(d) is necessary.
14. On the question of fuel manufacture from uranium, as opposed to enriched uranium, this is not a licensable activity and therefore is not covered by the regulations.
15. As raised by some respondents, work on alternative routes for part of the higher activity waste inventory is currently being carried out, including consideration of possible options for near surface disposal of some of this waste. However, the policy, and in due course which sites may be suitable, is still under discussion (including in Scotland which has a near surface policy for radioactive waste). Until the policy has been developed further we consider it is too soon to include a definition for any such sites that takes account of this possibility. On the question of including the requirements of the Environment Agency guidance as part of the definition in regulation 5(5) it is not considered as good practice to do so as guidance documents change over time. The Low Level Waste Facility at Dounreay will be classified as a relevant disposal facility as defined in regulations 2 and 4.
16. All nuclear operators have quality management systems certified under ISO 9001.
17. As the points raised in response to the consultation relate to interpretation issues, we have therefore decided to proceed with the criteria for intermediate risk nuclear sites as set out in the proposals.

18. An error in the definition of “enriched uranium” in regulation 5(6) has been corrected so that the definition refers to “... more than 0.72% **by mass** ...”.

Intermediate Sites Impact Assessment

19. The impact assessment on the effect of defining an intermediate site category was updated and circulated with the consultation paper. This is because under the revised criteria a larger number of sites may be eligible for inclusion in the category (an increase from 4 to possibly 14 sites). The counterfactual (do nothing option) was also changed from one based on not implementing the 2004 Protocol changes at all to one which assumes that the 2004 changes are in place and therefore a liability limit of €1,200 million would apply to intermediate sites.

Consultation Question

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

Summary of responses

20. Only a few respondents commented on the impact assessment. Specific comments included whether the list of sites provided in the impact assessment was a closed list. Other comments questioned the discount rate used, and suggested that the premiums used for the assessment were overstated because they only included the increase in limit and not the new heads of damage or the increased time limit for personal injury claims. In addition insurance premiums did not fall proportionately with liability i.e. they are weighted to the lower end.

The Government's response

21. We have reviewed the impact assessment in the light of the comments received. In response to particular comments:
- The list of possible intermediate sites is not closed list – it will vary according to whether operators apply for their sites to be classified as such, and over time as both existing and new sites change the activities and inventories of radioactive material on the sites.
 - Discount rates are different to interest rates. The discount rate is a standard one set by HM Treasury. This adjusts benefits and costs according to the value that society places on consumption today, versus consumption in the future.
 - We note the point about insurance premiums.
22. The key points of the impact assessment will be included in the Explanatory Memorandum to the Regulations.

Next steps

23. Following publication of this response we will lay the Nuclear Installations (Prescribed Sites and Transport) Regulations in the near future.

Annex 1 – consultation respondents

R Ebley

EDF Energy

Inutec Ltd

Low Level Waste Repository Ltd

Nuclear Decommissioning Authority

Nuclear Risk Insurers Ltd

Rolls-Royce plc

Springfields Fuels Ltd

Tradebe Inutec

Trustees of the Nuclear Liabilities Fund

