

## **GE Healthcare Ltd – 19 April 2011**

To whom it may concern

Thank you for the opportunity to participate in this important consultation process. This is a matter of considerable interest to us as a commercial nuclear operator who, although Licensed under the Act, operates outside the mainstream nuclear power sector for which the Conventions were principally established.

Our responses to the specific consultation points are attached but we would also like to highlight the following generic points:

1) There is a significant opportunity here for a proportionate and pragmatic re-assessment to identify those operators to whom lower-tier liability or exemption/exclusion could and should be applied. That would be entirely consistent with a risk based approach, general “good regulation” and controlling costs to both industry and Government. We cannot see from the consultation document that that opportunity will be seized across all operations. Further we believe that the (understandable ) reliance on using existing legislation (e.g. Prescribed Sites regulations) is likely to be constraining in respect of a proportionate application of the Convention in many cases.

2) Linked to point 1 above, whilst we believe that GE Healthcare could justifiably benefit from such a proportionate approach we are also concerned that UK Waste operators (and carriers) are not dis-proportionately burdened whilst awaiting agreement (or not) via the Nuclear Energy Agency on exclusion of LLW/VLLW . As well as the risk of driving up costs , it is entirely conceivable that some operators could decide to exit the nuclear sector. Similarly, some potential operators could be deterred from entering the sector. All three scenarios have the same effect, namely hindering the effective management of nuclear waste in the UK, both legacy and current arisings.

Therefore we would ask if it is feasible for the draft Nuclear Installations (Liability for Damage) Order 2011 to specify, on the basis of hazard, those operators who are exempted/excluded and who are subject to the lower tier requirements. i.e. an extension of the logic presented in para 8.28 (and others) of the consultation document. If not via the Order itself, can some other mechanism be used to the same purpose? We would suggest that Schedules within REPPiR 2001 for example could be a simple and appropriate basis on which to categorise operations covered by the Conventions.

Yours sincerely

J McHardy

Safety Director

**(2) 27 April 2011**

Dear Sir or Madam

In addition to GE Healthcare's response to the draft consultation, sent by Jim MacHardy 19<sup>th</sup> April we have additional comment for consideration on the issue by government regarding low risk installations (e.g. incinerators used for the treatment

of radioactive waste and disposal of the remaining ash to landfill, and landfill themselves for the disposal of VLLW), which GE Healthcare is happy to discuss with government -

1. The revised Conventions seem to leave a fair amount of leeway to government to define what are low risk installations, and the regulations should deliver implementation of, and be compatible with, the revised Conventions, not become an end in themselves. At the same time, government will want to know that they are on firm ground in describing particular sites as genuinely low risk - they could be challenged on this - and that may require further grounds and more explanation.

2. The Prescribed Sites Regulations at the moment set out prescribed limits of activity in regulation 4, additional limits for fissile material in regulation 5 and levels in Schedules 1 and 2. It will help to know how relevant those limits are to sites which are candidates to be 'low risk', and if different tests should apply to have some idea what those should be.

3. It should be realized that the issue we have raised re low-risk installations is not a one company issue but impacts on landfill and incinerator waste installations. This directly impacts the whole nuclear industry and government LLW strategy which requires increased use of such waste installations other than LLWR. The potential effects on waste management facilities and its role in the supply chain to the nuclear industry is to remove waste management options. We have highlighted this issue to incinerator companies (they were not aware of the consultation) and encouraged them to respond; relevant landfill companies are aware

4. Finally, if government deems it helpful we will assist with drafting suggestions and options for minor amendments to the Prescribed Sites regulations for consideration by government, which would need to be consistent with the revised Conventions, and ideally would be carry out such drafting in discussion with government.

Regards

Rob Storrie

EHS Programme Manager (Waste & Nuclear Liabilities Management)  
Pollards Wood  
Nightingales Lane  
Chalfont St Giles  
Bucks HP8 4SP

## Implementation of changes to the Paris and Brussels Conventions on nuclear third party liability - a public consultation

### Response form

You may respond to this consultation by email or by post.

Respondent details	
Name	James MacHardy
Organisation	GE Healthcare Ltd
Address	Pollards Wood, Nightingales Lane
Town/City	Chalfont St Giles
Post code	HP8 4SP
Telephone	
Email	
Fax	

Tick this box if you are requesting non-disclosure of your response. ☐

Please return by 28 April 2011 to:
Consultation on Paris and Brussels Conventions on nuclear 3 <sup>rd</sup> party liability Department of Energy and Climate Change Area 3C 3 Whitehall Place London SW1A 2AW  You can also submit this form by email: <a href="mailto:parisbrussels@decc.gsi.gov.uk">parisbrussels@decc.gsi.gov.uk</a>

Please select the category below which best describes who you are responding on behalf of.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central Government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input checked="" type="checkbox"/>	<b>Large business ( over 250 staff)</b>
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe):

Thank you for taking the time to let us have your views.

The Government does not intend to acknowledge receipt of individual responses unless you tick the box. ☐

## Consultation questions

<p><b>1</b> <b>Chapter 4</b> <b>Categories of damage</b></p>	<p>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.</p> <p>Particular questions you may wish to consider include:</p> <ul style="list-style-type: none"> <li>a) should particular types of claim be prioritised, and if so, how (see paragraph 4.14)</li> <li>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)</li> <li>c) should "compensatory remediation" be expressly included or excluded from the measures of reinstatement that can be claimed for (see paragraph 4.39)</li> <li>d) should we define what constitutes a "grave and imminent threat" and, if so, how (see paragraph 4.66)?</li> </ul>
<p><b>Response</b></p>	<p><b>General comment1: GE Healthcare Ltd has a significant concern about the financial impact (via increased insurance costs) of <i>inter alia</i> the new categories of damage. This concern is not limited to our own operations but also and in particular extends to the impact on operators of waste management facilities, including those of relatively small scale. This concern is expressed in more detail in the responses to other sections of this consultation. (section 4, 5, 6 and 8 below)</b></p> <p><b>General comment 2: We do not wholly agree with the implementation option in para 4.70. Approval of preventative measures by the State would, in our view, later provide for some limitation on or protection against speculative or malicious claims.</b></p> <p><b>Specific comments to the particular questions above:</b></p> <ul style="list-style-type: none"> <li><b>a) We see no benefit in a claims prioritization system.</b></li> <li><b>b) We have no strong view on this aspect</b></li> <li><b>c) We have no strong view on this aspect</b></li> <li><b>d) We consider implementation of emergency plans under REPPIR to be a reasonable basis for judging "grave and imminent threat" as discussed in para 4.65</b></li> </ul>

<p><b>2</b> <b>Chapter 5</b> <b>Geographical Scope</b></p>	<p>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.</p> <p>Particular questions you may wish to consider include:</p> <ul style="list-style-type: none"> <li>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)?</li> <li>b) how should we define who should be treated as a UK “national” for the purposes of section 16A (see paragraph 5.21)?</li> </ul>
<p><b>Response</b></p>	<p><b>GE Healthcare Ltd. has no strong view on this aspect.</b></p>
<p><b>3</b> <b>Chapter 6</b> <b>Limitation periods</b></p>	<p>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.</p> <p>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).</p>
<p><b>Response</b></p>	<p><b>General comment: GE Healthcare Ltd understands the adjustment of the claim period of 30 years for personal injury compared to the 10 year period for other types of damage. However we do not see the value in retaining the Parliamentary discretionary extension beyond the relevant limitation period.</b></p> <p><b>Specific comment to the particular question above:</b> <b>We do not support the extension of the 30 year limitation period to claims in respect of injury <i>caused by preventative measures</i>. The logic for extension set out in para 6.3 does not hold in relation to preventative measures. In addition this would represent another “long-tail liability” to which insurers would be averse.</b></p>

<p><b>4</b> <b>Chapter 7</b> <b>Liability during transport</b></p>	<p>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.</p> <p>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 <i>en route</i> from one nuclear installation to another?</p>
<p><b>Response</b></p>	<p><b>GE Healthcare Ltd found this section of the consultation difficult to assess. There seem to be three separate considerations which are somewhat conflated.</b></p> <p><b>One is the application in the situation of transit from Convention to non-Convention countries (about which we have no strong views).</b></p> <p><b>Another is about the position where material is temporarily stored at another installation while in transit. Our view is that clear definitions are missing here—does this for example include holding by a waste operator pending final treatment/disposal?</b></p> <p><b>Linked to that the third (and to us the most important) aspect appears to be the definition of what is excluded from liability for off -site occurrences. The use of the Excepted Matter regulations seems to be a <i>potential</i> way forward to a proportionate response (based on hazard) but the consultation document as written does not allow for analysis of the proposed changes.</b></p> <p><b>Our concern here is again the potential impact on smaller carriers and on operators of waste facilities i.e. increased cost disproportionate to hazard.</b></p>
<p><b>5</b> <b>Chapter 8</b> <b>Financial liability levels</b></p>	<p>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.</p> <p>In particular, we would welcome views on:</p> <ul style="list-style-type: none"> <li>a) the likely impact of increasing the standard liability level to €1200 million as compared to €700 million;</li> <li>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</li> </ul>

	<p>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?</p>
<p><b>Response</b></p>	<p><b>GE Healthcare Ltd is of the view that the application of a standard liability level of 1200 million Euros vs 700 million is not justified. It is not necessary for the purposes of compliance and most other Paris Contracting Parties have not done so. Further the logic of the arguments presented in paras 8.13 and 8.14 in respect of limiting operators liability applies equally here in the setting of that liability and provides a justification for limitation at the lower value.</b></p> <p><b>We strongly support the idea of a reduced level for low-risk transport but strongly suggest the same principle is used for <u>all</u> operations. Further, reliance on existing regulations (whether that be Carriage of Dangerous Goods etc., Prescribed Sites or Excepted Matter) is likely to limit options and prevent a thorough, modern and proportionate assessment. To that point, we would suggest that Schedules within REPPIR 2001 for example could be a simple and appropriate basis on which to categorise operations covered by the Conventions.</b></p> <p><b>Specifically on the question on transport and the practicality/administrative burden: it is difficult to judge the impact which again points to the need here for a fresh review across all operations impacted by the Convention.</b></p>
<p><b>6 Chapter 9 – Availability of insurance/financial security</b></p>	<p>We would welcome views on the availability of insurance or other financial security.</p> <p>In particular, we would welcome views on:</p> <ul style="list-style-type: none"> <li>a) what forms of alternative financial security should be acceptable and over what classes of liability might alternative forms of financial security be appropriate?</li> <li>b) how Government should assess operators' proposals for alternative financial security arrangements?</li> </ul> <p>In addition, we would welcome views on the Government</p>



	stepping in as a last resort to fill any insurance gap. How should Government calculate the charge for this?
<b>Response</b>	<p>a) GE Healthcare Ltd has no specific comment to make here.</p> <p>b) GE Healthcare Ltd has no specific comment to make here.</p> <p>c) GE Healthcare Ltd is concerned at the absence of a clear position in respect of pool Insurance cover before the legislation is enacted and therefore we support the view in para 9.23 that Government should consider filling any gap in return for a charge on Operators. Again we are firmly of the view that that charge should be proportionate to hazard i.e. to the potential magnitude of a major incident. In this way some operators could be exempt/excluded, some charged at lower tier rate and some charged at a “standard” rate. This tiered arrangement could readily be linked to the assessment of liability for different types of Operation, as per our earlier comments</p>
<b>7 Chapter 10 - Jurisdiction</b>	<p>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.</p> <p>In particular, we would appreciate views on:</p> <p>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)?</p> <p>b) whether we need a fall back provision giving jurisdiction to the High Court of Justice (see paragraph 10.17).</p> <p>In addition we would welcome views on our proposed clarification of “occurrence” in new section 26(2A) of the 1965 Act.</p>

<p><b>Response</b></p>	<p><b>GE Healthcare Ltd is of the view that there is scope for simplification on the question of Jurisdiction and that one Court could be selected. This would avoid the need for what appears to us to be convoluted and potentially contentious criteria for selection and tie-breaker provisions.</b></p> <p><b>From the comment above, we do not see that “Occurrence” needs to be defined for the purposes of Jurisdiction. However we believe that the clarification is helpful in a general sense.</b></p>
<p><b>8 Chapter 11 – nuclear waste disposal facilities</b></p>	<p>We would welcome views on our proposals for implementing the Paris Convention requirements in respect of nuclear waste disposal facilities.</p> <p>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.</p>
<p><b>Response</b></p>	<p><b>GE Healthcare Ltd strongly supports the Government view that Nuclear Waste facilities are not to be subject to the nuclear licensing regime and in particular agrees with the arguments presented in para 11.9</b></p> <p><b>We also strongly support the intention to exclude LLW and VLLW facilities from the Convention. However we note the protracted process under the mechanism for exclusion provided by the Convention (and the possibility of failure).We believe it is appropriate for the Government to proceed with exclusion for such facilities without going through NEA (as described in 11.18.)</b></p> <p><b>We are concerned that a liability impact on Waste Operators (albeit for a limited period until <i>possible</i> exclusion) would have a negative impact on effective waste and decommissioning efforts in the UK by driving up costs, forcing operators to withdraw from the sector or deterring others from entering it.</b></p> <p><b>Finally clarification is required on the Government’s proposals with respect to incineration facilities; are they excluded because they are a treatment facility or are they within the category of VLLW/LLW facilities? If the latter then our above comments also apply.</b></p>
<p><b>9 Chapter 12 Representative</b></p>	<p>We would welcome views on our proposals for implementing the new Paris Convention requirements in respect of</p>

<b>actions</b>	representative actions.
<b>Response</b>	<b>GE Healthcare has no specific comment to make on this aspect</b>

## Impact assessment questions

<b>IA1</b>	Can you provide information on current actual costs of financial security and the impact of the proposed changes?
<b>Response</b>	<b>Not practicable at this stage</b>
<b>IA2</b>	If you cannot provide actual costs, are you able to provide information on the <u>scale</u> of change for the costs of financial security through higher insurance premiums or alternatives?
<b>Response</b>	<b>We have been advised that costs will increase by a factor of between 5 and 7. This does not include potential impact on waste disposal costs</b>
<b>IA3</b>	Is this for a standard installation or a low risk installation or for transport activities?
<b>Response</b>	<b>Currently defined as a Standard installation (but note that GE Healthcare Ltd is of the view that a robust hazard based analysis would justify a lower tier categorisation)</b>

<b>IA4</b>	Can you provide information on on-going legal and administrative costs as a result of the changes and the likely scale and nature of transition costs?
<b>Response</b>	<p><b>Impact is anticipated to be of the order of £100k, not including IA2 above</b></p> <p><b>This does not include potential impact on increased waste costs</b></p>