

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.

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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 rd party liability Department of Energy and Climate Change Area 3C 3 Whitehall Place London SW1A 2AW
You can also submit this form by email: parisbrussels@decc.gsi.gov.uk

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

<input type="checkbox"/>	Business representative organisation/trade body
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X	Large business (over 250 staff)
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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>2 Chapter 5 Geographical Scope</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"> 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)?
<p>Response</p>	<p><i>1. With regards to the extension of the geographical scope of the Conventions, we would only note that such an extension has the potential to impact significantly on non-UK entities operating in the UK nuclear sector. Claims will now be able to be brought by non-Paris Convention Claimants, which might include, for example, a US employee of a US contracting firm and could potentially lead to the former issuing a claim in the US in so far as that claim falls outside the Nuclear Installations Act (NIA) 1965 (up to now non-UK contractors have dealt with this by way of indemnities.). By increasing the potential number of claimants, this is likely to have a knock-on effect to non-UK entities who wish to insure themselves against non-NIA claims.</i></p>
<p>3 Chapter 6 Limitation periods</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>

Response	<p><i>2. We share the same concern as the wider industry that the insurance market simply will not provide cover for the extended 30 year period and would suggest that the current arrangement, whereby liabilities over 10 years are covered by the Government, continues.</i></p>
<p>4 Chapter 7 Liability during transport</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>
Response	<p><i>3. We welcome the proposals set out in Section 7.11 & 7.12 (p.46). They would represent a helpful clarification of where liabilities lie when materials are being transported and introduce a level of statutory clarity that has been previously lacking.</i></p>
<p>5 Chapter 8 Financial liability levels</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"> 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?

<p>Response</p>	<p><i>4.1 Section 8.20 (p.53) states that the increase of the ‘standard liability’ to €1200 million will be phased in over a 5 year period. However, we can see no provision for a parallel period of adjustment for the increase in the ‘low-risk’ liability from £10 million to €70 million (8.22-24, pp. 53-4). We would urge the Government to allow for a phased increase in the ‘low risk’ liability both in the interests of fairness and to allow operators of low risk sites to adjust financially.</i></p> <p><i>4.2 We would also urge the Government to consider extending the ‘low risk’ category to include those nuclear sites which no longer have nuclear fuel on them and have a corresponding lower risk profile. With regards to these sites, €70 million would be more than adequate to cover any claims arising.</i></p> <p><i>4.3 With regards to proposal to set a reduced level specifically for low-risk transport (Sections 8.25-29, pp54-5), we would welcome such a move. The application of the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 would introduce a level of proportionality on the relative risk of the packages being transported that is currently lacking.</i></p> <p><i>4.4 On a more general point, we would be interested to know if the Government has undertaken any consideration of the impact of the changes to the Conventions on the market for the movement and processing of waste. It would seem that any further increase in the liabilities associated with moving waste between Convention countries would create a competitive distortion by making it more economical to move waste for processing or treatment to non-Convention countries. Has the Government factored such a possibility into their decision making?</i></p>
<p>8 Chapter 11 – nuclear waste disposal facilities</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>Response</p>	<p><i>5.1 We support the Government's intention not to extend the existing nuclear licensing regime, as set out in the 1965 Nuclear Installations Act, to disposal sites. There is existing legislation that already provides for adequate control of disposal sites and to apply the 1965 Act would create unnecessary duplication of regulation.</i></p> <p><i>5.2 However, we believe that the proposal to extend the liability regime to take in disposal sites would impose an unfair and disproportionate burden. Operating nuclear power stations and radioactive waste disposal facilities pose very different levels of hazard and consequently have differing regulatory regimes. Their liability regimes should reflect this accordingly and not simply default to that which poses the greatest hazard. The risk profile presented by disposal sites is so much lower than that of operating stations that it does not seem in any way appropriate to place them under the Conventions.</i></p> <p><i>5.3 This disproportionality is especially pronounced when considering the case of facilities for the disposal or processing of Low Level or Very Low Level Wastes, even if the lower level of liability is applied. The scope of the damages for which compensation can be claimed, the geographical scope of the Conventions, and the size of the financial liabilities are out of all proportion to these types of waste, their radiological content, and the level of hazard they pose. For example, there are certain types of waste or Naturally Occurring Radioactive Materials (NORM) that are exempt from any disposal authorisations or permitting, and will therefore not fall under the scope of the amended Conventions, that have a higher radiological content than many VLLW streams that will be disposed of at facilities that will now be subject to the Conventions and all the burdens and liabilities they bring.</i></p> <p><i>5.4 The Government itself recognises this disproportionality (Sections 11.15-16, p.73) and states that it believes that LLW and VLLW disposal facilities should be excluded from the Conventions. We would fully support this view. However, the Government proposes to seek this exemption through an application to the Nuclear Energy Agency, a process that can take several years (11.19, p.74) and may not even result in the exemption being granted. In the interim the Government proposes that these facilities should be subject to the full weight</i></p>
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of the Conventions. This is illogical and inequitable, as operators of such facilities would be asked to take on €70 of liabilities, which the Government recognises are disproportionate, for an open-ended period of time with no guarantee of a solution at the end of the process.

5.5 The Government acknowledge that there is an alternative and immediate way to enact the exemption (11.18, p.74), through applying a de minimis or proportionality test under the Conventions, but then declines to take this option up. We believe that the exemption for LLW and VLLW disposal facilities should be secured immediately through the application of the proportionality test and would urge the Government to take up this option. Alternatively, in support of its own policy (see 5.6 below), the Government should consider bearing the risk or liability of the Nuclear Energy Agency not agreeing an exemption rather than passing the burden down (even temporarily) to operators.

5.6 To fail to do so would impact negatively on the development of viable disposal routes for the UK's legacy wastes and put the successful implementation of other Government policies at risk. The Government's 2007 Policy for the Long Term Management of Solid Low Level Radioactive Waste calls for greater flexibility, implementation of the waste hierarchy to minimise waste for disposal, and a case-by-case development of solutions for the UK's LLW, including the use of specified landfill sites (run by commercial operators) for VLLW. Subjecting operators to the Conventions would discourage commercial operators from coming forward to provide such facilities, due to the disproportionate burdens that would be applied, and equally operators of facilities that would enable the application of the waste hierarchy (e.g. waste processors) will be disincentivised to bring new plant online for the same reason. It will also materially harm those facilities already in operation. Commercial organisations are being asked to step forward to provide viable disposal routes or processing facilities but then huge burdens that act as a barrier to entry and discourage them from doing so are being introduced.

5.7 Looking forward, it would be valuable if the Government were able to issue guidance on how future waste disposal or processing sites will be assessed in terms of the level of liability

they will be exposed to (the ‘standard’ liability or the ‘low risk’ liability), if any. We are thinking here particularly, but not exclusively, of any disposal sites that may be brought forward as a result of the previous Government’s acceptance of the Committee on Radioactive Waste Management’s recommendation that alternative disposal routes, such as near surface, near site disposal, be considered for reactor decommissioning wastes. The risk associated with these types of intermediate level wastes is so low that it would be appropriate to apply to them the same argument the Government sets out for LLW, i.e. that they “do not present the level of hazard that the Conventions was intended to address” (Section 11.15, p.73). We would urge the Government to apply this same exemption for the disposal of certain kinds of ILW and to give some indication of whether or not it is minded to do this. We would add that the likelihood of new alternative disposal routes being developed and implemented will depend, in part, on the amount of liability, if any, that is attached to them.

5.8 We would also add that bringing disposal sites within the liability regime, and all the burdens that entails, is unnecessary due to the existence of alternative ways of ensuring any future liabilities are met. For example, within the landfill industry bonds are used to provide for any future landfill remediation that might be necessary during the institutional control period. Such mechanisms could readily be applied to the disposal of radioactive waste by either commercial companies (at privately owned sites) or appropriate Government organisations (e.g. at NDA or MOD owned sites).

5.9 In summary, our concern is that by applying the Conventions to facilities for the disposal or processing of waste, and in particular LLW or VLLW (even for a temporary period), the development of the thriving commercial domestic market that the UK needs to effectively manage its legacy wastes will be severely damaged.

Impact assessment questions

IA1	Can you provide information on current actual costs of financial security and the impact of the proposed changes?
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Response	See IA2
IA2	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?
Response	<i>6. We understand from our contact with the specialised insurance market that current providers of risk transfer for the industry may look to introduce premium increases of up to 1000% as a result of the changes to the Conventions. While new, alternative markets may develop in the longer term, in the short and medium terms such a dramatic increase in costs obviously has the real potential to impact negatively on investment in the UK nuclear sector, both in terms of new build and of waste processing and disposal.</i>

