

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.

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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

Low Level Waste Repository Ltd. is the Site Licence Company (SLC) responsible for the management and operation of the Low Level Waste Repository (LLWR) in West Cumbria. The site is the UK's national facility licensed for the storage and disposal of Low Level Radioactive Waste. LLW Repository Ltd is a radioactive waste management company which offers a range of services to Customers across the UK in a mandated role as the Nuclear Decommissioning Authority's (NDA) Low Level Waste management contractor.

LLW Repository Ltd. is responsible for the only UK national facility for disposals of Low Level Waste. Implementation of the UK Strategy to reduce the disposals of Low Level Waste and preserve site disposal capacity is a key mission for our organisation. In order to ensure that only wastes which require a highly engineered disposal facility are disposed of at the Repository, we propose to implement a service via the supply chain for disposal of very low level waste, which is in line with UK Government policy.

We have compiled this response by consulting key personnel across our organisation and this is a combined response which incorporates their comments.

<p>1 Chapter 4 Categories of damage</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"> a) should particular types of claim be prioritised, and if so, how (see paragraph 4.14) 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) c) should "compensatory remediation" be expressly included or excluded from the measures of reinstatement that can be claimed for (see paragraph 4.39) d) should we define what constitutes a "grave and imminent threat" and, if so, how (see paragraph 4.66)?
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Response	<ul style="list-style-type: none"> a) No comment b) No comment c) No comment d) No comment
2 Chapter 5 Geographical Scope	<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)?
Response	<ul style="list-style-type: none"> a) The safety and security provided by UK flagged vessels (INF-1 or INF2 Ships) is reassuring to the UK when such vessels are transporting radioactive material in high seas. As Maritime code perceives these flagged vessels as territory of the state, we see no benefit in relaxing this Nuclear Liability Insurance provision. It has the potentiality to have a negative effect on safety as non UK flagged vessels are often operated much cheaper. b) No comment
3 Chapter 6 Limitation periods	<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>Response</p>	<p>No comment</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>
<p>Response</p>	<p>7.11- One of The Nuclear Decommissioning Agency's (NDA) transport principles is to reduce road transports and encourage the use of rail transport for the movement of radioactive material across the UK -both between site license companies and to UK ports for international transport. As a Site Licence Company, LLW Repository Ltd. must work within the NDA transport principles.</p> <p>We note that there are improvement opportunities emerging from this encouraged use of rail transport and the increased use of international waste treatment facilities. As a Site Licence Company, operating within the NDA framework, we note that the commercial structure in place does not support the use of the term 'direct economic interest'. However, it remains important to an SLC to maximize use of assets and minimize costs.</p> <p>Site License holders with rail heads located either nearby or on their sites, have an interest in operating as a transit site for packaged radioactive material. Trains are only cost effective against a road solution when rail wagons are full and loading/unloading time is minimized. One such improvement proposal has recently been raised by LLW Repository Ltd. with Sellafield Sites Ltd, and other sites across UK are interested.</p> <p>7.12 – LLW Repository Ltd. would support retention of the current</p>

	<p>system, where the sending Site License Company remains responsible for the nuclear matter until the final receiving licensed site has taken on the liability, either through express contractual provision or through traditional custody of the nuclear matter at the receiving licensed facility. Any sites being used for transit purposes, should not be permitted to take on the civil nuclear liability.</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>	<ul style="list-style-type: none"> a) We would support the proportionality approach proposed by the government to limit liability at the appropriate level. We see no requirement for the Government to increase the liability for increasing the standard installations liability level to €1200 million as compared to €700 million. We believe that this will create an appearance of additional cost to the nuclear industry which will be inflated above the requirements of the Paris Brussels convention. We see no need to increase the level above and beyond that required by the convention to be implemented in UK law and recommend that a limit be set at €700 million. b) LLW Repository Ltd. supports a reduced liability level for low risk category radioactive material. We would like to express our view that current thresholds for Nuclear Liability Insurance provisions do not align with radioactive waste transports, nor do we believe historically, they were ever intended to. The UK decommissioning industry transports Very Low Level Waste, Low Level

	<p>Waste and smaller quantity of Intermediate Level Waste and an even smaller quantity of High Level waste, although all these categories of waste (waste originating from the fuel cycle) are deemed to be Nuclear Matter and require Nuclear Liability Insurance, at premium cost to the UK treasury.</p> <p>It is our opinion that the thresholds for low risk material in transport require modernized to re-align the nuclear industry with civil nuclear liability insurance requirements. However we strongly oppose any attempts to align the IAEA transport regulations with such insurance requirements.</p> <p>One reason is the IAEA regulations are on a two yearly review cycle and frequently change. In addition and most importantly, insurance requirements are normally set using a risk based approach, the contents of any packages are the risk, this is irrespective of the packaging integrity. Unfortunately the IAEA regulations only have three categories of material commonly used, Low Specific Activity (LSA)I, LSA-II or LSA- III, all other requirements are based on the package integrity. In principle, if the IAEA align with the United Nations and classify the contents as the UN Number rather than the package, then this proposal would work, until then the IAEA system simply can not be used as a risk based approach as low hazard contents can be (and often are) transported in high integrity packages, flawing this proposal. An outcome would therefore be higher liability insurance would be mandatory than that required to meet the risk of the package contents.</p> <p>LLW Repository Ltd. would support a UK consultation on revising the Excepted Matter Regulations, leading Industry bodies such as the Radioactive Material Users Committee RAMTUC (21 member companies) would provide support on this important industry matter.</p>
<p>6 Chapter 9 – Availability of insurance/financial security</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"> a) what forms of alternative financial security should be acceptable and over what classes of liability might alternative forms of financial security be appropriate? b) how Government should assess operators' proposals for

	<p>alternative financial security arrangements?</p> <p>In addition, we would welcome views on the Government stepping in as a last resort to fill any insurance gap. How should Government calculate the charge for this?</p>
Response	<p>a) We believe that in order to implement a legal requirement on the holder of nuclear liability to provide insurance or other financial security, then the Government must first provide assurance that it is feasible to put such arrangements in place. The consultation document notes that it may not be possible to secure suitable insurance. We also note that it may not be possible for smaller businesses or very low level disposal facilities to provide adequate alternative financial security arrangements. The LLW Repository Ltd. will implement a new disposal service via the supply chain for disposal of very low level waste in the near future. In order to ensure that it remains viable for such disposal operators to adhere to any legal requirements, we would strongly support the Government proposal to step in to fill any such insurance gaps. We suggest that a proportional approach should be taken in consideration of any charges that the Government may consider making. We propose that any costing basis would be in line with typical insurance costs which a nuclear liability owner could be expected to incur using the current norms for insurance cover as a basis for estimating any charges and that this would be applied with a proportionate approach.</p> <p>b) We have no comment and would like to be included in any future discussions on how such assessments were to take place, in the event that such alternative arrangements are required.</p>
7 Chapter 10 - Jurisdiction	<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</p>

	<p>(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>
Response	<p>a) No comment</p> <p>b) No comment</p>
8 Chapter 11 – nuclear waste disposal facilities	<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>
Response	<p>We support the proportional approach to low risk facilities outlined in this consultation document</p> <p>We support the approach to de-couple the licensing and liability regime of the 1965 Act and agree with the Government approach set out in the consultation document.</p> <p>We welcome the proposal to a proportionate approach in the application to low hazard facilities and support the proposal to exclude Low Level Waste Disposal Facilities from the liability regime.</p> <p>We have reviewed the draft Order and we observe that there is <u>no reference as to how the implementation of transfer of liability from a nuclear licensed site to a non nuclear license site will be effected. We would welcome publication of a draft and would like the opportunity to comment.</u></p> <p>We also observed that the draft Order does not provide for the <u>exclusion of the need for low risk facilities to require a nuclear licence. We would welcome publication of a draft and would like the opportunity to comment.</u></p> <p>We understand the reasons for the timescales that are set out</p>

	<p>in the consultation document and believe that early production of a draft for implementation of these two issues would enable a timely resolution of any emergent issues. We believe that it is important that there is clarity on these matters as early as possible to support very low risk disposal facilities as they begin to implement the very low level waste disposal service. It is essential that this disposal service is enabled in order to preserve capacity at the national Low Level Waste Repository for those wastes which require a highly engineered disposal facility and that this be implemented as early as possible. Disposal of bulk quantities of very low level waste is an emergent market and stability of the future legal and operational regime is required to enable continued delivery of this disposal service.</p>
9 Chapter 12 Representative actions	We would welcome views on our proposals for implementing the new Paris Convention requirements in respect of representative actions.
Response	No comment

Impact assessment questions

IA1	Can you provide information on current actual costs of financial security and the impact of the proposed changes?
Response	
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	
IA3	Is this for a standard installation or a low risk installation or for transport activities?
Response	
IA4	Can you provide information on ongoing legal and administrative costs as a result of the changes and the likely scale and nature of transition costs?
Response	

