

Department of Energy and Climate Change
Area 3C
3 Whitehall Place
London
SW1A 2AW

28 April 2011

Implementation of changes to the Paris and Brussels Conventions on nuclear third party liability

EDF Energy welcomes the opportunity to comment on the proposed implementation of changes to the Paris and Brussels conventions through the consultation launched by the Department of Energy and Climate Change (DECC).

In its nuclear activities EDF Energy has partnered with Centrica, which has a 20% stake in the company's eight existing plants and in the project carrying out pre-development work for nuclear new build. EDF Energy has prepared this response on behalf of the two companies.

EDF Energy agrees with the need to reflect the changes to the conventions within the Nuclear Installations Act (NIA) 1965 in order to ensure a consistent model across signatory states. However, it is important that the changes do not put nuclear operators at an undue commercial disadvantage, since that could prevent the government achieving the need to secure investment in major new low carbon energy infrastructure, maintain security of supply via output from our existing nuclear plants as well as negatively impacting the investment case for life extension of those plants.

EDF Energy currently operates eight nuclear plants and is currently working toward a £20billion investment in four new nuclear plants in the UK. For investors such as ourselves to have continued confidence in bringing forward such plans there needs to be clarity and certainty around Government policy. It would not be acceptable to introduce the amendments as proposed in the DECC consultation without clear information on how financial security could be obtained, and on the costs associated with securing it. Therefore, all relevant and practicable forms of financial security should be developed in advance of the legislation taking effect, and sufficient time should be given for adequate discussion of these arrangements.

We would urge the Government to consider the following key points before any amendments are made to the Nuclear Installations Act:

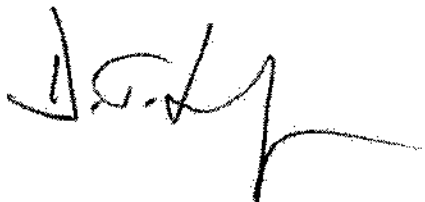
- The increase in operator's liability for personal injury or death claims from 10 years to 30 years raises a number of concerns around financial security, as such long-term risks have traditionally been a challenging area for the insurance market.

- Operators are required to maintain insurance or other form of financial security to meet their liabilities under the convention. Therefore, to give effect to the amended legislation without a complete answer to how the necessary financial security will be provided could result in nuclear operators being in breach of their statutory obligations.
- The objective of the Conventions is to channel liability to the operator and remove uncertainty from third parties affected by a loss event. The government should therefore consider how certainty can be maintained when the timeframe is amended.

The option for the Government to provide insurance as a commercial arrangement with operators should be kept open, where other methods have not been able to provide appropriate cover. Such an arrangement would provide security to investors and third party claimants while staying true to the Government's pledge of 'no subsidy'. This is consistent with the Secretary of State's statement on 18 October 2010 in which he outlined that the Government would consider taking on 'financial risks or liabilities' where there is appropriate compensation and 'corresponding benefits'.

We attach our detailed response to the consultation using the template provided in the document. If you have any queries, please do not hesitate to contact Kitty Sinclair or myself.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Linford', with a long horizontal flourish extending to the right.

Denis Linford
Corporate Policy and Regulation Director

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	
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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: <u>parisbrussels@decc.gsi.gov.uk</u>

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"/>	Large business (over 250 staff)
<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>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)?
<p>Response</p>	<ul style="list-style-type: none"> a) There are examples of this in some foreign legislation e.g. funds are allocated to claimants for personal injury, individual property damage and lastly commercial property damage and economic loss. While one could argue that such a system may be a fairer distribution of funds, in practice EDF Energy would express concerns over how one could actually manage such a system. The relevant timing of personal injury claims presenting themselves make prioritization impractical. If personal injury claims are to be prioritized you would be unable to pay property claims for 30 years until you were confident that all potential claims had been presented before distributing the available funds. b) No. The property owner has been compensated and is therefore capable of reinstating the land which he owns. The damage to the land will have been assessed based on the thresholds set under the Contaminated Land Regulations under Part 2 of the Environmental Protection Act 1990. No further obligation should be placed on the operator once its duty to compensate for damage to property has been met. This should include circumstances where remediation may be required at a

	<p>later date by any responsible agency (i.e. the Environment Agency or SEPA). To provide certainty, the Government should consider how required remediation should be enforced. The UK courts are also unlikely to support double compensation as it is contrary to principles already laid down in general law.</p> <p>c) EDF Energy encourages the inclusion of compensatory remediation to allow for any naturally available dispersion or remediation to be taken into account. Natural dispersion can be a more effective and efficient mechanism to reinstatement depending on the circumstances of the release.</p> <p>d) EDF Energy would encourage the use of existing thresholds within existing legislation to ensure consistency and clarity. For example Part 2 of the Environmental Protection Act 1990 provides guidance on exposure levels and as an operator we already comply with the Radiation (Emergency Preparedness and Public Information) Regulations 2001. The Government may wish to consider whether additional guidance may be necessary for instances where the application may apply to land or the environment as REPPIR only applies to public health.</p>
<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> <p>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)?</p> <p>b) how should we define who should be treated as a UK “national” for the purposes of section 16A (see paragraph 5.21)?</p>

<p>Response</p>	<p>Such a move would be welcomed to ensure consistency across Convention states. However, EDF Energy would encourage the Government to consider the changes within the overriding principle of channeling of liability to the operator under the Paris Convention.</p> <p>EDF Energy has no comment on b)</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>
<p>Response</p>	<p>The historical rationale behind the current limitation on operator's liability to 10 years was because this was as long as the commercial insurance market would provide cover for. Insurance has been the sole means used by operators to meet their obligation to provide financial security in the UK. The insurance markets have indicated that they can now provide insurance for 30 years on property claims and other heads of damage, but cannot provide it for personal injury beyond the current 10 years. This would leave the operator in a position where it would not have insurance cover available to meet its financial obligations for claims beyond the 10 years. We would encourage the Government to ensure that alternative practicable arrangements for financial security are available to operators prior to the amendments being brought into effect. If the changes are brought into effect without clarity on how financial security is to be provided then uncertainty will exist for third parties and dilute the principle of channeling liability under the conventions.</p> <p>General preventative measures to protect the public or workers in the event of an incident are unlikely to give rise to effects that result in claims arising long after any incident. It is however, feasible that some measures such as removal of irradiated water for example, could lead to a radiological injury or illness</p>

	<p>occurring either directly from the measure or from ineffective or negligent actions to carry out the measure, and therefore the limitation period of 30 years could be applied.</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>The underlying principle of the Conventions is to channel the liability to the operator responsible for the release. From a claimants perspective it needs to be clear who the responsible party is and to whom they should submit their claim for liability. The current situation provides this certainty in that regardless of who owns the material or whether an economic interest exists liability rests with the operator holding the material at the time of the event. In our opinion, the revisions requiring the operator to have an economic interest in the material could cause confusion and appear to go against the principle of channeling.</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> <p>a) the likely impact of increasing the standard liability level to €1200 million as compared to €700 million;</p> <p>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</p>

	that could be used to identify low-risk transport?
Response	<p>The Government should encourage all signatories to the conventions to adopt a unified approach to implementation to ensure consistency for claimants and operators and provide an even footing for competition across the EU.</p> <p>It is our view that the higher proposed limits could impact investment in new nuclear build and place current and future nuclear operators in an unfair position against conventional power operators. The Government has already identified (in its National Policy Statements on Planning) the energy gap and therein stated a need for new nuclear generation in the UK and the need to keep a balanced energy mix. Therefore, we would encourage Government to consider the proposed changes as part of the overall impact assessment on the energy industry from ongoing Market Reform debates principally on existing operators of nuclear plants and the investment required for new nuclear build.</p> <p>EDF Energy does not believe it would be acceptable to introduce the increased liability levels without clear information and consensus on how financial security can be obtained by the operators, and the costs associated with securing it.</p> <p>We have no comment on the matter of low-risk transport.</p>
6 Chapter 9 – Availability of insurance/financial security	<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 alternative financial security arrangements? <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>There are concerns regarding the availability of insurance for some new heads of damage and it will be important to obtain the views from the insurance industry. We would continue to encourage Government to assess the forms of financial security that could be used; within the parameters set out by Government regarding the definition of what constitutes a public subsidy for nuclear if commercial insurance is not available to the operator.</p> <p>a) Forms of financial security that may be acceptable could be; insurance, bonds, Government indemnity, bank guarantees, Parent Company Guarantee (PCG) and industry mutualisation of funds. It is our view as a subsidiary of an international Group experienced in all these alternative forms of financial security that some will have limited use and it will be problematic to stream varying forms of security across the classes (heads of damage) without leading to potential gaps, crossover or uncertainty at the time of a claim. It is imperative that feasible solutions are agreed before any changes are brought into force.</p> <p>b) EDF Energy believes that insurance will remain the key form of financial security by operators supported by operator funding solutions where possible (for example the use of a captive insurance company), and therefore suggests that the use of existing credit assessment methods would be the most appropriate and reasonable form of assessment to apply. For example, Financial Services Authority approval, review of company accounts, recognised rating agency ratings etc.</p> <p>It is our view that there will be a gap in insurance and any role by Government to fill this gap must be clearly defined prior to ratification of the amendments.</p> <p>In order for the Government to be able to calculate the charge EDF Energy would suggest that the following factors are considered:</p> <p>(i) The existing safety record of the UK nuclear industry and the very limited claims brought under the NIA to date.</p> <p>(ii) Assess the probability of liability for the areas where the gap actually exists (i.e. 20 years for personal injury, damage caused by nuclear incidents that are not sudden or accidental).</p> <p>(iii) Assess the financial impact (worst case) on third</p>
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	<p>parties or their property.</p> <p>(iv) Apply a catastrophic loading for the nature of risk being considered (i.e. very low probability and potentially high severity).</p> <p>The above could provide the Government with a view on the risks to which it may be exposed and calculate an appropriate charge for taking on the liabilities for which no practicable financial security is available to operators.</p>
<p>7 Chapter 10 - Jurisdiction</p>	<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>Response</p>	<p>a) EDF Energy suggests that uncertainty could arise from such a measure. For example, it would be impossible to predict what the actual impact from an event will be at the start, where the bulk of claimants may reside and therefore ultimately what the totality of the claims could be. As such, we would not support the option set forth in paragraph 10.16.</p> <p>b) EDF Energy would support the use of the High Court.</p> <p>We welcome the proposed clarification on the term “occurrence”.</p>
<p>8 Chapter 11 – nuclear waste</p>	<p>We would welcome views on our proposals for implementing the Paris Convention requirements in respect of nuclear waste</p>

disposal facilities	<p>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	EDF Energy has no comment on this.
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	EDF Energy supports the proposals for very low level waste and low level waste. We consider that such sites are more appropriately regulated by existing agencies and relevant available legislation i.e. Environment Agency and SEPA.

Impact assessment questions

IA1	Can you provide information on current actual costs of financial security and the impact of the proposed changes?
Response	EDF Energy has no comment.
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	EDF Energy has no comment.
IA3	Is this for a standard installation or a low risk installation or for transport activities?
Response	EDF Energy has no comment.
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	EDF Energy has no comment.

EDF Energy
April 2011

