Nuclear Risk Insurers Ltd response to Paris Brussels revision consultation

28th April 2011

Information about Nuclear Risk Insurers Ltd (NRI)

NRI is a FSA authorised insurance intermediary that acts as the UK insurance market's underwriting agent for all matters of nuclear insurance. It operates as a limited company and has a membership consisting of over 20 leading UK market property & casualty insurers from both Lloyd's and the general market, who pool their insurance capacity for nuclear risks into NRI; it is therefore commonly known as the British nuclear insurance pool. NRI then uses this capacity both to insure the nuclear sites in the UK and reciprocally to reinsure other nuclear sites around the world in association with similar entities internationally.

NRI today represents one of the largest single blocks of risk transfer insurance capacity in the world, at around £460m ($745m/€520m) and is also one of the oldest nuclear insurance entities in the world (founded in 1956).

PARIS BRUSSELS REVISION: NRI KEY POINTS

- The nuclear insurance industry welcomes the revision to the Paris/Brussels Convention.
- Insurance capacity should be available to cover the full €1,200m financial security obligation when it is introduced, subject to the points made below.
- Insurers anticipate being able to cover the majority of the new wider Convention cover proposed; however, some aspects of the revised Convention remain problematical for insurers.
- Insurers congratulate Government on its efforts to define in the draft order the new categories of damage covered by the revised Convention; however, in the opinion of insurers, some aspects of the new categories of damage remain unclear & without clear thresholds of applicability.
- Clear definitions & guidance for the competent court must be provided by the revised Nuclear Installations Act; clarity is essential to ensure that insurers can understand the risk, price the risk & hence enabling them to offer capacity. Clarity is also helpful to victims to assist them in understanding what events they make seek compensation for.
- In its response, NRI proposes further definitions for UK nuclear liability legislation which will clarify the scope of cover even more; this will enable the wider participation of insurers in the provision of operator financial security.
- The UK nuclear insurance market has access to a global network of similar insurance entities which together provide a cohesive infrastructure of solvent, independent capacity with experience of dealing with a high volume of claims following catastrophe events.
- The insurers look forward to working with both Government and the nuclear industry as the amending order develops, to provide the optimum financial security solution for the revised Convention cover.

In its response, NRI will provide general comments on each of chapters 4 to 12, and then answer the individual questions posed by DECC at the end of each chapter of the consultation.

NIA = Nuclear Installations Act.

1. The new categories of damage

(i) '*Loss of life or personal injury*': this category of damage already exists under the Convention; as such, it has been the subject of insurance for many years.

(ii) '*Loss of or damage to property*': **this category of damage** also already exists under the Convention; as such, it has been the subject of insurance for many years.

'*And each of the following to the extent determined by the law of the competent court:*

(iii) *economic loss arising from loss or damage referred to in sub-paragraph (i) or (ii) above insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage*':

Government considers that this category of damage is already sufficiently covered by (i) & (ii) above; UK case history certainly supports this view. It has been established that there needs to be a causal link between any economic loss & the original damage in (i) & (ii) above before this category is activated & accordingly the requirement for injury or damage from which the economic loss arises limits the scope of such claims. This clarification has caused the insurers no difficulty previously; NRI considers that this category of damage has been insured under the existing financial security & insurance arrangements.

Therefore, although a new express category, NRI has no concerns about its introduction.

(iv) '*the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in sub-paragraph (ii) above*'.

During the initial negotiations for the revision of the Paris Convention, insurers were consistent in their expressions of concern as to whether insuring such ill-defined new categories of damage would be possible. Insurance is the application of the common law principle of indemnity, whereby a contract requires that the person insured must have suffered a loss in order to recover under the policy; moreover, the person with the insurance policy must have a sufficient interest in the matter of insurance (so called 'insurable interest') to take out an insurance policy. Insurers were initially concerned about whether any loss under the proposed new categories would be quantifiable & able to demonstrate clearly that a *financial* loss had occurred.

However, with the development of case law, substantial insurer analysis of the new categories of damage, the passage of time & a recognition by Government that clear definitions are beneficial to all parties, insurers have grown more comfortable in considering insurance for these new categories of damage. Indeed, a small market for general environmental risk insurance is now developing & insurers' **understanding of the** new nuclear liability categories has been aided by these developments in the general insurance market.

In addition, NRI notes that in this consultation Government has made welcome efforts to define carefully the bounds of new damage category (iv); this has enabled insurers to a more positive view when considering providing financial security insurance for them. The key parameters proposed in the consultation are:

- **Use of the existing underlying environmental damage assessment arrangements to determine whether compensation is payable.** Recent legislative developments that clarify a definition of radioactively contaminated land have assisted insurers understanding of how this new category of damage might be assessed; for example, thresholds that determine when contamination has occurred allow insurers to assess risks & calculate premiums more easily.
  In paragraph 4.27 Government notes it is considering whether to amend any of these arrangements to make them fit better with the revised 1965 Act. NRI would encourage Government to make any additional clarifying amendments that permit immediate & unequivocal identification of nuclear damage when it occurs, thus allowing the financial security arrangements to compensate victims of the damage quickly. For example, an amendment that made the appropriate regulations the default

threshold for intervention following nuclear damage would give providers of financial security & accident victims more certainty of outcome & would to that extent benefit both.

- **Limiting the right to compensation to cases where *significant* impairment of the environment has been caused.** Government proposes restricting liability for this category of nuclear damage to 'significant' impairment; the threshold for 'significant' is that the nuclear damage must already be eligible for compensation as property damage (as in (i) above), before it is considered 'significant'. **Case history already has clarified what constitutes 'property damage', thus giving some degree of** certainty of coverage to operators & providers of their financial security.
  NRI strongly supports this proposal, as it provides a further threshold for the assessment of whether nuclear damage has occurred under this category & in that way promotes certainty in the claims handling process.

- **Requiring approval by the Secretary of State for any 'measures of reinstatement' required after damage has occurred & the costs associated with those measures.** Should nuclear damage occur under this category, the Government proposes that the Secretary of State assumes the role of the **'competent court' as the decider of any measures of reinstatement required & their costs.** The Convention is not specific on what measures might be necessary to reinstate or restore the environment, so it is encouraging that the Government recognises that those possibly called upon to pay for such measures need to have comfort that the proposed UK regime is reasonable & practical. **The use of the terms '*appropriate & proportionate*' in the proposed NIA revision is helpful in this** regard, as is the proposal to leave it to the Secretary of State to approve such measures.
  NRI strongly supports this proposal, as it also provides a further threshold for the implementation of any environmental restoration measures required should nuclear damage occur under this category.

The introduction of these clear thresholds above which compensation for nuclear damage can be considered is vital for provision of secure, long term financial security for operators. NRI is therefore encouraged by the **Government's proposals to establish clear thresholds for the revised nuclear liability categories. However,** some uncertainty remains regarding the triggering of the nuclear liability compensation regime; this will be a disincentive for insurers to participate in the provision of financial security. The remaining areas of uncertainty relating to this category of damage are:

- **Cover for 'compensatory remediation':** Government is considering whether to include or exclude this type of remediation. NRI would urge Government to exclude this type of remediation, as it is outside the scope of the Paris Convention. This type of remediation is more public & speculative in nature, it may take some time to establish liability & its provision has a potential overlap with the 5th new category of nuclear damage. These longer term uncertainties may well hold up other compensation payments due to legal action, so depriving genuine victims of their more straightforward nuclear damage compensation.

- **If a UK nuclear installation causes nuclear damage in another country, any measures of reinstatement can be approved by the competent authorities in that country.** The revised nuclear liability arrangements permit foreign approval of such measures, although jurisdiction would remain with the UK courts. However, the restrictions on measures of reinstatement applicable in the UK are absent, thereby leaving any measures of reinstatement overseas under the possible influence of political rather than scientific factors. Therefore, in addition to a resultant inequity between measures applied in the UK with those overseas, the introduction of political risk to the provision of financial security is very unwelcome & adds significant uncertainty. Owing to these uncertainties, insurers have already indicated that they do not expect to be able to provide financial security for the overseas element of any nuclear damage. NRI therefore urges Government to consider other ways of removing uncertain political risk from this new category.

- **Government will enable public authorities to reinstate environmental damage in the public interest.** In section 4.21 of the consultation document, Government notes that it considers that this new category of damage is aimed at those who accrue expense in the reinstatement of the environment 'in the public interest'. **In NRI's opinion,** the Paris Convention does not impose a public duty on operators in the way that, for example, **the EC's Environmental Liability Directive does** with regard to rectifying environmental damage. The third recital of the Convention preamble clearly **states an objective:** '*desirous of ensuring adequate & equitable compensation for persons who suffer damage caused by a nuclear incident*'. The main thrust of the Convention is essentially claims in tort for loss or damage suffered following a nuclear incident. It can be noted that the nuclear damage is defined not as the environmental impairment in itself, but the cost of taking measures of reinstatement. Therefore any damage suffered & claims arising are related to individually attributed rights rather than as a result of any general public duty toward the environment. It is accepted that public authorities may have to incur costs in taking measures of reinstatement, which are separate to the more normal type of damage incurred by those whose property is damaged; however it has to be recalled that the true scope and purpose is to compensate for costs incurred, not a wide ranging obligation to fund the reinstatement of all & any environmental damage.
  By proposing that this new category covers reinstatement of environmental damage in the public interest, Government could be taken as widening the scope of the Convention & introducing greater uncertainty to the providers of financial security. It is important to be clear that what is covered is costs which are reasonable & which the body charged with reinstatement has had to incur.
  The relationship between this head of damage & cases where there is damage to property falling under category (ii) is potentially important. Plainly the operator ought not to have to compensate for the same damage twice & the scheme of the Convention as explained above is that damage to property takes priority. If an owner is compensated for damage to his property, but does not clean it up, insurers see no reason why the operator should then further have to compensate a public authority which itself steps in to take those measures. On the other hand, if it is clear that property will be cleaned up by a public authority, then presumably the owner would have no claim himself for the cost of doing so, but might have a claim for damage suffered from loss of use of the property before clean-**up, or possibly from any proven residual stigma. It is important, in NRI's view,** for the Government to provide as much certainty as possible on these matters.

This new category of damage is open to two opposing assessments; on the one hand the new damage can be considered as complimentary to the original simple heads of damage under the Paris Convention & therefore does not introduce material additional risk to operators & their providers of financial security. On the other hand, the use of open language & deferral to individual competent courts conceivably make nuclear operators & their providers of financial security much more exposed to uncertainties of coverage & interpretation.
In this consultation, Government has clearly recognised some of the uncertainties & has sought to ensure that the competent court in the UK has sufficient guidance to interpret compensation awards with reasonable certainty for all parties; however, some aspects still leave operators & insurers with uncertainty & it is hoped these can be clarified during the remaining stages of the Convention revision process.

In summary, NRI anticipates being able to provide financial security for this new category, although the full **€700m of financial** security required may not be available until the remaining uncertainties are clarified.

(v) '*loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in sub-paragraph (ii) above*'.

This is also a new category of damage; **in Government's view the scope of this category is not wide. In NRI's** view, this is the most difficult of the revised categories. During the Convention revision negotiations, insurers sought clarification on this particular category, as the two examples of how compensation might arise cited

in both the *exposé des motifs* of the Convention & now in the DECC consultation document (section 4.52) merely seem to confuse matters.

The proposal in the consultation does not offer comfort from the fear that the operator might be inundated with spurious claims from a whole range of businesses all claiming to have suffered some unquantifiable economic loss. The drafters of both the Convention & the consultation stress that any exposure under this **category is limited by the language '*direct* economic interest'; these words limit compensation but do not** clarify whether compensation may or may not be payable, thus revealing a rich seam of uncertainty that could be exploited, to the cost of more genuine damage victims.

In summary, NRI does not anticipate being able to provide financial security for this new category of damage, unless Government introduces more clearly defined thresholds of cover.

(vi) *'the costs of preventive measures, and further loss or damage caused by such measures'*

This new category of damage can arise from two principal origins:

a. Measures taken following a nuclear accident.
b. **Measures taken following the possibility (a *'grave & imminent threat'*)** of a serious accident.

In the event of (a) above, it seems reasonable to assume that some emergency measures will be required & that the cost of these should be the responsibility of the operator concerned. If the nuclear accident has exceeded the established legal accident thresholds, then compensation for reasonable costs of emergency measures should also be eligible. Therefore, these costs should be met by the financial security provider.

In the event of (b) above, justifying the cost of these measures is potentially more difficult. Operators & their financial security providers could worry that political considerations might result in measures beyond what is reasonable. Also, from the perspective of insurers, there was some concern that compensation payments might be made when there is no identifiable event; this would contravene one of the basic principles of insurance. However, in the consultation, Government has addressed this problem with a practical proposal; it proposes defining a 'grave & imminent threat' as being the implementation of emergency plans under the Radiation (Emergency Preparedness & Public Information) Regulations of 2001 (so called REPPIR 2001). This proposal would immediately clarify the threshold beyond which the costs of measures would be compensated & allow providers of financial security to have certainty of when a payment is required. NRI therefore strongly supports defining a grave & imminent threat in this way.

In the consultation, Government also proposes two further clarifications for preventive measures:

- **The application of the 'appropriate & proportionate' test of reasonableness for the cost of** preventive measures.
- The restriction of costs to personal injury & property damage.

Both these clarifications are also welcomed by the insurers.

The Government does not propose to restrict preventive measures to those approved by the Secretary of State only; whilst this lack of restriction is practical, given the probable involvement of multiple authorities in any preventive measures, insurers would have preferred to have a more centralised, national decision maker approving the costs of these measures.

In summary, NRI can support the introduction of this new category, provided the proposals outlined in the consultation document are implemented.

Consultation questions for Chapter 4:

a) *Should particular types of claim be prioritised, and if so, how (see paragraph 4.14).*

NRI does not support the introduction of prioritisation. It considers prioritisation to be both impractical & unfair. Impractical because there is no certainty *when* claims for damage will be made; if Government tries to control compensation to certain claimants in favour of others, efficient management of compensation becomes very difficult. Unfair because the imposition of controls favouring some victims over others will doubtless be perceived to be discriminatory, no matter how well intentioned they are.

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 been paid to the owner (see paragraph 4.29)?*

This question has been covered under (iv) above.

c) *Should "compensatory remediation" be expressly included or excluded from the measures of reinstatement that can be claimed for (see paragraph 4.39).*

This question has been answered under (iv) above.

d) *Should we define what constitutes a "grave and imminent threat" and, if so, how (see paragraph 4.66)?*

This question has been answered under (vi) above.

2. Geographical scope

Providers of financial security have some concerns about the widening of the geographical scope of the Convention, as the certainty whether damage has occurred available to operators in their own country may not be available in other, less 'nuclear friendly' locations. In such locations, political motivation may drive some claimants to bring unjustifiable claims for damage against operators or environmental reinstatement standards may be unreasonably imposed.

However insurers recognise that this change derives from a treaty obligation & take some comfort that jurisdiction for any claims will remain with the UK.

Consultation questions for Chapter 5:

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)?*

NRI considers that national consistency with the Convention provisions is better wherever possible; this ensures that international nuclear trade is not complicated by materially different national interpretations. Thus it would support UK alignment with this provision of the Convention.

b) *How should we define who should be treated as a UK "national" for the purposes of section 16A (see paragraph 5.21)?*

NRI does not consider this question a matter for insurers.

3. Limitation periods

In the view of insurers, Government should consider the difficulties of introducing different limitation periods for bodily injury & other types of damage. The other types of damage may exhaust the financial security limits well before the expiry of the 10 year period, so requiring victims of all more slowly occurring bodily injury damage to seek the discretion of Parliament to meet compensation. Indeed, recent events in Japan support such an outcome. In addition, insurers are unlikely to be able to provide financial security for the revised 30 year bodily injury limitation period in the short to medium term; in the longer term, markets may develop the ability to underwrite these longer periods; however, insurers currently find insuring any long term risks very difficult due to uncertainty of separating the development of societal diseases from those directly related to the industry concerned. The incidence & quantification of bodily injury so far into the future is still difficult to model.

Therefore, insurers consider the existing arrangements under the NIA to be both sensible & satisfactory; however, insurers also recognise that some amendment of the current arrangements may be necessary as a result of the Convention revisions. For example, should no financial security be available for a limitation period of more than 10 years, Government may decide to continue with the current arrangements, amended to comply with the Convention & charge a reasonable premium for the limitation period up to 30 years that falls outside of the current capabilities of the private market.

Insurers would also support the introduction of reinsurance or indemnity arrangements with Government to ensure total financial security cover for this exposure, if appropriate.

The government proposes some further changes to limitation periods:

- **The application of the 30 year limitation period to bodily injury caused as a result of preventive measures.** Insurers would not support this additional extension; such an extension is seen as unnecessary & subject to even greater uncertainty than bodily injury caused by straightforward nuclear damage. Insurers consider that any preventive measures required will be made in the short term & thus any damage resulting should also be notifiable in the short term; the introduction of an extension in limitation therefore brings no foreseeable benefits.
- **The deletion of the 20 year limitation period for stolen, lost, jettisoned or abandoned nuclear matter.** Insurers would support this change, as it will be make the UK arrangements consistent with those of the Convention.
- **The extension of the limitation period where a claim has been referred to the European Nuclear Energy Tribunal (ENET).** Providers of financial security would prefer to see no extensions to limitation periods, as such extensions merely add uncertainty & thus make attracting supporting capital more difficult. Extending the limitation period where a claim has been referred to the ENET may be acceptable, if the ENET itself has limitation periods, but this is not clear from the consultation document.

Consultation questions for Chapter 6:

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).

This question has been answered above.

4. Liability during transport

Insurers welcome the recognition by both the Paris Convention drafters & the UK Government of the problems caused by so called 'forum shopping', whereby some operators have minimised the cost of financial security during nuclear transports by seeking the minimum possible level of financial security for as much of a nuclear transport as was feasible. New Article 4 (c) of the Paris Convention & the changes proposed to the UK NIA will help to prevent reoccurrence of this practice.

Insurers also note the intentions of Government to align the revised NIA more closely with the Convention through the insertion of a new section 7A in the draft order. Ensuring the efficient availability of adequate compensation for victims of a nuclear transport accident should be a key objective of nuclear liability legislation. This requires the responsibility for liability to be absolutely clear & the level of financial security to be sufficient; with its proposed changes, Government appears to have made steps to clarify responsibility during nuclear transports. Insurers' primary concern regarding transport has always been for clarity of cover, in what is often a misunderstood & complex aspect of the nuclear liability regime; therefore insurers support the greater clarity provided by Articles 4 & 5 of the Convention & the associated changes proposed in section 7.11 of the consultation document. The alternative noted in section 7.12 appears to offer little change & is arguably more confusing.

Insurers also welcome the clarifications proposed in section 7.15 & 7.18 of the consultation document.

Consultation questions for Chapter 7:

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 en route from one nuclear installation to another?

The consultation explains the proposal to align UK legislation more closely with that of the Convention concerning the transport of nuclear material, so that liability remains with the operator responsible for that material; thus any stopovers at other nuclear installations en route would not require a transfer of responsibility to these interim installations. Both from the perspective of consistency with Article 5 of the Convention (& so also with other Convention states) & a simpler process, NRI supports the proposal in section 7.11 of the consultation document.

5. Financial liability levels

Insurers support the introduction of higher amounts of financial security; insurers also consider that there will be enough capacity in the insurance market to provide both the revised €700m initial amount & the higher €1,200m amount of financial security required 5 years after the implementation of these revisions, provided the clarity & perceived scope of the final legislation introduced are acceptable. Insurers agree with the Government's view that the revised financial security amounts do not represent a subsidy for the industry & that the level of the new amount is a reasonable balance between the demands of victims & the responsibility of the operators.

Insurers note Government's observations on the compatibility of the proposals for the UK with other Paris Convention countries. Following the recent events in Japan, one must presume that more countries will now seek to impose a higher financial security amounts on nuclear operators; however, as providers of financial security in most nuclear states, insurers are aware of the potential to put the UK nuclear industry at a competitive disadvantage by opting for the higher limits.

The material impact for operators of introducing higher financial security amounts is that they will need to pay an additional premium to buy the wider insurance required to cover their financial security amounts; the additional premium will be levied by insurers to cover both the additional capacity & the broader categories

of damage demanded by the Paris Convention revisions. However, insurers are confident that risk transfer **insurance will still represent the cheapest method of fulfilling operators' financial security obligations.** Precise premium levels for the revised Convention requirements will depend on many factors; in particular, the clarity of definitions for the new categories of damage will be key to enabling insurers to calculate their exposure with certainty. However, as an approximate guide today, the new financial amounts & new categories of damage could result in premiums of between four & eight times the current amounts.

The proposals for defining lower risk nuclear installations & transports are welcomed by insurers, provided that the regulations that define such lower risk amounts are absolutely clear & are perceived as sufficient by the public. In the case of nuclear installations, the existing arrangements are satisfactory (as noted by section 8.23 of the consultation document) and the proposal to introduce assessment based on existing nuclear transport regulations to govern the transportation risk is also supported.

The contrasting geographical scope of the Paris & Brussels Conventions described in section 8.32 is noted; the proposal for having two tiers of funding for compensation is acceptable, but it illustrates the difficulties of the earlier proposals for prioritisation of claims. There is also scope for confusion with the proposals, as a **distinct point at which precisely €700m is distributed will not necessarily** be easy to identify. Although the geographic scope may differ between the tiers of compensation, the providers of financial security view the financial security amount required as a single capital sum, thus a complex model to distinguish between claims arising from the first tier & second tier will add administrative complexity to claims handling.

Insurers welcome the proposal for claimants to bring a single action (section 8.36) as a simplifying measure that will ease the claims handling process.

Overall, NRI broadly supports the introduction of the higher financial security amounts.

Consultation questions for Chapter 8:

In particular, we would welcome views on:

a) *the likely impact of increasing the standard liability level to €1200 million as compared to €700 million;*

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?

These questions have been answered above.

6. Availability of insurance or other financial security

Insurers **agree with Government's view that the precise extent of insurers' cover for the revised Convention** will not be certain, as it substantially depends on the clarity & perceived scope of the final legislation introduced. The extent of cover available today in the market does not differ materially from that presumed by Government in section 9.6 of the consultation document. In summary, the key areas likely to present difficulties for insurers are:

- Insuring bodily injury claims beyond 10 years after any incident;
- Insuring the cost of reinstatement of impaired environment outside the UK;
- Insuring any damage occurring as a result of 'normal operations'.

These gaps in insurance cover are neither new nor unique to the UK market; currently minimal cover is available globally for these risks.

Insurers recognise that operators are required to have full financial security in place & that some cover may be hard to obtain. Therefore, insurers believe that the most practical way to deal with the uninsurable liabilities is to protect the operators by risk transfer to the Government, as suggested in section 9.23 of the consultation paper. Our view is that the charge for this risk transfer should be at a nominal cost reflecting the favourable experience from the nuclear industry over a period of more than 50 years. We believe that this proposal is helpful to potential claimants in the event of a nuclear incident as claims could be dealt with centrally & there would be no need for claimants to try to distinguish between claims that are covered by insurance & those that are not.

Insurers understand that operators may want to provide financial security for themselves to try to save paying insurance premiums, but insurers contend that such provisions do not represent good value for the taxpayer (as the ultimate guarantor) or victims of an accident. The recent events in Japan have demonstrated clearly that operator funded financial security is unlikely to provide victims with long term security of payment after a severe accident, as the operators stock & asset values will fall & debt costs will rise. Some examples of possible problems with operator funded arrangements are:

- Failure of solvency; victims are left without compensation due to the financial failure of the utility operator following a large accident.
- Lack of a long term claims registration & handling infrastructure for victims
- Possible conflict between operator's public relations needs & the needs of victims following an accident.
- Lack of independence when assessing & handling claims payments for accident victims.
- Operator's need to be focused on site stabilisation & decontamination rather than victims after a big accident.
- For larger international operators, an accident demanding resource in one country may compromise its ability to service its liability obligations elsewhere.
- The cost of such arrangements for operators is likely to be high, especially as the risk appetite to support these plans will have reduced after the Japanese accident.

If operators decide to offer alternative solutions, then their plans should be assessed with consideration of these points. Overall, insurers consider that risk transfer insurance with third party capital provides the best chance of a long term, equitable & solvent arrangement for victims of a nuclear accident & therefore for taxpayers.

Government suggests that it may intervene should financial security not be available. Insurers recognise that they are unable currently to provide the scope of financial security for all the proposed obligations; however, this position will probably change over time. Therefore, insurers would welcome working with Government in the interim to ensure that operators' financial security is completely covered through a combination of private market insurance & Government reinsurance; such a solution is likely to be adopted elsewhere amongst Paris Convention states.

Consultation questions for Chapter 9:

We would welcome views on the availability of insurance or other financial security. In particular, we would welcome views on:

a) what forms of alternative financial security should be acceptable and over what classes of liability might alternative forms of financial security be appropriate?

If an operator proposes to provide alternative financial security rather than purchase an insurance policy then NRI believes that the operator should be required to purchase a suitable instrument, such as a bank guarantee or surety bond, to give comfort that the funds were available, if the need arose. In any event the funds should certainly be clearly ring fenced from other funds & not available to the operator for alternative uses, until the provision for such funds was no longer required, which could be for up to 30 years from when the risk period ceased.

NRI has no objection to allowing operators to offer alternative financial security instead of insuring their risks but feels that this is likely to be an uneconomic route for operators to follow due to the high cost of bank guarantees & other instruments that would be likely to be acceptable to the Government, & the considerable length of time that a such an instrument would need to be available for to cover potential claims.

NRI's view is that some of the potential liabilities that the Government is proposing to impose on operators will be uninsurable such as:

- ***Liabilities arising from "normal operations".*** **If the radiation levels from a nuclear site are within the limits set by the Government. NRI is unsure how a nuclear operator could be liable for damage. Insurance is designed to cover fortuitous events & if radiation levels are within the limits set, then the exposure is to be expected & would not be fortuitous.**
- ***Liability for bodily injury claims in the period from 10 years after an incident to 30 years*****. Cover is difficult at present for long periods owing to issues such as a general, marketwide lack of appetite for long-tail claims & risk of a significant volume of claims following a nuclear incident not related to the incident.**

NRI supports Government's proposal to encourage operators to use insurance where it is available, particularly with respect to larger scale incidents & only to consider alternative financial security arrangements to cover smaller scale claims.

b) How Government should assess operators' proposals for alternative financial security arrangements?

NRI believes that operators' plans for alternative financial security should include the following:

- **The funds should be available to pay for the operator's liabilities even if the operator were to be put into administration, enter liquidation or otherwise cease trading.**
- **The plan should set out a clear mechanism that would make the financial security become available to meet liabilities as they fall due.**
- **Clearly the mechanism to make the financial liability become available to meet liabilities needs to allow for claims for compensation in respect of costs of measures taken after an event that creates a "grave & imminent threat of nuclear damage", as well as following a nuclear incident.**
- **The plan should have a clearly set out proposal for how claims are to be handled in the event of an incident & there should be a requirement that these plans should be tested periodically as part of the operator's business continuity testing.**
- **The plan should specify how decisions would be made when giving instructions to the claims handlers as to which claims should be settled, their claims handling authority levels, how decisions will be made in borderline cases & which claims would be contested.**

- **There should be a clear process easily available to the public, probably via a website, to set out how claims can be made & what the appeal process is if claims are rejected.**

- **The plan should allow for the fact that the funds will need to be made available to cover potential liabilities for 30 years following the cessation of the risk period, to allow for claims that may only manifest themselves after a period of time.**

- **The plan should set out how the funds will be topped up in the event that liabilities were met from the fund provided & specify the timescale over which the additional funds will be made available.**

- **For operators that own multiple sites there should be clearly defined separate funds available to settle liability claims for each individual nuclear site.**

NRI believes that there are particular potential difficulties in proposing the use of alternative financial security to cover liabilities that could give rise to a high volume of claims following a major nuclear incident. Any plan would need to explain how the management of the operator would be in a position to give direction to the claims handlers & deal with disputed claims, when the operator's prime focus should be to deal with mitigating the impact of the nuclear incident.

c) 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?

NRI suggests that a potential mechanism could be for NRI to create a pool for these types of risks with the Government as the sole reinsurer. If this were deemed appropriate then the insurance premium rates could be set by NRI, with delegated authority from the Government Department concerned.

7. Jurisdiction

Insurers support the current provision of the Paris Convention whereby jurisdiction is awarded to a single court; insurers recognise that such a restriction facilitates the settlement of compensation claims for victims. The use of a single competent court to adjudicate all claims has been an important provision of the Paris Convention since it was first introduced & this provision has assisted the providers of financial security in their support for the nuclear industry.
Insurers will be concerned if any changes threaten this principle; NRI is therefore supportive of the minor changes proposed to the arrangements between Paris states, as these do not propose any material changes to the well established need for a single court.

Government also proposes to make additional provisions in the revised NIA to clarify which jurisdiction would apply within the UK. NRI supports the proposals & believes that they will be workable in the event of a jurisdiction dispute between the different parts of the UK. NRI agrees with the Government & does not consider there to be a need for a 'fall back' provision; therefore it would support the removal of NIA section 16B (13).

To support its proposals for deciding upon jurisdiction within the UK, Government also proposes to restrict the use of the term 'occurrence' in the revised NIA (proposed section 26 (2A) of the NIA). Insurers welcome the sentiment behind Government's action & are supportive of the proposal to restrict the interpretation of 'occurrence' in sections 7 to 11 to a single, original release of nuclear matter; such a change is considered an improvement in clarity. However, insurers are also disappointed that Government has not been able to extend the definition of 'occurrence' in section 26 (1) of the NIA to cover its use in sections 7 to 11, rather than just sections 16 (1), 16 (1A), 16B, 17 (3), 18 & 26 (2B). Insurers always welcome any clarifying

statements that make any legal decisions easier & of quicker benefit to victims & the financial security providers.

Consultation questions for Chapter 10:

In particular, we would appreciate views on:

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)?*

b) *Whether we need a fall back provision giving jurisdiction to the High Court of Justice (see paragraph 10.17).*

In addition we would welcome views on our proposed clarification of "occurrence" in new section 26(2A) of the 1965 Act.
These questions have been answered above.

8. Nuclear waste disposal facilities

The Paris Convention states clearly that installations for the disposal of nuclear substances should be covered by the nuclear liability regime; under the revised Convention, these sites will be required to have a minimum **financial security amount of €70m**. Government proposes bringing such facilities in the UK within the liability regime of the NIA. However, Government does not propose licensing all of these facilities, as it feels that existing regulations are sufficiently robust to ensure safe operation & extending the nuclear licensing regime to such facilities would be cumbersome. This seems a reasonable approach & NRI supports the proposal as described in section 11.10 of the consultation document.

However, elsewhere in the document Government outlines its plans to exclude from the liability regime *some* **of these sites that qualify as low (or very low) level waste sites & pose little 'nuclear'** hazard or risk; these sites can only be excluded from the regime by Government seeking an exclusion for these sites from the **OECD's Nuclear Energy Agency** (NEA) – itself a cumbersome process with no guarantee of success, even in the medium term.

Insurers' experience is that *any* facilities that handle **'nuclear substances' often have difficulty** in obtaining **'normal' insurance, because** of the perceived nuclear exposure. Any nuclear exposure means that the normal (i.e. non-nuclear) insurance market is immediately restricted in its ability to provide cover by virtue of the radioactive contamination exclusion clauses. These clauses are part of the fundamental principle that steers nuclear liability to operators & their nuclear insurers & in so doing, assists nuclear operator financial security providers with control of their nuclear risk accumulation. If insurance is difficult to obtain, then the site operator concerned may not be able to attract contractors to work on its facility, even if the nuclear risk is low & confusion over insurance arrangements often results.

Both operators & nuclear insurers benefit from the clarity of being under a nuclear liability regime, because then there is no doubt that nuclear financial security is required; however, Government is understandably **reluctant to burden very low risk sites with an obligation to have financial security of €70m**. It is unfortunate that the revised Convention does not consider a very low financial security amount more commensurate with the low hazard presented by some of these facilities.

Therefore, for the short to medium term all low level nuclear waste facilities will require financial security of **€70m, until such time as Government has secured an exclusion for the low risk facilities from the scope of** the Convention. **NRI supports this position, noting that the financial impact of requiring €70m of security will not be great. When (& if) the OECD NEA steering committee grants an exclusion for the UK's low risk facilities,**

NRI predicts that these sites will continue to require some 'nuclear' insurance, notwithstanding the removal of these sites from the nuclear liability regime. However, such insurance can be purchased for an amount lower than the €70m & more in keeping with the site risk; NRI does not foresee any difficulty in providing this insurance, if operators feel the need for it.

NRI notes that the proposals in this section will initially leave low risk sites with a requirement for a sizeable financial security amount & that the eventual position of these sites in the nuclear regime may not be absolutely clear, but there does not seem to be any other practical solution that is consistent with the UK's treaty obligations. NRI is always willing to tailor insurance products to suit the operator's particular risk & exposure.

Consultation questions for Chapter 11:

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.

NRI does not consider this question a matter for insurers.

9. Representative actions

The Government proposes to change the NIA to permit the State of a country covered under the wider geographical scope of the Convention to bring claims in a UK court on behalf of its nationals; in doing so, Government acknowledges that such action may increase the number of claims that could come forward.

NRI has already outlined the potential dangers it sees of politically motivated action from other States in section 2 of this document; it is for this reason that insurers currently find it difficult to consider coverage for nuclear damage arising abroad. Such reluctance to cover foreign inspired action in the UK court will continue until it is clear that politically motivated actions are always rejected.

Consultation questions for Chapter 12:

NRI has no further observations on this section.

10. Impact assessment questions

1. *Can you provide information on current actual costs of financial security and the impact of the proposed changes?*
   ***Response:* NRI is unable to provide an actual cost impact of the proposed changes.**
2. *If you cannot provide actual costs, are you able to provide information on the scale of change for the costs of financial security through higher insurance premiums or alternatives?*
   ***Response:* NRI has provided information on the scale of change of costs in section 5 of this response document; to summarise, NRI considers that the new financial amounts & new categories of damage could increase premiums by between four & eight times the current amounts.**
3. *Is this for a standard installation or a low risk installation or for transport activities?*
   ***Response:* the information provided refers to a standard installation.**
4. *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:* NRI does not anticipate incurring substantial future legal & administrative costs to complete its work on the implementation of the revised Paris Convention. NRI has already noted that operators will be required to pay higher premiums to cover their wider liability obligations for higher amounts.**

NRI – April 2011