

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: 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

<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>	<p>With regard to the new dispositions set out in the draft order, we have no significant comments or suggestions as the said dispositions are the ones already present in the Paris Convention.</p> <ul style="list-style-type: none"> a) On the prioritization of claims, as mentioned in the consultation documentation, we also share the view that it will be difficult to implement clear and fair rules of prioritization. The current situation should therefore be maintained. b) In the case where compensation has already been paid by the owner, we are of the view to apply rules which avoid the double payment of compensation. If compensation has already been paid, we believe that the paid amount should be subtracted from the public authority claim. Nevertheless, should the claim be based on a different cause, the dispositions of the Convention shall apply. c) Exclusion or inclusion of "compensatory remediation" is indeed questionable as some of the said remediation could be taken into account under others dispositions of the Convention, for example economic losses for agricultural fields. Even if the court position on such matter could evolve over time and therefore bring

	<p>uncertainty on the owner financial liability, we are of the view to leave the proposed draft as it stands and avoid any exclusion or inclusion of “compensatory remediation” in the case of “reinstatement measures”.</p> <p>d) To define a “grave and imminent threat” will raise several difficulties and probably limit the purpose of the new 1965 Act dispositions. We are of the view not to define the terminology “grave and imminent threat”.</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>a) The choice of alignment of the “new” Nuclear Act with the Paris Convention is acceptable as it is a step forward to harmonization throughout Europe.</p> <p>b) The definition of a UK “National” should be in line with the dispositions of the Brussels Convention. In our view, a transcription of the dispositions of art 2 (b) and (c) of the Brussels Convention would be a good solution.</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>The proposed implementation of the limitation periods are in line with the principles of the Paris Convention and are as such acceptable.</p>
4 Chapter 7 Liability during transport	<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>Regarding the different scenarios outlined by the government, we are of the view that an alignment with the Paris Convention regime is preferred as it will give more clarity for the operators involved.</p>
5 Chapter 8 Financial liability levels	<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; <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 that could be used to identify low-risk transport?</p>

<p>Response</p>	<p>The increase of the liability level is a common problem across Europe as several countries are working on the implementation of the revised Paris Convention. The questions pending for the operators and the insurance companies are more related to the scope of damages.</p> <p>The proposition to set a reduced level for low risk transport is essential and should as mentioned in the consultation documentation be based on IAEA regulations. The level of liability should be in line with the risks associated with the transport.</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 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>
<p>Response</p>	<p>As mentioned in the consultation documentation, the commercial insurance market is still assessing the provisions of the Paris Convention, related to new categories of damages: additional costs of remediation, environmental damages; and to the new prescribed duration.</p> <p>From the operator side, it is difficult to give views on potential alternative solutions without having clear signs from the insurance market on the limits of its offer.</p> <p>The final solution will mainly depend, as already mentioned, on the insurance market's response. Depending on the proposed coverage, operators will then choose the best solution for their project. Nevertheless, we consider essential that, in case of a gap between liability and existing coverage, a suitable mechanism that solve this potential problem should be defined</p>

	<p>in advance, including possible intervention of the government. The costs will in our view mainly depend on the scope of the intervention, which could only be defined once the insurance companies define their own scope of intervention and associated limits.</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> <ul style="list-style-type: none"> 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). <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>Regarding the allocation of jurisdiction, we are of the view to define the rules of allocation on the basis of the localization of the incident as proposed.</p> <p>Even if the occurrence to recourse to the fall-back solution is rather low, we are of the view to keep it.</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>

Response	NuGen, as a prospective nuclear power station operator, has no comments in relation to the waste disposal facilities.
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	The new proposals related to the implementation of the Paris Convention are acceptable. Nevertheless, we would like to emphasise that double compensation must be avoided. The dispositions of the implementation legislation should clarify this point and define as the case may be solutions to decrease the risks of double payment for the same damage.

Impact assessment questions

IA1	Can you provide information on current actual costs of financial security and the impact of the proposed changes?
Response	<p>As already mentioned, the impact and costs of the provisions of the revised Paris Convention are for the time being still under assessment.</p> <p>With no complete view on how the insurance market will deal with those new requirements, the calculation of any financial costs is difficult and could lead to misleading data being provided.</p>
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	<p>The current information disclosed by insurance companies related to the new amounts of insurance refer to scale rather than to numbers. Moreover, the insurance and consequently the associated premium will also depend on the kind of technology installed, the site and the safety measures linked with the plant.</p> <p>The information we've seen leads us to believe that, assuming an actual premium of 1.5 million Euros for a 150 million Euros insurance coverage related to 1000 MW unit, the increase of said</p>

	liability up to 700 million Euros will be reflected in the premium by a multiple 4 to 6, and up to 7 to 9 for an increase of 1200 million Euros.
IA3	Is this for a standard installation or a low risk installation or for transport activities?
Response	The numbers indicated at point IA2 are referring to standard installation.
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	The works are still pending and will need to have more complete information from financial and insurance markets. We therefore are not able to provide relevant information on these points at this time.

