

## 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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Email	
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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<sup>rd</sup>  
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](mailto:parisbrussels@decc.gsi.gov.uk)

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

<input type="checkbox"/>	Business representative organisation/trade body
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<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)
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<input type="checkbox"/>	Trade union or staff association
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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><b>1</b> <b>Chapter 4</b> <b>Categories of damage</b></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"> <li>a) should particular types of claim be prioritised, and if so, how (see paragraph 4.14)</li> <li>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)</li> <li>c) should "compensatory remediation" be expressly included or excluded from the measures of reinstatement that can be claimed for (see paragraph 4.39)</li> <li>d) should we define what constitutes a "grave and imminent threat" and, if so, how (see paragraph 4.66)?</li> </ul>
<p><b>Response</b></p>	<p><b>Preventative Measures</b></p> <p>New Section 7 (1D)) imposes a duty on the holder of a nuclear site license to ensure that no event arises that creates a grave and imminent threat of a breach of the other duties of a site license holder. This causes uncertainty for the site license holder as it is unclear when a "grave and imminent threat" has arisen. Also, the preventative measures will be taken by a third party which the site license holder may consider to be inappropriate in the circumstances. It is the site license holder who has the knowledge of the specific threat in question and the steps already being taken to prevent the threat developing further. This gives rise to the unfortunate situation where the site license holder will retain a liability for a third party's actions which appears unreasonable.</p> <p><b>Reinstatement</b></p> <p>Where damages are claimed for the costs of reinstatement, damages should not be available where compensation has already been paid in respect of that property under another head of damages.</p>



<p><b>2</b> <b>Chapter 5</b> <b>Geographical Scope</b></p>	<p>We would welcome views on our proposed implementation of the revised geographical scope of the Paris Convention and the Brussels Supplementary Convention as described in this chapter and as set out in the draft Order.</p> <p>Particular questions you may wish to consider include:</p> <ul style="list-style-type: none"> <li>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)?</li> <li>b) how should we define who should be treated as a UK “national” for the purposes of section 16A (see paragraph 5.21)?</li> </ul>
<p><b>Response</b></p>	<p>No comment.</p>
<p><b>3</b> <b>Chapter 6</b> <b>Limitation periods</b></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><b>Response</b></p>	<p>Currently any claims made ten years after a nuclear incident are made to HM Government rather than to the relevant operator of a nuclear licensed site. (Please refer to Section 16 of the Nuclear Installations Act 1965). The global nuclear insurance pools have so far declined to provide insurance to cover claims made after a ten year period after a nuclear incident has taken place. This leaves all operators of nuclear licensed sites in the UK with an exposure which can not be readily insured. As a nuclear site license holder we would be supportive of an insurance scheme which may be proposed by the Government.</p>

<p><b>4</b> <b>Chapter 7</b> <b>Liability during transport</b></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><b>Response</b></p>	<p>Operators of nuclear sites do, and may continue in the future, enter into contracts for the transport, storage and onward conveyance of nuclear material. However, the ownership of such material may not transfer to the operator of the nuclear site as the holder of the nuclear site license may not have a direct economic interest in the material being stored at the facility.</p> <p>The transfer of liability from one operator to another in connection with the transport of nuclear substances when the other operator has a direct economic interest in the material being transported only applies where the transport takes place between operators of different contracting states.</p> <p>We need clarity as to whether there is a time limit for storage in transit and when storage is deemed “incidental” to a transport contract. In addition it is suggested that there is some confusion as to whether liability can transfer to an operator of a nuclear licensed site as the material is being held <i>incidentally</i> to a transport or if the operator has an economic interest in that material.</p> <p>In addition nuclear material is at times stored at a nuclear licensed site but the ownership of material may remain with one or a number of customers. We need clarity as to whether liability for material that is stored at a particular nuclear site can be transferred to the operator of that site or whether as ownership remains with a third party liability will remain with a third party. This lack of clarity is of concern for an operator of a licensed site particularly where tenants of facilities on a nuclear licensed site own material or use a third party’s material. Would the site license holder retain liability for the activities undertaken on the site in such circumstances particularly as the site license holder is unlikely to have a direct economic interest in such material?</p> <p>It is also suggested in the interests of clarity that nuclear liability should only be transferred from a consigning site to a receiving site by the express agreement of the nuclear site license holders of both the consigning site and the receiving site.</p>



<p><b>5</b> <b>Chapter 8</b> <b>Financial</b> <b>liability levels</b></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 that could be used to identify low-risk transport?</p>
<p><b>Response</b></p>	<p>The revision of the financial liability levels causes particular concern for operators of nuclear facilities in the UK. Some other states which are signatories to the Paris Convention have indicated that the level of nuclear liability will not increase above €700 million. Indeed under international law the additional second tier of €500 million under the supplementary Brussels Convention remains a government responsibility. Additional costs will be incurred by UK Operators in order to obtain additional insurance cover over and above €700 million standard liability level to €1200 million standard liability level. This will put UK nuclear operators who compete in a global nuclear market such as nuclear fuel supply market at a competitive disadvantage.</p> <p>It is seen as important to seek to achieve a common standard liability level amongst the Paris Convention States so that Operators do not seek the lowest liability regime in which to operate and do business.</p> <p>It is also worth remembering that the Paris Convention is based on the principle of the strict channelling of liability to the operators of nuclear facilities <i>irrespective of the fault of the operator</i>.</p> <p>There are many types of nuclear licensed site in the UK. For example a fuel fabrication site will undertake a variety of chemical and light engineering processes for the manufacture of nuclear fuel and associated products and services. It is suggested that it is appropriate that level of financial liability of any nuclear site license</p>

holder should be commensurate to the hazard and risk involved with operating such a site particularly considering the principle of strict channelling of liability that applies to operators of a nuclear licensed site.

The operations at a fuel fabrication facility do not involve the issues associated with operating a nuclear power plant or the transport, storage and processing of spent fuel arising from the operation of a nuclear power plant. Whilst the hazard associated with such a site may not be as low as a low (or very low) level waste site, it certainly is not on the scale of a nuclear power plant or spent fuel facility. Therefore it is proposed that a limit commensurate with the hazard is applied for lower risk sites.

The imposition of such an additional burden of financial liability (on a scale disproportionate to the hazard) would put fuel fabrication facilities at a disadvantage to similar operators in other jurisdictions within the Conventions whose governments impose a lower limit of liability. This commercial disadvantage in a very competitive market would threaten the ability to win business for the UK and would undermine the security of high value jobs.

In terms of the transport of material it should be recognised that the nuclear logistics industry has an extremely good safety record. A proportionate approach that recognises the low risk of significant third party damage for nuclear transports is welcomed. In addition it should be recognised that material that has not been irradiated will present a lower risk of significant third party damage. However, clarity is required how the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 could apply in the context of nuclear liability requirements. It is suggested that a scheme which assessed the possible outcomes of an incident during the transit of material is appropriate.

It should be recognised that material is transported between nuclear licensed sites at a number of points during the fuel cycle, for example taking material to enrichment facilities, providing cylinder services, transporting finished fuel to a nuclear power plant. As indicated earlier operators of nuclear installations and transportation services based in the UK are concerned that they could face significant competitive disadvantage when compared with operators based in Paris Convention states which might have



	lower standard liability thresholds.
<b>6</b> <b>Chapter 9 –</b> <b>Availability of</b> <b>insurance/financial security</b>	<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"> <li>a) what forms of alternative financial security should be acceptable and over what classes of liability might alternative forms of financial security be appropriate?</li> <li>b) how Government should assess operators' proposals for alternative financial security arrangements?</li> </ul> <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>
<b>Response</b>	<p>The likely impact of a) increasing the types of damage that is covered by the Nuclear Installations Act, b) widening the geographical scope and c) increasing the liability level from current levels to €1200 million means that operators of nuclear licensed sites will be faced with significant additional insurance costs (possibly an eight to ten fold increase) which will affect our competitiveness compared to other Paris Convention/Non Convention Countries. Indeed under international law the additional second tier of €500 million under the supplementary Brussels Convention remains a government responsibility. As previously stated our limits should be based on degree of hazard not a blanket limit applied across all nuclear sites. Even in the US our Fabrication Sites fall outside the Price Anderson Act.</p> <p>We will require help from our brokers to help structure our future insurance programme and to explore alternative risk financing structures. Currently we understand the nuclear insurance markets will not be able to provide the full scope of cover required and we would welcome the opportunity to explore Industry/Government insurance schemes to underwrite these additional risks. We believe the rating structure should reflect the hazard of our business.</p>
<b>7</b>	We would welcome views on our proposed implementation of



<b>Chapter 10 - Jurisdiction</b>	<p>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"> <li>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)?</li> <li>b) whether we need a fall back provision giving jurisdiction to the High Court of Justice (see paragraph 10.17).</li> </ul> <p>In addition we would welcome views on our proposed clarification of “occurrence” in new section 26(2A) of the 1965 Act.</p>
<b>Response</b>	<p>No comment</p>
<b>8 Chapter 11 – nuclear waste disposal facilities</b>	<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>
<b>Response</b>	<p>Paragraph 11.12 states that future application of the nuclear licensing regime may occur. However, certainty in this regard would be appropriate.</p>
<b>9 Chapter 12 Representative actions</b>	<p>We would welcome views on our proposals for implementing the new Paris Convention requirements in respect of representative actions.</p>
<b>Response</b>	<p>No comment</p>

## Impact assessment questions

<b>IA1</b>	Can you provide information on current actual costs of financial security and the impact of the proposed changes?
<b>Response</b>	We are unable to provide detailed cost information.
<b>IA2</b>	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?
<b>Response</b>	As previously advised we believe our existing premiums could increase by 8 to 10 fold.
<b>IA3</b>	Is this for a standard installation or a low risk installation or for transport activities?
<b>Response</b>	This is for a standard installation and transport activities.
<b>IA4</b>	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?



<b>Response</b>	We are unable to provide detailed cost information.
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