

EXPLANATORY MEMORANDUM ON THE PROTOCOL TO AMEND THE CONVENTION ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY OF 29 JULY 1960, AS AMENDED BY THE ADDITIONAL PROTOCOL OF 28 JANUARY 1964¹ AND BY THE PROTOCOL OF 16 NOVEMBER 1982²

Title of the Protocol

Protocol to amend the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982

Command Paper Number: 9135

Subject Matter

This Explanatory Memorandum refers to the ratification by the United Kingdom of the 2004 Protocol to amend the Convention on Third Party Liability in the Field of Nuclear Energy ("the Paris Convention").

The Paris Convention is a well-established international regime, mainly comprising of Western European signatories³, for compensating third parties who suffer damage as a result of a nuclear incident at a nuclear installation or during the transport of nuclear substances to and from that installation. At the same time it is aimed at ensuring that operators of such installations, being in the best position to ensure the safety of their installation, take responsibility for any failure in safety. Further, recognising that the effects of a nuclear incident are not constrained by national boundaries the Convention also aims to provide uniformity in certain basic rules across its signatory countries.

In order to meet these aims, the Paris Convention is based on the following key principles:

- The operator of a nuclear installation is exclusively liable for personal injury or property damage resulting from nuclear incidents. All claims for injury or damage are "channelled" to the operator and, with limited exception, no other party can be liable. This means claimants have an easily identifiable person to bring a claim against in the event of a nuclear incident;
- The operator is strictly liable for the injury and damage. There is no need for a claimant to establish fault on the part of the operator;
- The operator's liability is capped in amount per incident by the legislation of its home country (but not at an amount less than the minimum liability amount per incident specified by the Convention);
- The right to compensation expires if legal action is not brought within 10 years following the nuclear incident;
- The operator is under an obligation to maintain insurance or other financial security up to the limit of its liability;

¹ Treaty Series No. 69 (1968), Cmnd.3755

² Treaty Series No. 6 (1989), Cm. 659

³ The Contracting Parties are: Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Turkey and the United Kingdom.

- Where there is a nuclear incident in a nuclear installation in one Paris Convention country, claims for compensation can be brought against the operator in respect of injury or damage incurred in another Convention country; and
- In general, the courts of the Convention country where the nuclear incident has occurred deal with compensation claims (irrespective of where the damage has been incurred).

The Convention is not concerned with safety standards. Such matters are addressed in other national and international frameworks and through the work of the regulators – in the UK this is the Office for Nuclear Regulation. The Convention is implemented in the UK by the Nuclear Installations Act 1965.

The Paris Convention has been amended several times. This amending Protocol was agreed in 2004. The main aim is to upgrade the existing regime so that, in the event of a nuclear incident, an increased amount of compensation will be available to a wider group of claimants in respect of a broader range of damage than is currently the case. The most significant changes are:

- The introduction of four new categories of damage in respect of which compensation must be made available, in addition to the existing categories of personal injury (including loss of life) and damage to property. These are:
 - (i) economic loss arising from property damage or personal injury;
 - (ii) the costs of measures of reinstatement of the impaired environment;
 - (iii) loss of income deriving from a direct economic interest in any use or enjoyment of the environment that has been impaired; and
 - (iv) the costs of preventive measures, and compensation for personal injury or property damage caused by such measures.
- An increase in operators' financial liability per incident for nuclear installations to a minimum of €700m, and for low risk installations and transport of nuclear material to €70m and €80m respectively.
- An increase in the period, from 10 to 30 years, in which claims for personal injury can be brought against operators from the date of the incident. The period for claims for other categories of damage remains at 10 years.
- An extension of the geographical scope to cover claims of damage incurred in
 - (a) countries which are party to the Vienna Convention⁴ and the 1988 Joint Protocol⁵,
 - (b) countries with no nuclear installations, and

⁴ The Vienna Convention establishes a third party liability regime that is similar to that established by the Paris Convention.

⁵ Joint Protocol Relating to the Application of the Vienna Convention and Paris Convention. This only applies where the Paris country is also a Party to the Joint Protocol.

- (c) countries with equivalent and reciprocal liability arrangements which are based on principles identical to those in the Paris Convention.

Ministerial responsibility

The responsibility lies with the Secretary of State for Energy and Climate Change.

Policy Considerations

(i) General

The UK has been a signatory to the Paris Convention since the 1960s. This Protocol brings to the UK the benefits of increased levels of liability for a wider range of damage and more compensation for UK victims in the event of an accident in another Convention country that affected the UK. The Nuclear Installations Act 1965 is the only route through which nuclear third party damage claims can be made in the UK.

(ii) Financial

The main impact of the changes will be on operators of nuclear installations who will be required to have increased insurance or other financial security to cover the increase in liability level from the current £140m to €700m when the revised UK legislation comes into force. The cap on liability will progressively increase by €100m per year over five years to €1200m. The operators of prescribed sites considered as lower risk will need to have insurance or other financial security for a minimum of €70m, an increase from £10m.

(iii) Reservations and declarations

The UK will declare the UK's Exclusive Economic Zone as defined by the Exclusive Economic Zone Order 2013 (SI 2013/3161) when this Protocol is ratified.

Implementation

The Protocol will come into force when two thirds of Contracting Parties have deposited their instruments of ratification. Contracting Parties who are also member states of the European Union are bound by a Council Decision (2004/294/EC) which envisages that member states will ratify the Protocol simultaneously.

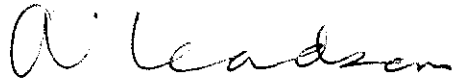
The UK will implement the Protocol through amendments to the Nuclear Installations Act 1965 by means of an affirmative statutory instrument.

At this stage ratification of the Protocol will be for the UK only. The Crown Dependencies and overseas territories can request that the ratification be extended to them at a later date if they wish.

Consultations

A public consultation on the Government's proposals for implementation of the Protocol into UK legislation was carried out in 2011. Key issues raised by consultees were the level of liability and the provision of insurance/other financial security for the increased liability level. The Government intends to implement the

proposals taking account of the responses, as set out in the Government response published on 30 March 2012⁶. Officials in other Government Departments have been consulted on the changes in general and in particular those including devolved matters. Government has continued to keep interested parties up to date with progress towards implementation, in particular publishing updated versions of the draft Order annually, most recently in March 2015.



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⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/42757/4874-parisbrussels-government-response-to-consultation.pdf