

NUCLEAR LIABILITY

CHANGES IN THE PIPELINE

FOR UK LEGISLATION

Nuclear Liability - broadening the scope, the Government Consultation on the implementation of changes to the Paris and Brussels Conventions on third party nuclear liability

“Nuclear liability” - providing third party compensation following a nuclear incident - is foremost in the UK nuclear sector's consideration with the release in January of the Government's consultation on the implementation of changes to the international Paris Convention and Brussels Convention on nuclear third party liability (“the Consultation”).

The proposed amendments are significant and impact all aspects of the nuclear sector, whether decommissioning, transport or new build.

UK nuclear liability legislation implementing the Paris and Brussels Conventions is contained in the Nuclear Installations Act 1965 (the “NIA 1965”). The Consultation

proposes that changes to these Conventions will be implemented by secondary legislation amending the NIA 1965, a draft Order (Draft Nuclear Installations (Liability for Damage) Order 2011) with the proposed amendments is therefore included within the Consultation.

International law

In brief, the Paris Convention provides a framework, through a number of core principles, to ensure the public is compensated for harm resulting from a nuclear incident. These principles ensure liability is channelled to the operator of the nuclear installation regardless of fault or negligence; provide a limitation period for claims; require mandatory financial security (e.g., insurance) to meet operator liability;

and channel claims' jurisdiction to the same court.

The Brussels Convention, supplementary to the Paris Convention, provides additional funds to those made available under the Paris Convention where the maximum operator liability amount has been exceeded. The same core principles apply to both Conventions.

Proposed amendments

Substantial amendments are being proposed to the NIA 1965 to implement the amended Paris and Brussels Conventions, with the Government's general approach being to adopt the wording/definitions of the Conventions as far as possible to ensure consistency between Convention countries.

The main changes are as follows:

- The amendments propose increasing operator liability to a minimum of €700 million; Government liability to €500 million; and the liability of the pool of funds contributed to by contracting parties to the Brussels Supplementary Convention to €300 million (total of €1500).
- The Consultation proposes increasing operator liability over the coming years from the current £140 million per incident to €1200 million for standard installations, with lower levels set for low-risk installations and transport of low risk material.
- By amending operator liability to €1200 million (from €700m specified by the amended Paris Convention) UK operators will become liable for the first 2 tiers of compensation.
- The more significant changes relate to the new types of damage for which site operators can be liable. In addition to the existing heads of damage (a) Loss of life or personal injury; and (b) Loss of or damage to property; the changes will include:
 - (i) *Economic loss arising from loss or damage referred to in a) and b) above;*
 - (ii) *The costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken;*
 - (iii) *Loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of significant impairment of that environment;*
 - (iv) *The costs of preventive measures, and further loss or damage caused by such measures.*
- The definition of ‘nuclear installation’ will be widened to include those of being decommissioned and to all installations used for the disposal of nuclear substances, although installations post-closure which pose no significant risk can be excluded. The Consultation suggests the Government will seek to exempt low level waste repositories.
- Currently, only claimants in a Paris Convention state can claim for damage arising from a nuclear incident. However, operator liability will now extend to claimants in a state which is not party to the Paris Convention, if that state:
 - (i) *is party to the Vienna Convention and the 1988 Joint Protocol; or*
 - (ii) *has no nuclear installations in its territory at the time of the nuclear incident (e.g. Ireland); or*
 - (iii) *has, in force at the time of the nuclear incident, national nuclear liability legislation which affords equivalent reciprocal benefits and which is based on principles identical to those contained in the Paris Convention.*

- The Consultation proposes to realign the NIA 1965 more closely to the amended Paris Convention by setting a general limitation period for claims for all damages except for personal injury of 10 years from the date of the incident. For personal injury claims, the limitation period will be extended to 30 years.
- The site operator will still be required to hold and maintain compulsory insurance or other financial security to cover payment up to the prescribed limit of liability. Whilst insurance can continue to cover most of the new categories of damage, the operator will be expected to identify alternative financial security for any gaps the Government acknowledges will exist. This has been and will continue to be a topic for much discussion in the nuclear sector.
- With respect to nuclear liability in transport, currently Paris Convention operators can agree at which point of the transport liability transfers from one operator to another. The amendment will only enable the transfer of liability from one operator to another where the receiving operator has a direct economic interest in the material transported.

Conclusions

The proposed amendments are relevant in respect of non-UK contractors entering the UK for both decommissioning and new build, particularly as recent years have witnessed the request for nuclear indemnities from foreign contractors entering the UK nuclear market. There has been concern that the strict and exclusive operator liability principle only currently applies to limited damage suffered (personal injury and property damage), potentially leading to the risk of further unlimited civil claims against the operator outside the remit of the NIA 1965. Such claims would be unlimited and not necessarily protected by insurance as under the NIA 1965. Furthermore, the current arrangements do not compensate victims from non-Paris Convention states, such as the US. The risk of such victims issuing claims in their home state against the entities with the “deepest pockets” is perceived as high enough by some businesses to warrant requesting indemnities to protect against such risk. The proposed amendments will increase the claims channelled to the site operators and, in turn, go some way to reduce the risk of

claims brought outside the NIA 1965 and further improve the UK's access to the international skills base.

The Consultation will end on 28 April 2011 with the aim of placing the Order before Parliament in the summer 2011. The new legislation could then come into force by Spring 2012 although this is dependent upon the other EU Convention states being ready to ratify.



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