

The law and the nuclear industry



Gareth has been active in the nuclear sector for 10 years. He joined Burges Salmon's Nuclear team in 2008, having spent the previous 11 years working 'in house' at Imperial College, London. The last three years at Imperial were spent working with nuclear physicist Simon Franklin, as Legal and Commercial Project Manager for Imperial's nuclear reactor decommissioning planning project. Responsibilities spanned co-authoring the initial options study, strategic and operational project planning and delivery, risk management, and governance. Also legal/commercial negotiations with government and industry nationally and internationally.

Gareth has been company secretary to Radsafe CLG since its incorporation and is a member of its risk management group. He is a member of the International Nuclear Lawyers Association, serves on the Nuclear Institute (Western Branch) Committee, and has been an active participant in the NIA Decommissioning Working Group for several years. Gareth's role at Burges Salmon incorporates strategic nuclear/energy business development and client relationship management.

While researching the nuclear industry in all its many facets, health & safety has been mentioned on many occasions and with it the law, and how it affects the people who work within it.

In the first of series of articles Gareth Davies from Burges Salmon sheds some light on what can often be a very thorny and complicated subject.

Overview of the nuclear sector - a Lawyer's perspective

The nuclear sector is not new, but established. Measured against other industry sectors, is currently buoyant with the added draw of exciting commercial opportunities anticipated over the next half century - at least. For those new comers to the sector, this article aims to provide a useful overview and draw attention to the unique legal regime in place across the sector.

After the war, the UK saw its first research reactor at Harwell, during the mid 1950s the Government identified nuclear as the 'energy of the future' and by the late 50's the first reactors with electricity production capability were opened at Calderhall and Chapelcross. The momentum was gathering along with rapid advances in power station technology and by 1964 Sir William Penney reportedly said 'if it worked it was obsolete'. The UK's last 'new build' nuclear power station was at Sizewell (B), with electricity generation commencing in the mid 90's. In recent months Sizewell has been identified along with Hinkley as likely sites for the first new build projects for a generation. Electricity from these plants is planned to meet domestic consumption needs by 2017/18.

Following the uncertainties for nuclear power post privatisation of the electricity industry, there was a prolonged lull in the new build market. Various economic, social and political factors have, however, come together and nuclear is now firmly back on the agenda, driven by the low carbon commitment, the simple need for cost-effective

sources of energy and security of that supply. With the significant levels of investment this build programme will entail, interest in the sector is being re-newed with unprecedented vigour.

Established sector participants and new entrants alike are competing not only for work but also the scarce resources - particularly skilled and experienced staff - to deliver that work to the exacting standards the sector requires.

This is just as true of law firms. Due to the decade or so in the doldrums, very few firms saw the need for a specialist nuclear practice. This meant the bulk of that work was undertaken by a handful of firms and consequently, now much of that specialist legal experience is focussed in a few firms and the sector's own in-house lawyers.

The nuclear sector itself is large and diverse, spanning as it does areas such as education and research, medicine, power production and military applications. Research and military sites aside, at this point it may be worth distinguishing two areas in the sector the market views as ripe with opportunity - decommissioning and new build.

The opportunities do not extend simply to tapping the current rich UK work seams, but to export the experience gained to the growing international marketplace for both the decommissioning of legacy plant and facilities (there are over 420 operational reactor units worldwide, with 120 closed for decommissioning), and the global renaissance in building new nuclear power plants.

In broad terms the UK decommissioning market comprises the publicly funded clean up of the 20 sites designated under the Energy Act 2004 as the responsibility of the Nuclear Decommissioning Authority (NDA). Whilst there are a number of reactors (and nuclear licensed sites) which fall outside the NDA's responsibility, clean up is largely publicly funded, therefore a body of public law applies, for example procurement regulations and state aid. Demonstrating value

for money is a priority, and work programmes, anticipated to run to many tens of billions of pounds, can change according to Government policy and priorities, for example the Public Value Programme.

Nuclear power plant new build on the other hand is being progressed by the private sector, most particularly by European electricity producing utilities, with a view to new energy being available to consumers at a competitive price through an open, non-subsidised market.

As with any large, highly regulated industry, there is a significant body of applicable laws and regulation across the many areas of its operation, whether planning, health and safety, construction (or deconstruction), employment, commercial, property - the list goes on. However, for this sector there are the additional international and national nuclear laws to consider, comprising a vast collection of legally binding and non-binding instruments governing the key pervasive themes of nuclear safety, security, safeguards (non-proliferation) and liability.

Nuclear law - a definition

"Nuclear law is the body of special legal norms created to regulate the conduct of legal or natural persons engaged in activities related to fissionable materials, ionizing radiation and exposure to natural sources of radiation."

It's objective is to *"to provide a legal framework for conducting activities related to nuclear energy and ionizing radiation, in a manner which adequately protects individuals, property and the environment."*

Nuclear law is not only relevant to those companies that own or manage nuclear installations but also to companies operating within a nuclear licensed site and persons affected by nuclear activities.

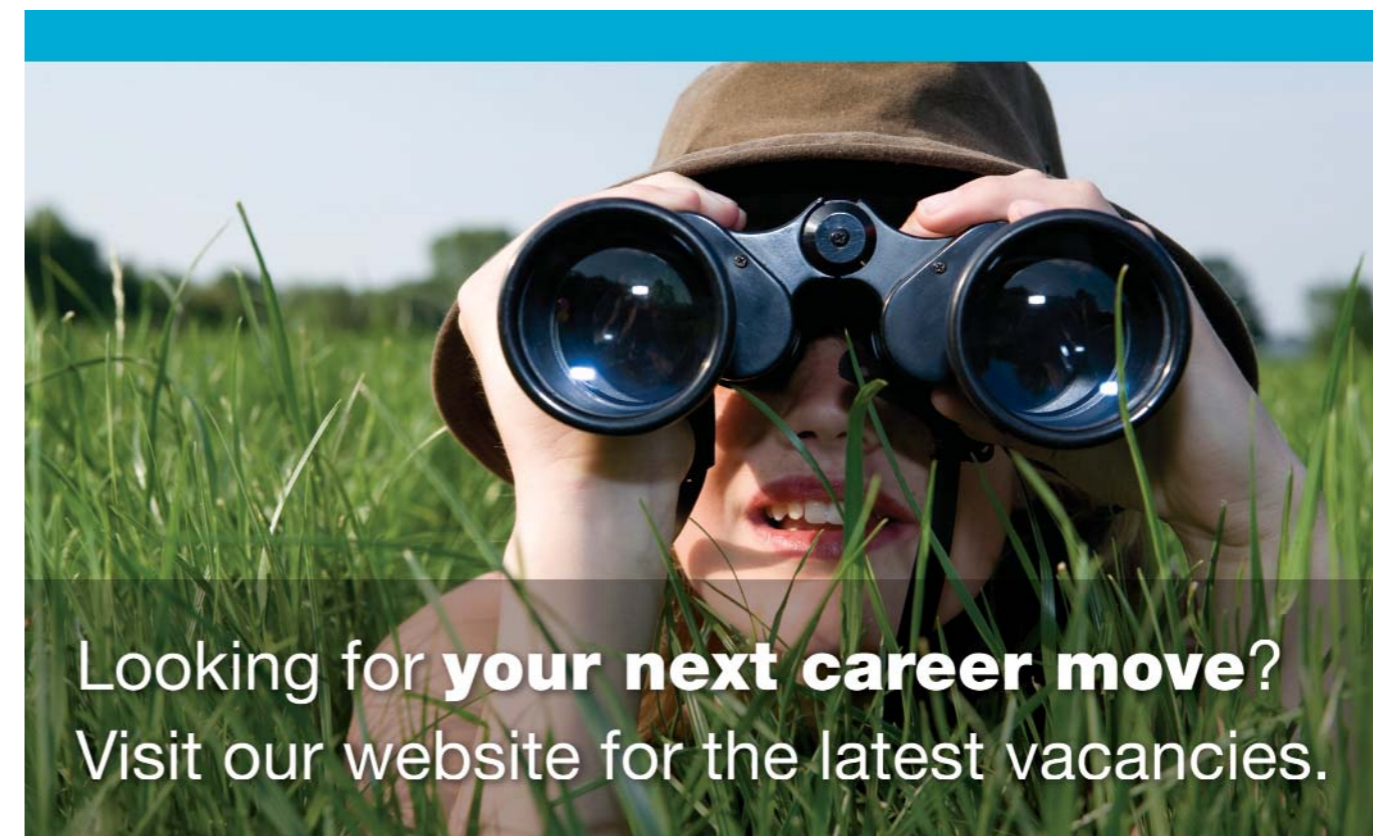
Therefore, all companies who operate within the nuclear industry, be they at the management or subcontractor level, should have an

understanding of nuclear safety and liability principles before entering contracts and undertaking work.

There is a raft of legislation governing nuclear operations in the UK, along with its own distinct regulatory regime policed by the Nuclear Installations Inspectorate (NII). Nuclear sites have their own special licences, with 36 standard licence conditions which must be adhered to (breach is an offence under the Nuclear Installations Act 1965) in the interests of safety and with respect to the handling, treatment or disposal of nuclear materials. Nuclear law will usually impact most areas where lawyers are asked to advise, Licence Condition (LC) 36 for instance addresses Control of Change, so it could be that a simple matter of employment law, could on a licensed site, trigger LC 36 notification requirements.

Given the catastrophic potential inherent throughout the nuclear energy production lifecycle, the fundamental objectives behind these layers of law and regulation are simple and united. That is, to provide a legal framework for conducting activities related to nuclear energy and ionizing radiation in a manner which adequately protects individuals, property and the environment. These activities include material use and transport (whether domestic or international, by road, sea, rail or air), waste storage and management, emergency arrangements and health and safety to name but a few. To those organisations with a track record in the nuclear sector this will be familiar territory, for those new comers these will be important. Albeit often non-intuitive issues to consider and address, particularly the nuclear liability regime which can take on a surprisingly different mantle. In later articles we will look at nuclear law in more detail and nuclear-related topical legal issues.

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