

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT NUCLEAR INSTALLATIONS (LIABILITY FOR DAMAGE) ORDER 2016

Tuesday 15 March 2016

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The Committee consisted of the following Members:

Chair: ALBERT OWEN

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|---|---|
| † Aldous, Peter (<i>Waveney</i>) (Con) | † Lynch, Holly (<i>Halifax</i>) (Lab) |
| † Borwick, Victoria (<i>Kensington</i>) (Con) | † McCaig, Callum (<i>Aberdeen South</i>) (SNP) |
| Boswell, Philip (<i>Coatbridge, Chryston and Bellshill</i>)
(SNP) | † Mitchell, Mr Andrew (<i>Sutton Coldfield</i>) (Con) |
| † Dowd, Peter (<i>Bootle</i>) (Lab) | † Murray, Mrs Sheryll (<i>South East Cornwall</i>) (Con) |
| † Green, Damian (<i>Ashford</i>) (Con) | † Rimmer, Marie (<i>St Helens South and Whiston</i>)
(Lab) |
| † Hart, Simon (<i>Carmarthen West and South
Pembrokeshire</i>) (Con) | Sherriff, Paula (<i>Dewsbury</i>) (Lab) |
| † Kawczynski, Daniel (<i>Shrewsbury and Atcham</i>)
(Con) | † Smith, Julian (<i>Skipton and Ripon</i>) (Con) |
| † Leadsom, Andrea (<i>Minister of State, Department of
Energy and Climate Change</i>) | † Smith, Royston (<i>Southampton, Itchen</i>) (Con) |
| † Lucas, Ian C. (<i>Wrexham</i>) (Lab) | † Whitehead, Dr Alan (<i>Southampton, Test</i>) (Lab) |
| | Daniel Whitford, <i>Committee Clerk</i> |
| | † attended the Committee |

Fifth Delegated Legislation Committee

Tuesday 15 March 2016

[ALBERT OWEN *in the Chair*]

Draft Nuclear Installations (Liability for Damage) Order 2016

2.30 pm

The Minister of State, Department of Energy and Climate Change (Andrea Leadsom): I beg to move,

That the Committee has considered the draft Nuclear Installations (Liability for Damage) Order 2016.

It is a pleasure to serve under your chairmanship, Mr Owen. The draft order will amend the Nuclear Installations Acts 1965 to implement changes to the Paris convention on nuclear third party liability and the Brussels supplementary convention. The powers to make the order are contained in section 76 of the Energy Act 2004. Before briefly outlining what the order seeks to do, I shall take the opportunity to restate the Government's commitment to making sure that we have a secure, affordable and clean energy system to keep the lights on in the decades ahead.

I remind Members that the UK is a signatory to both the Paris convention on nuclear third party liability and the Brussels supplementary convention. The parties to the conventions are mainly western European countries. The conventions establish a framework for compensating the victims of a nuclear incident. The regime has been in place since the 1960s and is one of the cornerstones of international nuclear liability law. The special international regime is necessary because ordinary common law is not well suited to dealing with the particular problems in the field. The regime provides compensation for the public for damage resulting from a nuclear accident and ensures that the growth of the nuclear industry is not hindered by it bearing an intolerable burden of liability. The reciprocal nature of the regime scheme also provides for international consistency.

Amendments to the conventions were agreed by the Paris and Brussels signatory countries, including the UK, in 2004, and will come into force once the amendments have been ratified by the signatories to the conventions. The UK is committed to ratifying the amended protocols. To do so, we have to implement the changes in UK legislation. The order will upgrade the existing nuclear third-party liability regime and ensure that, in the event of a nuclear incident, an increased amount of compensation will be available to a larger number of claimants in respect of a broader range of damage than is currently the case.

The proposed changes will apply to existing operators of nuclear licence sites and to operators of any new licence sites in future. The liability regime will be extended to cover facilities used for the disposal of low-level nuclear radioactive waste. Operators must put in place insurance or other financial security to cover their potential liability. It will be for the operators to bear the resultant costs on their balance sheets. At the societal

level, the policy is estimated to have zero net impact as the current resource cost of the Government holding the contingent liability is considered equivalent to the future insurance costs for the industry.

The order's provisions will come into force at difference times. Some will come into force shortly after the order is made to allow secondary legislation to be made to complete the implementation of the regime changes. The main provisions will not come into force until the revised regime comes into force in the UK. Joint ratification of the Paris protocol is required with the other EU signatories to the conventions. The target date for that is currently 1 January 2017.

On the specifics of the order, in addition to the existing categories of personal injury and property damage, it provides for the inclusion of new categories of damage: first, costs of measures of reinstatement of the impaired environment; secondly, loss of income deriving from a direct economic interest in any use or enjoyment of the impaired environment; and thirdly, costs of preventive measures where there is a grave and imminent threat of nuclear damage and consequential compensation.

The amendments to the conventions increase significantly the amount of funds available for compensation in the event of a nuclear incident. Under the existing regime, a total of approximately €300 million is available for compensation. That will rise to €1,500 million. Operators will be required to bear much greater financial responsibility for a nuclear incident. Operators of power stations and similar sites will have an immediate increase in liability from the current £140 million to €700 million. That will then rise by a further €100 million annually up to €1,200 million. We are continuing to use the flexibility in the conventions to set lower liabilities for lower risk situations where, in the event of an incident, there is unlikely to be significant damage.

The lower liability levels for low and very low-risk sites and low-risk transport will be brought into effect by additional regulations to be made in advance of the commencement of the order. All liability levels will be topped up from public funds to a total of €1,500 million per incident if needed to meet compensation claims, as required by the amended Brussels convention. Contributions from all Brussels convention countries will be used to top up the funds from €1,200 million to €1,500 million. Contracting parties are permitted to impose a higher liability level or unlimited liability. The UK has adopted an approach similar to most other contracting parties in capping liability to ensure that operators can put in place insurance or other financial security specifically to cover their third-party liabilities.

The geographic scope of the conventions is extended so that it is wider than countries that are party to the conventions and includes non-nuclear countries and countries that have equivalent and reciprocal liability arrangements. The order increases the period within which claims for personal injury can be brought against operators to 30 years from the date of an incident. The limitation period for other claims remains at 10 years.

The provisions on allocation of jurisdiction between Paris convention countries now take into account the establishment of exclusive economic zones under international law and other types of maritime zone. The provisions also specify that only one court in the convention country where the incident has occurred should deal with claims arising from the incident. That avoids conflicting

judgments on liability, ensures that the responsible operator's liability limit is not exceeded and provides clear benefit to the UK if it is affected by a nuclear incident in another country.

The order brings operators of disposal sites for nuclear radioactive waste into the liability regime. We are working with the Paris convention countries to agree an exclusion for operators of disposal installations that take only low level and very low level nuclear radioactive waste, since the risks that such waste presents are not what the Paris convention was designed to address. If excluded from the regime, existing general tort law will continue to apply to such sites.

The revised Paris convention now requires every contracting party to ensure that its law allows another country to bring representative actions on behalf of its people. That does not create any new right to compensation, rather it provides an alternative avenue for claiming compensation and allows for the co-ordination of large volumes of claims. The order creates rights for other countries to bring representative actions in the UK. The UK Government will have the equivalent power to bring representative actions in other Paris convention countries.

One of the key features of the Paris regime is the requirement for operators to maintain insurance or other financial security to cover their liabilities under the convention. Operators currently meet that requirement by purchasing insurance from the market. Under the new regime, the market is willing to provide cover to the full extent of the operators' new liabilities apart from the extension to the limitation period from 10 to 30 years for personal injury claims. If operators are unable to obtain cover for a liability, Governments are required to provide it. We will, on a commercial basis and for a charge, consider arrangements to fill the gap in cover until the market is prepared to cover it. If such arrangements are made, I will provide a report to Parliament on them every two years.

The UK will review the operation of the revised regime in line with the timings set by the contracting parties to consider any revisions to the Paris convention. The form and timing of the review is a matter for the contracting parties to agree, including the UK.

I would like to finish by emphasising the importance of this update to a long-standing regime. Nuclear power in the UK has a strong safety record, and the likelihood of a nuclear incident occurring is very small. The production and use of nuclear power does, however, involve the use of hazardous radioactive materials, and an incident could have far-reaching adverse consequences for human health and the environment. Guarding against those risks is therefore of the highest priority. The UK has in place robust safety, security and environmental protection regimes that comply with frameworks laid down at EU and international level.

This liability regime is aimed at ensuring adequate and fair compensation for victims, while ensuring that the operators, who are in the best position to ensure the safety of their installations, take responsibility for any failure in safety. Furthermore, recognising that the effects of a nuclear incident do not stop at national boundaries, the conventions aim to provide a high degree of uniformity in certain basic rules across their signatory countries.

2.41 pm

Dr Alan Whitehead (Southampton, Test) (Lab): It is a pleasure to serve under your chairmanship, Mr Owen. It is also a pleasure to see the hon. Member for Southampton, Itchen in his place; as a fellow Member for Southampton, I am sure he is taking as close an interest in these proceedings as I am.

Opposition Members do not propose to divide the Committee on this order. It is a lengthy document that has, as always, been admirably summarised by the Minister. I know that she must have had quite a hard job of digesting all 55 pages of it. She summarised it with admirable precision and got to the heart of the issue: the question of insurance liabilities for nuclear operating companies and how those are changing under the convention and the proposals in this draft statutory instrument. I have one or two questions and thoughts on that particular issue, on which I will be grateful for the Minister's elucidation and light-shedding.

My first question relates to the expansion of cover from €700 million to €1,200 million for main sites. I note, as the Minister did, that that is above the minimum level that has been required under the convention and above the minimum level applied in a number of other European countries. According to the proposals, it is to be implemented over five years, which, as far as I understand it, means that the initial cover implemented under the order will be €700 million, rising by €100 million per year to €1,200 million five years later.

The explanation for that change in the impact assessment is that

"the wider insurance market is unlikely to have the capacity to meet"

insurance levels of €1,200 million immediately, and therefore a period of five years is required to enable the insurance market to gain that capacity. However, the Minister has this afternoon stated that the market is "willing to provide cover" at new levels, by which I understand that the Department has done the right thing in terms of investigating whether that level of cover will be sustainable for the market. I note the areas she mentioned where that might not be seen as sustainable, and her proposals for Government to act essentially as an insurer of last resort at that point, should it prove necessary.

However, if it is the case that the market is in principle willing to provide cover under those circumstances, it does not seem necessary at first sight to undertake an increase progressively, in stages of €100 million a year up to the €1,200 million level proposed. It seems in principle that straightforward implementation of an increase would be more appropriate. Has the Minister, in her discussions with the insurance market, reflected on that particular issue, and is she minded to make the change immediate rather than stepped, as the statutory instrument suggests?

The second question relates to the other categories that the Minister mentioned were included in the new schedule of insurance cover. Included in those categories are low-risk nuclear and nuclear transportation, which has a cover level of €80 million. What is not stated, however, is exactly what the difference between transportation of high-risk and low-risk nuclear material consists of. It is noted in the documentation here that transportation of high-risk material would be covered

[Dr Alan Whitehead]

at the level of a nuclear site, and that transportation of low-risk material would be covered up to a liability of €80 million. Can she provide a little information about what is defined as low-risk and high-risk transportation, to make the difference in insurance levels clear?

My final question relates to the impact that the changes would have on the operating costs of nuclear installations. I note that during the consultations—although, they occurred some while ago, in 2011—a number of nuclear operators indicated that proposals to increase the liability levels might have an impact on their viability and operating costs, particularly the proposal that the cost should be greater than might be found elsewhere in other parts of Europe. My understanding of the operating costs of a nuclear installation is that they would come to something like the equivalent of £1.32 per megawatt-hour. That figure is included in the impact assessment to the document, and it is as a proportion of the total operating costs of a nuclear power plant.

That cost is calculated on the basis of a new nuclear plant, and the impact assessment definition of a nuclear plant is the site at Hinkley Point C, which was established as a separate site in 2012, after the consultations had taken place and during a period when the Department, without actually placing an order before the House, was issuing annual updated versions of the order to be placed in the public domain in order to inform the industry, in particular, of where the order was at that time.

I would imagine that that particular order and its contents may well have been part of the negotiation on the strike price, among other things, that took place between the Government and EDF as far as Hinkley Point C power station is concerned. Under those circumstances, does the Minister consider that the existence of this document itself may have been part of the negotiations, in terms of understanding what the additional operating costs might be for a nuclear power plant as a result of these forthcoming changes, albeit changes that were in draft form at the time and not before a Committee, as they are today? Has that figure of £1.32 per megawatt-hour been included in the eventual strike price achieved in the negotiations between the Government and EDF?

The thrust of my question is this: does the Minister consider that the figures in the document we are considering will have contributed in any way to the setting of the strike price, in such a way that the nuclear power company could have passed its additional operating costs on to its customers, or on to the customers of the electricity producer and the power station, as a result of those negotiations, or is she able to say that that had no part in those discussions and that it was therefore not a serious factor to consider in those overall negotiations?

I promised not to give the Minister a particularly hard time this afternoon, so I hope that those questions are not particularly hard.

2.52 pm

Andrea Leadsom: I will let the hon. Member for Southampton, Test off this time; just to be kind, I will agree that he has not given me too hard a time.

The hon. Gentleman asked if we should effectively bring in all the additional charges in one big bang rather than having a stepped increase. Our view is that it

is better to allow the insurance market to develop the capacity to take on the insurance. He will be aware that different insurance markets among the different signatories to the conventions have differing capacity. We have been in regular contact with the insurance industry in the UK, and this is considered to be the best way to implement the increases on a stepped basis.

The hon. Gentleman asked what the difference is between low-risk and high-risk transportation. I can assure him that the difference between them will be more clearly defined when we come to the other legislation that is due later. However, it tends to be the case that low-risk transportation is the transportation of most of the nuclear material that is transported. The high-risk transportation would be, for example, the transportation of spent fuel or vitrified waste, which are more hazardous materials. Those are some examples, but we will articulate the difference between low-risk and high-risk transportation more clearly in other legislation.

The hon. Gentleman also asked about operating costs. It is not expected that this change will have a significant impact on operating costs. The insurance liability adds around 0.4% to costs, so it is not a significant amount. Of course, with anything like this in all probability the cost will be passed on to the consumer. That is what happens; if costs increase, they are passed on. However, this is not a significant change.

In response to the hon. Gentleman's point about Hinkley Point C, it will have taken all factors into account in assessing the return to the project and therefore the strike price, which, as the hon. Gentleman will be very aware, will not be incurred by the bill payer until Hinkley Point C is producing electricity, which will be some time in the mid-2020s. It is therefore unlikely that any factors have been left out of the calculation of what the strike price should be.

I thank hon. Members for being here today and for hearing me out. This is a very important piece of legislation. I will just reiterate that the UK has one of the strongest nuclear regulatory regimes in the world, which always seeks to maintain and improve the safety of nuclear licensed sites. As new reactor designs are developed, safety will continue to be of paramount importance. As I said at the start of this debate, the order amends the Nuclear Installations Act 1965.

Dr Whitehead: I am sorry to ask the Minister to give way so close to her peroration, but could she just elaborate briefly on the question of the stepped insurance increase over five years, which is set out in this document? Bearing in mind that the market is willing to underwrite such arrangements, can she comment on whether an immediate increase to €1,200 million might not be preferable to a stepped increase over a five-year period?

Andrea Leadsom: I did just answer that, but perhaps the hon. Gentleman was looking at his papers. We are in constant, regular contact with the UK insurance industry on this point. The decision we have taken is that it is better to introduce it on a stepped basis, to make sure that the insurance market builds the capacity to take on this additional risk. That is very important.

Dr Whitehead: I was just puzzling over the difference between the fact that the Department has clearly consulted the market and the market has stated that it is willing to

provide cover. I did hear what the Minister said about stepped capacity, but that, frankly, was a repeat of what is set out in the explanatory notes, rather than further elucidation. I am asking whether, since those particular thoughts had been put into the document, greater elucidation had been found from the market on its willingness to undertake the increased amounts. That is what I heard the Minister indicate this afternoon about the market's willingness to bear the burden of those additional premiums.

Andrea Leadsom: Perhaps I can explain it by saying that the insurance market does have an appetite for providing catastrophic cover, as it has done in the past. As I explained in my opening remarks, we are talking here about widening the cover to include damage to the environment, personal liabilities and so on that go beyond what was there previously. In that regard, as the

hon. Gentleman will appreciate, the insurance market has an appetite for risk and we believe that that will change and become more relaxed as time goes by. The problem with pricing insurance in the early days is where there is no track record of claims, and so on. Therefore, we are trying to introduce this on a stepped basis, so as not to put too much pressure on the insurance market all in one day.

We intend this order to ensure adequate and fair compensation for victims, with operators taking responsibility for any failure in safety. It also provides a high degree of uniformity of certain basic rules across signatory countries. I commend the order to the Committee.

Question put and agreed to.

2.58 pm

Committee rose.

