

Nuclear Law

Spring 2015

Welcome

Welcome to this Spring 2015 Edition of the Burges Salmon Nuclear Briefing. I hope you find this Briefing useful and informative. If you would like to see particular issues explored in future Editions or you have any questions you would like answered please do not hesitate to let me know on +44 (0) 117 939 2225 or email ian.salter@burges-salmon.com



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The new Licence Condition 3 regime: Fundamental shift in approach to the regulation of property transactions on nuclear licensed sites



From October 2014, the regulation of property transactions under Licence Condition 3 ('LC3') has fundamentally changed. The arbitrary 90-day approval process has given way to a clearer and more proportionate Site Licence Holder ('SLH') lead assessment of risk and nuclear safety which is designed to reduce the cost and regulatory delay experienced in lower risk matters, whilst focusing SLH and ONR attention on higher risk transactions.

This article examines the key differences between the old and the new regimes and highlights some practical considerations for SLHs and counterparties who are entering into property transactions with them.

The Old Regime

Until October 2014, LC3 required the consent of the Office for Nuclear Regulation ('ONR') before the SLH was able to *part with possession* of any part of a nuclear licensed site. What amounted to *parting with possession* was inconsistently applied. With the significant increase in the number and nature of property

transactions on nuclear licensed sites in recent years owing to the changing nature of the industry, it was felt that clarity and proportionality were required to bring LC3 in line with other nuclear site licence conditions.

Under the old regime, SLHs simply needed to establish whether as a matter of fact a property transaction would amount to *parting with possession*, which could be tricky in practice to determine. Once it was established that LC3 consent was required, obtaining it was onerous and required a minimum 90-day ONR application process, regardless of value and risk.

The New Regime

From October 2014, the new LC3 regime applies to all *property transactions*. This new concept is very wide and catches every type of property deal or transaction, except where a right of access or occupation is being given to any national/international regulator, a body performing statutory functions (such as the Civil Nuclear Constabulary) or contractors delivering services solely to the SLH.

The new licence condition 3 regime *continued*

Under the new regime, the SLH is given the role of assessing the impact each property transaction may have and whether ONR consent should be required at all. This is a fundamental change in approach. The SLH must now draft and put in place *adequate arrangements* to ensure that the SLH remains in overall control of the nuclear licensed site when entering into property transactions and that the potential impact on nuclear safety is fully assessed. These arrangements will be proportionate and bespoke for each site and must be reviewed and approved by the ONR.

The new arrangements enable the SLH to consider the significance and impact of each property transaction on matters relating to security of tenure and nuclear safety and security, and require the SLH to categorise each transaction as *high risk*, *medium risk* or *low risk*, or *below scale*.

All *high risk* transactions require peer review (by another SLH) and the ONR's consent. It is not clear whether the timescale for determining applications will be longer or shorter than the 90-day period under the old regime and SLHs should therefore continue to plan ahead and build in sufficient time after the negotiation process to enable LC3 consent to be obtained. All *medium risk* transactions must be notified to the ONR (rather than requiring formal consent), and the ONR will then have 28 days to object to the transaction going ahead. No ONR approval or notification is required for property transactions classified as *low risk* or *below scale*. See the following table summary:

Risk Category	Role of the ONR	Timescales
High Risk	Consent	Assume 90 days
Medium Risk	Notification	28 days to object
Low Risk or Below Scale	None	Not applicable

Practical Issues for SLCs

Under the new regime, the SLH will now need to keep an accurate log of all property transactions on the nuclear licensed site, and ensure that it has adequate resources (people and administrative) to deal with the LC3 assessment for a larger number of transactions which the new regime applies to. SLHs will also need to ensure that site safety and security teams are fully engaged with the SLH's management of property transactions and there will be an increased need for on-going and regular engagement with ONR inspectors.

Conclusion

The new LC3 regime should enable SLHs to manage property transactions in a manner which is proportionate to the risk they present. Simple, low risk matters should not need regulatory approval which historically increased cost and delay on minor property deals. The focus and scrutiny has quite rightly shifted to higher risk transactions but a new administrative burden has been placed on SLHs to prepare and maintain ONR approved plans and keep adequate records, as well as taking on significant safety responsibility.

For SLHs and counterparties in property deals, there is now a need to understand very early on the likely LC3 risk category for that transaction and to plan ahead – in particular, to allow sufficient time in the negotiations to obtain the necessary regulatory approvals.

For further information please contact Philip Beer at philip.beer@burges-salmon.com or +44 (0)117 307 6904, or Michael Bray at michael.bray@burges-salmon.com or +44 (0)117 939 2290.

DECC publishes guidelines on trans-boundary impacts of energy developments

In March DECC published Guidelines on the assessment of trans-boundary impacts of energy developments on Natura 2000 sites outside the UK. They can be found here:

<https://www.gov.uk/government/publications/guidelines-on-the-assessment-of-transboundary-impacts-of-energy-developments-on-natura-2000-sites-outside-the-uk>

These Guidelines are relevant to Nationally Significant Infrastructure Projects (NSIPs) generally, but particularly to those in the nuclear and offshore wind sectors.

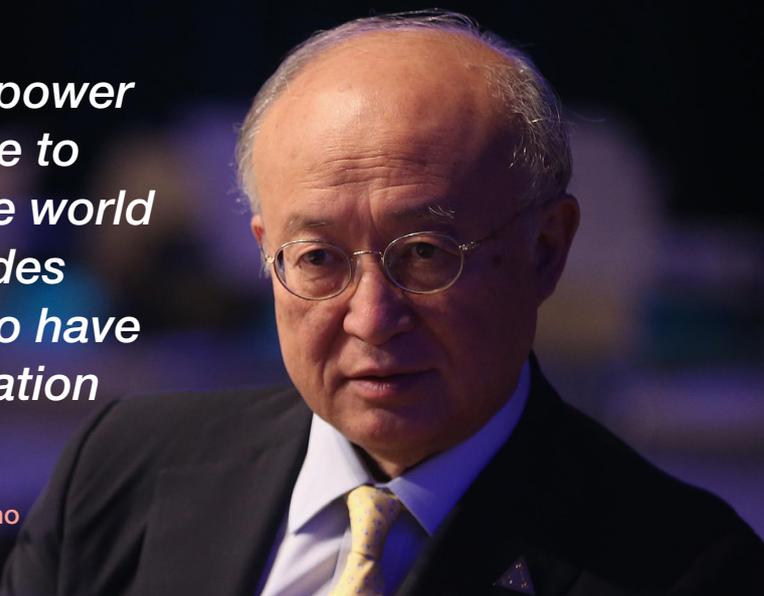
For further information on how these guidelines could affect your plans please contact Julian Boswall at julian.boswall@burges-salmon.com or on +44 (0) 117 307 685.



Japan joins Convention on Supplementary Compensation ‘CSC’, and the Convention will now come into force

“the use of nuclear power looks set to continue to grow throughout the world in the coming decades and it is important to have adequate compensation schemes in place.”

IAEA Director General Yukiya Amano



The approval by Japan’s Diet on 21 November 2014 of legislation to ratify the Convention on Supplementary Compensation ‘CSC’ was a very significant step. It has now been followed by the signature on 15 January 2015 of the Convention on behalf of Japan by Ambassador Mitsuro Kitano at the IAEA headquarters in Vienna, and the Convention will now finally come into force on 15 April 2015.

IAEA Director General Yukiya Amano congratulated Japan and declared that *“the use of nuclear power looks set to continue to grow throughout the world in the coming decades and it is important to have adequate compensation schemes in place.”* Ambassador Kitano said that Japan would continue to encourage other countries to join the Convention, especially in Asia.

Initially the CSC will apply to incidents within the contracting parties, which will be the USA, Romania, Argentina, UAE and Japan, and for some transports between them. Burges Salmon continues to offer advice on nuclear liability legislation to new nuclear countries and others, and we anticipate that this is likely to be one of the major developments in nuclear liability legislation in and after 2015.

For further information on the CSC or nuclear liability issues, please contact Ian Salter at ian.salter@burges-salmon.com or on +44 (0)117 939 2225 or William Wilson at william.wilson@burges-salmon.com or on +44 (0)117 939 2289.

IAEA – ‘What’s Ahead in 2015’

A packed agenda for the IAEA in 2015 includes the following examples of the Agency’s work on some of the key legal topics:

February 2015	Convention on Nuclear Safety - Member States meeting to consider amendments
February 2015	IAEA annual technical meeting on nuclear power infrastructure development

February 2015	International experts’ meeting on strengthening research and development in the light of the accident at the Fukushima Daiichi Nuclear Power Plant
May 2015	Fifth Review Meeting of Contracting Parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management
April/May 2015	Non-Proliferation Treaty Review Conference
September/October 2015	Meeting of Legal and Technical Experts on the Implementation of the Code of Conduct on Safety and Security of Radioactive Sources
December 2015	Joint IAEA and NEA Workshop on Standards, Practice and Evolution in Radiation Protection following the Fukushima Daiichi Nuclear Power Plant accident

Office for Nuclear Regulation ‘ONR’

The ONR has published its revised Strategy for 2015 to 2020, which reflects some significant changes in the focus of its regulation, and concentration on some of its key priorities in significant sites like Sellafield, where the Department for Energy and Climate Change ‘DECC’ has also just announced a change of regulatory arrangements and its intention to bring ownership of Sellafield Ltd back into public control under the Nuclear Decommissioning Authority ‘NDA’.

OECD NEA Nuclear Law Bulletin 2014

The OECD NEA Nuclear Law Bulletin remains an authoritative and respected round up of news and updates on nuclear law developments round the world, and the latest version Nuclear Law Bulletin 93 (2014) can be accessed at <https://www.oecd-nea.org/law/nlb>

Effective functioning of a regulator

The OECD NEA's Committee on Nuclear Regulatory Activities (CNRA), has updated its "green book" on the effective organisation and functioning of nuclear regulatory regimes, which is of general interest for new nuclear countries in particular –

<http://www.oecd-nea.org/nsd/pubs/2014/7185-regulator.pdf>

Nuclear Power Asia 2015

This conference was held in Kuala Lumpur, Malaysia on 27-28 January 2015. William Wilson, Barrister, and Philip Beer, Partner attended from Burges Salmon.

<http://www.nuclearpowerasia.com>

UK Trade & Investment / Nuclear Industry Association Civil Nuclear Energy Showcase, 2015, London

This major conference welcomed delegates from 20 countries to London for two days of meetings and presentations on all aspects of nuclear new build, and other work undertaken by UK firms such as decommissioning. Ian Salter, Head of Nuclear at Burges Salmon and John Houlden, Partner, were speakers.

Nuclear Law and Regulation Training

We continue to develop and offer a comprehensive package of training in all aspects of nuclear law and regulation, which we have assembled in response to considerable demand both from developing regulators and government agencies in new nuclear countries, and as a means of providing professional development and updates to the staff of experienced nuclear operators and other bodies, many of whom require the training to be tailored to their particular needs. Our work on drafting nuclear legislation and regulation in new nuclear countries and advising on nuclear projects in the UK and overseas helps ensure that our training materials are being continually updated and revised.

For further information about any aspect of nuclear law and regulation training, please contact William Wilson at william.wilson@burges-salmon.com or on +44 (0)117 939 2289

Burges Salmon Guide to Nuclear Law – 2015

After the success of the first edition of the *Burges Salmon Guide to Nuclear Law*, we are pleased to announce that the second edition of the *Burges Salmon Guide to Nuclear Law (2015)* is expected to be ready for distribution in early Summer this year.

The second edition builds upon and updates the information set out in the first edition, and sees several chapters added, including chapters

on SMRs and fusion. Some of the chapters are jointly written with industry experts, and delve into key detail. We are delighted that the second edition will also have a series of illustrations from well-known international lawyer and celebrated cartoonist Carlton Stoiber.

If you wish to receive a copy of the book please contact Ian Salter at ian.salter@burges-salmon.com

Burges Salmon Glossary of Nuclear Terms – 2015 Edition

The Burges Salmon Glossary of Nuclear terms, first produced some 5 years ago, has become a useful tool for all those in the nuclear sector.

Its original aim was help demystify the sector's often bewildering array of acronyms and terminology/definitions for those people new to the sector. It has grown significantly since the first edition and now has contributions from some of the sector's key organisations and participants.

The 2014 Edition is now due its annual refresh and will be going out to its peer reviewers and contributors shortly. We aim to get the 2015

Edition completed and circulated in late June. It is free and will only be available by download.

If you are interested in adding any terms or receiving a link to the 2015 Edition when it is ready, please contact Gareth Davies at gareth.davies@burges-salmon.com

The 2014 Edition can be found at http://www.burges-salmon.com/sectors/energy_and_utilities/nuclear/publications/burges_salmon_glossary_of_nuclear_terms_july_2014.pdf

Ian Truman rejoins our Nuclear Team

We are delighted to announce that Ian Truman rejoined the Burges Salmon Nuclear Team in March this year.

Ian, who trained at Burges Salmon, has worked for the last five years at EDF at the Qube in London. He has worked closely on the legal aspects of the Hinkley Point C new build project.

"We are thrilled that Ian has chosen to return to Bristol and to Burges Salmon. The new build market is opening up domestically and internationally, and Ian brings excellent in-depth experience, which we believe will provide first rate legal and regulatory insight and support to our clients" **Ian Salter**



The next NIA Legal and Finance Affairs Group on 28 May 2015

The next NIA Legal and Finance Affairs Working Group meeting will be hosted at Freshfields Bruckhaus Deringer on Thursday 28 May. The Working Group is Chaired by Burges Salmon Head of Nuclear Ian Salter.

Once again it will be a topical session covering the implications for 'nuclear' of the election of a new Government; a legal perspective on the recent changes at Sellafield; an international nuclear liability update; and

a presentation from Mike Weightman on the regulatory requirements for licensable entity status. There will also be a nuclear fuel overview from Urenco and an EU update from Foratom.

If you would like to attend, and have not already registered to do so, please contact Peter Haslam at the NIA - peter.haslam@niauk.org

Istanbul Nuclear Power Plants Summit 2015

William Wilson, Barrister, attended this important conference for Burges Salmon and renewed links with a wide variety of participants. **For further information contact william.wilson@burges-salmon.com.**



Burges Salmon hosts the next NIA Decommissioning Group Meeting

On 26th March Burges Salmon hosts the latest meeting of the NIA Decommissioning Group in its Bristol offices.

From that date the Group's remit will expand to include the existing generation sector. With well over 100 attendees already registered, the meeting has an excellent line up of speakers, drawn from both decommissioning and existing generation sectors. Gareth Davies takes over from Andrew Munro, as Group Chair with John Carine of Areva coming in as the

Group's Deputy Chair following his election at the end of last year.

The NI Western Branch dinner takes place later that night at @Bristol.

For further information on these events see the NIA and NI websites: <http://www.niauk.org/forthcoming-events> and <http://www.nuclearinst.com/Events>

Ian Salter chairs INLA UK

We are pleased to announce that from 1st January 2015, Head of the Burges Salmon Nuclear Team, Ian Salter, has become Chair of INLA UK. Ian will also be the UK appointed INLA International Board Member.

Ian took over the role officially after the INLA Inter Jura in October last year in Buenos Aires, Argentina, having been elected last summer.

Ian has been involved with INLA for over 10 years and is planning some new initiatives for the UK. Ian takes over from Alvin Shuttleworth who has chaired the UK group for several years through periods of growth and change.

Alvin passes the baton to Ian with INLA UK in robust financial and administrative shape following the

successful INLA Inter Jura hosted in Manchester in 2012.

http://www.burges-salmon.com/INLA_2012

Alvin will continue to participate in the running of INLA UK at Board level in an ex-officio capacity.

Ian Salter said 'I am honoured to have been elected Chair for the UK. INLA represents the global experience and knowledge of nuclear lawyers, in a field which is ever evolving. I am planning to re-focus INLA's activities in the UK and make this body of law more accessible. These are exciting times.'

For further information about joining INLA please contact Ian Salter at ian.salter@burges-salmon.com

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