

## Welcome

Welcome to our latest issue of Nuclear Law. I hope you find it a useful round up of legal developments, news and events in the sector. We have not listed all the work we are doing in the sector or all of our lawyers who are working in the sector, but if something is of interest to you or there is something you would like to discuss, please feel free to contact your usual contact or me on +44 (0) 117 939 2225 or email [ian.salter@burgessalmon.com](mailto:ian.salter@burgessalmon.com)

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## Work to implement the EU stress tests



Following the Fukushima disaster, the European Union put in hard work to re-assess the levels of nuclear safety at all nuclear power plants in the EU. This work covered all of the following 145 plants in 15 EU Member States:

- Belgium: 7 reactors (2 NPPs)
- Bulgaria: 2 reactors (1 NPP)
- Czech Republic: 6 reactors (2 NPPs)
- Finland: 4 reactors (2NPPs)
- France: 58 reactors (19 NPPs)
- Germany: 17 reactors (12 NPPs; out of these 17 reactors, 8 reactors were shut down after Fukushima)
- Hungary: 4 reactors (1NPP)
- Lithuania: 2 reactors under decommissioning (1 NPP)
- The Netherlands: 1 reactor (1 NPP)
- Romania: 2 reactors (1 NPP)
- Slovakia: 4 reactors (2NPPs)
- Slovenia: 1 reactor (1 NPP)
- Spain: 8 reactors (6 NPPs)
- Sweden: 10 reactors (3 NPPs)
- United Kingdom: 19 reactors (10 NPPs)

In addition, the stress test covered 4 NPPs (5 reactor units) in Switzerland and 4 NPPs (15 reactor units) in Ukraine.

The main findings of the stress tests, carried out in co-operation with Member States' group of nuclear safety authorities, ENSREG, were that levels of NPP safety across Europe were high, and that no NPP should shut down for safety reasons. However, in almost all cases, significant improvements were recommended.

These improvements are being taken forward in national action plans, addressing areas such as backup cooling water supplies and mobile diesel generators, and improvements to address seismic instrumentation, and resilience against floods, fires, extreme weather phenomena and the like.

Nuclear power plant operators and national regulators estimate that these improvements could cost up to €200 million per reactor unit, or €25 billion across the EU. Financial support following EU accession is being extended to Bulgaria, Lithuania and Slovakia.

This work, and the wider lessons learned from Fukushima, are the key driver for the European Commission's proposed revised **Nuclear Safety Directive**.

# Proposal to amend the Nuclear Safety Directive ‘NSD’ published, June 2013

The European Commission published a first draft of proposals to amend the Nuclear Safety Directive in December 2012.

The language of this draft was highly prescriptive and would have resulted in general obligations in international nuclear Treaties and Conventions being requirements of European Union law. For example - *“Member States shall guarantee the effective independence of the competent regulatory authority for carrying out the regulatory tasks laid out..., assuring that safety judgements are not subordinated to political, economic or social interests...”*

These early draft proposals received fairly critical scrutiny from the European Nuclear Safety Regulators Group ‘ENSREG’. Some ENSREG members thought that there were insufficient technical reasons to amend the existing Directive. Concerns were expressed about the timetable. Concerns were also voiced that the revised proposed Directive would shift resources within regulators from supervision of nuclear installations to EU negotiations and peer reviews.

Key proposals made by ENSREG included:

- that the NSD should set ambitious safety objectives instead of detailed and fixed safety criteria as proposed in the DG Energy draft NSD;
- topical reviews as an inter-regulatory instrument to ensure high quality nuclear safety across Europe (in preference to wider international peer-review mechanisms);
- a joint regulator and operator developed and published transparency strategy (rather than more detailed and prescriptive requirements); and
- emphasis on the key criteria for competent regulatory authorities of effective independence from undue influence in the decision making (in contrast to the highly detailed requirements in the original DG Energy draft).

In the proposal for a revised Directive adopted and published by the European Commission on 13 June 2013, the Commission has only partially met these criticisms from the most experienced regulators within the European Union.

The Commission stakes a claim for European Community competence to legislate in the area of nuclear safety based upon its reading of EU Court of Justice Case 29/99, and the link between radiation protection and nuclear safety. As this would be the first EU-wide topical legally binding instrument on this topic, Member States will examine this claim closely.

Of more immediate concern to some in the industry will be, not the principles in the proposal, but the level of prescriptive detail with which they are spelled out. Member States would be legally obliged to arrange for periodic self-assessments of their national frameworks and regulators every 10 years, to include international peer review of “relevant segments”. Every six years, Member States would be legally obliged to carry out topical peer reviews. Effective independence of competent regulatory authorities would have to be legally guaranteed by detailed provisions. Design, siting, construction, commissioning, operation and decommissioning of nuclear installations would have to be done with the objective of “practically eliminating” the occurrence of all accident sequences which would lead to early or large releases.

The Commission may well take the view that the public reaction to the Fukushima disaster fully justifies its legislative approach, but the highly prescriptive approach is at odds with the preferred emphasis of some nuclear regulators upon principles and continuous improvement.

**For further information on the Proposal for a revised Nuclear Safety Directive, please contact Ian Salter, Partner on +44 (0)117 939 2225 or email [ian.salter@burges-salmon.com](mailto:ian.salter@burges-salmon.com) or William Wilson, Barrister on +44 (0)117 939 2289 or email: [william.wilson@burges-salmon.com](mailto:william.wilson@burges-salmon.com).**

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## Hinkley Point Judicial Reviews

It is understood that two legal challenges have been made to the Development Consent Order at Hinkley Point C. Those challenges, which it is likely will be considered together, have been made by Greenpeace Limited and An Taisce (the National Trust for Ireland). When making an application for judicial review the grounds for that application must be stated and at the time of writing this briefing the rebuttal of the UK Government has not been seen. It is understood that the grounds of the claimants relate to the consultation with

Ireland about the development and (in relation to the Greenpeace challenge) the failure of (in Greenpeace’s view) the UK long term waste disposal programme following the withdrawal of Cumbria County Council. This, Greenpeace alleges, means that the Government’s policy on nuclear new build (and the assurances of progress in relation to long term waste disposal) have not been met.

It is expected that the Government’s response will be robust and we will report further on developments in future briefings.

# Electricity Market Reform 'EMR' Update

In recent weeks, DECC has issued a raft of further information about its EMR proposals, including the proposed strike prices for renewables technologies under the Contracts for Difference (CfDs) model, set to be introduced in 2014. However, there is still no announcement on a potential strike price for nuclear, and negotiations remain on-going as to the potential terms of an investment contract (an early form of CfD) for the proposed new nuclear power station at Hinkley Point C. The consultation on the draft EMR Delivery Plan, published on 17 July, states that the Government's position on allocation and price-setting arrangements for nuclear generation will be set out in early August.

Included in the Treasury's infrastructure plans "*Investing in Britain's future*", announced on 27 June was confirmation that Hinkley Point C is eligible for a UK guarantee through the UK Guarantee Scheme. The UK Guarantee scheme was launched by the Government in 2012 and aims to make use of the public balance sheet to guarantee up to £40 billion worth of projects. It is understood that the support will take the form of an irrevocable financial guarantee



of scheduled principal and interest in favour of the lenders to investors in the project and will be issued in return for the payment of a guarantee fee by the project, to be charged at market rate.

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## Paris and Brussels Conventions on nuclear third party liability - new law, new liabilities

Forthcoming very significant changes to the Nuclear Installations Act 1965 'NIA 1965' will implement the revised Paris Convention on Nuclear Third Party Liability and the Brussels Supplementary Convention.

These changes will increase the categories of damage for which operators are liable, including damage to the environment; widen the geographical scope of those eligible to claim compensation; and significantly increase the financial liability of many operators from £140 million to €1,200 million.

In the coming months operators' proposals for meeting the insurance

and financial security requirements of the NIA 1965 will be formally scrutinised by government, and third party reviews and assurance will be required. We expect this to be a significant activity for operators.

**For further information, please contact Ian Salter, Partner on +44 (0) 117 939 2225 or email: [ian.salter@burges-salmon.com](mailto:ian.salter@burges-salmon.com), Cheryl Parkhouse, Senior Associate on +44 (0) 117 902 6640 or email: [cheryl.parkhouse@burges-salmon.com](mailto:cheryl.parkhouse@burges-salmon.com) or William Wilson, Barrister on +44 (0)117 939 2289 or email: [william.wilson@burges-salmon.com](mailto:william.wilson@burges-salmon.com).**

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## Canada to revise nuclear liability law and join Convention on Supplementary Compensation

In an announcement of international significance, the Canadian government has said that it will introduce later in 2013 legislation to replace and modernise its 1976 *Nuclear Liability Act*. Compensation available to address civil liability for civil nuclear damage will be increased over a three-year period from \$75 million to \$1 billion. The legislation will also broaden the categories for which compensation may be sought, and improve procedures for delivering compensation. As with the Paris and Brussels Conventions, the Canadian government will provide cover for some risks where insurance is unavailable, and a reduced regime will apply to low risk installations such as research reactors.

Very importantly, Canada's legislation will also implement the IAEA's Convention on Supplementary Compensation. This Convention comes into force when it has been ratified by at least five countries with an installed nuclear capacity of 400,000 megawatts thermal. Canadian ratification would establish civil nuclear liability treaty relations with the USA, which is already a party, and would leave the Convention ready to come into force with the ratification of one more qualifying party, such as Japan or South Korea.

# Deep Geological Repository and Managing Radioactive Waste Safely

On 13 May, the Government issued a call for evidence on the siting process for a deep geological disposal facility: *"Managing Radioactive Waste Safely: call for evidence on the siting process for a Geological Disposal Facility"*. This is an open consultation inviting views on the site selection aspects of the ongoing MRWS programme from those engaged in (or interested observers of) the siting process to date. Comments and evidence were requested by 10 June 2013 and are now being reviewed.

The call for evidence follows the decision of Cumbria County Council's vote to withdraw from the Managing Radioactive Waste Safely (MRWS) process to find a site in January earlier this year, after formally expressing an interest in the process in partnership with Allerdale and Copeland Borough Councils. Both Allerdale and Copeland Borough Councils voted in favour to participate in

the process and proceed to the next desk-based studies stage (Stage 4). However, due to a previous undertaking that the existing site selection process could only continue with agreement at both Borough and County level, this has left the MRWS process with no volunteer community at present.

DECC's (Edward Davey MP) press notice released following the Councils' decision stated that the Government remains firmly committed to geological disposal as the right policy for long-term safe and secure management of higher activity radioactive waste, and continues to support the voluntarism and partnership approach. It stated that the Government *"will now embark on a renewed drive to ensure that the case for hosting a GDF is drawn to the attention of the communities and to encourage further local authorities to come forward... to join the process"* and reflect on experiences to date.

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## Supply Chain Safety: comparisons from the Regulated Rail Industry



It is commonly accepted that high risk industries require an enhanced level of safety regulation. One example is the rail industry which has developed a mature system of safety management deriving from industry specific UK and European law. If a train derails the impact can be catastrophic. But such an incident could be caused by the failure (or simply the incorrect fitment or specification) of any number of components supplied and fitted by a long chain of manufacturers, maintainers, train construction companies and infrastructure companies.

Railway companies consequently have to abide, not only with the 'normal' safety laws (including the Health & Safety at Work Act 1974 in GB) but with European derived regulation dealing with safety certification or authorisation (by the industry regulator) of detailed safety management systems and, in a cross-over between safety and standardisation, Technical Specifications for Interoperability. Safety duties are imposed on the operators, but also on suppliers. At each level of the chain the undertaking is responsible for the safety of its own products and work. In order to obtain approval they must also show how they ensure the quality

of their own suppliers. The control they must exercise is linked to the degree of control, knowledge and capacity they have to check and ensure compliance with safety below them in the supply chain.

The industry uses independent 'Notified Bodies' to confirm compliance with safety standards when updating the network or rolling stock and maintains records of approved suppliers and safe equipment. European law is continuing to develop as the latest proposed Rail Safety Directive now deals specifically with the obligation of railway operators to be responsible for safe operation including the supply of material and contracting of services.

There are important lessons to be learned from other areas considering integrated supply chain management of safety responsibilities, such as rail, aerospace and REACH and chemicals.

**For further information, or to be put in touch with lawyers with relevant experience in these fields, please contact Ian Salter, Partner on +44 (0) 117 939 2225 or email [ian.salter@burgessalmon.com](mailto:ian.salter@burgessalmon.com).**

# In-country training in nuclear law and regulation

Burges Salmon is continuing to develop both the materials and its capacity for delivering in-country international Nuclear Law Training. This will cover key areas of responsibility for new nuclear regulators, such as Safety, Security and Safeguards, Nuclear Liability, Nuclear Transport, and other key areas adapted to local requirements and jointly delivered with local legal experts.

**For further information or to receive sample materials or discuss specific programmes, please contact William Wilson, Barrister on +44 (0)117 939 2289 or email: [william.wilson@burges-salmon.com](mailto:william.wilson@burges-salmon.com).**

## Recent News

The Government's Energy Minister Michael Fallon has announced a community benefits package becoming available to local communities hosting new nuclear power stations. The package aimed at

lasting several decades will be taken forward in two phases: the first based on business rates retention, and the second funded from Central Government.

## In the office

### Ian Salter elected Vice Chair of International Nuclear Law Association 'INLA' UK Branch

INLA's objective is the promotion and pursuit, on an international level, of studies and knowledge of legal issues related to the peaceful utilisation of nuclear energy. It has been established for over 40 years and has a large worldwide membership comprising legal, financial and insurance professionals.

### Leipzig meeting of INLA Germany

The German Branch of INLA held its Regional Conference on 6th and 7th June in Leipzig, Germany. The topic of the conference was "Nuclear law in the EU and beyond - nuclear safety, new build and phase-out". Ian Salter (pictured above) was invited to speak on the key legal issues faced by new build in the UK.



### All-Energy, Aberdeen

Burges Salmon was invited to address the All Energy Conference in Aberdeen on the key issues facing the UK nuclear industry. The panel included representatives from EDF, National Nuclear Laboratory, and UKTI.

### Nuclear Events

The next NIA Decommissioning Group which will be chaired by the Group's Vice Chair Gareth Davies (pictured right), will take place during the day in Oxford on 20th October. The NI Central Branch Dinner will take place that evening.



The annual NI/NIA Dinner in London will take place on 5th December.

The next NIA Nuclear Exports Group will take place on 24th September in London. Details of all NIA and NI events can be found on their websites.

### Burges Salmon Guide to Nuclear Law - new updated edition being planned

Due to the success of the first edition of the Burges Salmon Guide to Nuclear Law, planning for a second updated edition is now well under way. Existing chapters will be brought up to date and will include the latest developments, and various new chapters will be added. As with the first edition the aim is to provide a practical guide.

One Glass Wharf  
Bristol BS2 0ZX  
Tel: +44 (0) 117 939 2000  
Fax: +44 (0) 117 902 4400

6 New Street Square  
London EC4A 3BF  
Tel: +44 (0)20 7685 1200  
Fax: +44 (0)20 7980 4966

[www.burges-salmon.com](http://www.burges-salmon.com)

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A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

Visit our website at [www.burges-salmon.com](http://www.burges-salmon.com)

