

BREXIT, EURATOM AND NUCLEAR LIABILITIES: PROSPECT LAW AT THE WM SYMPOSIA 2018 IN PHOENIX, ARIZONA PART II:

The following series of articles is written further to Jonathan Leech's attendance at the Waste Management Symposia 2018 in Phoenix, Arizona, on 22nd March, and examines the UK's impending exit from EURATOM and responsibility for international nuclear safeguards.

See link to [Jonathan Leech's presenter profile](#), [List of exhibitors](#) and [Conference Program](#)

The second part of this series examines the UK's nuclear cooperation agreements and post-exit relationship with EURATOM.

Future Relationship with Euratom

Phase 1 negotiations have focused on separation issues (such as ownership of special fissile materials). Phase 2 will move onto the future relationship between the UK and Euratom.

The UK Government's aim is to remain as close as possible to existing arrangements, achieving maximum continuity without actually remaining as a full member of Euratom (recognising that Euratom membership is comprised exclusively of EU member states). Aside from the badge of membership, there is nothing at all about the UK's relationship with Euratom that the UK Government would like to change.

There is no established model for the form of close association the Government seeks. The solution will be bespoke. It seems that anything is now open to negotiation. Even recognition of some on-going jurisdiction for the European Court of Justice, previously seen as a red line, may now form part of a future relationship. Government is confident that *"there is a sensible solution, which may involve the ECJ ..."*. This would be a victory for pragmatism. Government has not found any ECJ case on Euratom affecting the UK in all the time it has existed. *"It may be a point of principle for some people, but in practice as an appellate jurisdiction it has not even been needed."* In essence, Government is seeking an arrangement that has all the benefits and obligations of membership, but without actually being a member of Euratom.

Transitional period

Government has stated that there should be a time-limited transitional period of *"about 2 years"*, with the UK *"staying in all the EU regulators and agencies during that limited period ... [meaning] that companies will only have to prepare for one set of changes as the relationship between Britain and the European Union evolves."* It is not clear whether this or any other transitional period will apply to Euratom.

The BEIS Committee Report published on 13 December 2017 refers to the committee's assumption that staying in all EU regulators and agencies *"includes membership of Euratom"* (whilst also noting that *"the Government has not said so explicitly"*). Euratom is neither a regulator nor an agency. It is a community with its own legal identity. This does not mean that that UK cannot remain a full member of Euratom during a transition period, but the position is not clear.

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A transitional period during which current arrangements for implementing safeguards within the UK via Euratom monitoring and inspections would alleviate time pressure on establishing domestic safeguarding capability within the UK Office for Nuclear Regulation. Assuming the UK does not remain a full Euratom member, the UK will still need to preserve or re-create existing safeguarding obligations currently enshrined in Euratom regulations.

The UK is only likely to be able to retain the benefit of existing Euratom nuclear cooperation agreements during a transition period if the UK does remain a full Euratom member during the transition period. Each Euratom nuclear cooperation agreement is made between Euratom for the benefit of its members and a third country. It is unlikely that Euratom can unilaterally extend the benefit of any cooperation agreement to a non-member (as the UK would then be) without the agreement of that third country.

Nuclear safeguards and cooperation agreements

Safeguards are essential to international nuclear commerce – verifying for an international audience that nuclear material is where it should be and is used only for its intended purpose. International safeguards are administered by the International Atomic Energy Agency (IAEA) under the Non-Proliferation Treaty (NPT), which requires that non-nuclear-weapon states accept comprehensive safeguards on all nuclear material. Similar arrangements are in place to safeguard civil nuclear material in nuclear weapon states (including the UK) under Voluntary Offer Safeguards Agreements negotiated with the IAEA. Safeguarding requirements applicable to the UK therefore arise from both the IAEA and Euratom. Euratom safeguarding requirements go beyond IAEA requirements, both in relation to quantities of material and nuclear facilities requiring inspection.

Currently the UK satisfies its safeguarding obligations via Euratom, with Euratom inspectors carrying out inspections of UK plant and inventories and submitting reports to the IAEA.

In a written statement made on 14 September 2017 the Secretary of State for Business, Energy and Industrial Strategy provided a clear commitment, recognising that *“it is vitally important that the new domestic nuclear safeguards regime, to be run by the Office for Nuclear Regulation, is as comprehensive and robust as that currently provided by Euratom.”* The statement confirms the Government’s decision to establish *“a domestic regime which will deliver to existing Euratom standards and exceeds the standard that the international community would require from the UK as a member of the IAEA.”* Government has no interest in reducing current safeguarding obligations to achieve a commercial advantage.

Government has made clear that it regards the current Safeguards Bill before Parliament as a contingency arrangement, to be used if an appropriate future relationship with Euratom cannot be achieved. The Bill provides enabling powers for development of a domestic safeguarding regime but does not itself make clear whether that regime will be designed to meet obligations under the UK’s replacement Voluntary Offer Safeguards Agreement with the IAEA or to maintain equivalence for current (and possibly future) Euratom safeguarding requirements. To maintain equivalence, Government will need to develop detailed regulations replicating current Euratom commitments.

Delivery of a state system of accounting and control to meet those commitments immediately on Euratom exit will remain a practical challenge. Evidence provided by ONR and others to the BEIS Committee highlights the difficulty in securing, training and mobilising sufficient resource before the current Euratom exit date of 29 March 2019. ONR is confident of meeting IAEA obligations by that

date, but additional time will be required “to include all the activities necessary for an assurance regime which is robust and as comprehensive as that of Euratom.” It would be possible for the UK as a non-member during a transition period to continue to rely on Euratom inspections and monitoring (as distinct from Euratom nuclear cooperation agreements as referred to in Paragraph 5.4 above). It would however still be necessary for a safeguarding regime to be set out in UK law in place of current Euratom regulation.

Jonathan Leech is a solicitor specialising in project and infrastructure work, with particular emphasis on the energy, nuclear and utility sectors. His work includes advising on legal and contracting strategies and regulatory issues associated with major nuclear development, decommissioning, waste and reprocessing projects, energy infrastructure and other utility and infrastructure related projects.

Prospect Law is a multi-disciplinary practice with specialist expertise in the energy and environmental sectors with particular experience in the low carbon energy sector. The firm is made up of lawyers, engineers, surveyors and finance experts.

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