

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

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 third part of this series examines the nuclear cooperation agreements the UK has entered into over the past 50 years.

Nuclear cooperation agreements

Nuclear trade between the UK and other Euratom members relies on cooperation provisions within the Euratom treaty and common Euratom safeguarding arrangements.

Nuclear trade between the UK and other countries relies on either Euratom nuclear cooperation agreements, or bilateral nuclear cooperation agreements, the majority of which are predicated on continued UK participation in Euratom safeguards.

Of the circa 50 bilateral nuclear cooperation agreements the UK has entered since 1956, over 30 specifically recite and rely upon UK participation in Euratom safeguards. Without demonstrably adequate safeguards and replacement nuclear cooperation agreements key countries will, where their domestic law or policies require, cease trade with the UK in nuclear materials, components, technology and know-how. The relationship with the US is well understood. Absence of a 'Section 123 Agreement' would prevent supply of key components for both the planned Hitachi-GE ABWR and Westinghouse AP1000 reactors, and would disrupt supply of components and equipment required by Sellafield. Absence of a nuclear cooperation agreement with Australia would cut off a key source of uranium imports.

The UK Government has identified development of replacement nuclear cooperation agreements with USA, Canada, Australia and Japan as key milestones within the Euratom exit programme, including negotiation up to Q4 of 2018 and finalisation in Q1 of 2019 "to enter into force on Day 1 of Exit". Notably there is no mention of South Korea. Written evidence from Sellafield to the BEIS Committee also identifies Kazakhstan and China as key counterparties.

Establishing the UK safeguarding regime to be in place on Euratom exit will be a pre-condition to finalising any new nuclear cooperation agreement. In each case the acceptability of any new regime will be a matter for each counterparty. As noted above, the current Safeguards Bill is merely a first step in enabling development of a domestic safeguarding regime. Whilst there are relatively few states that require nuclear cooperation

agreements as a strict legal or policy requirement, for those that do the need to finalise a safeguarding regime first will add to the challenge presented by the timetable. For example, taking into account the minimum 90-day Congressional review period for a new Section 123 Agreement, any replacement UK safeguarding regime will need to be established by the end of 2018 at the latest if the agreement is to take effect immediately on the current Euratom exit date.

Update on nuclear liabilities conventions

The global nuclear liabilities landscape is changing. The last 3 years have seen significant developments, with the Convention on Supplementary Compensation finally entering into force on 15 April 2015 and significant progress towards ratification of the 2004 Protocols to the Paris and Brussels Conventions. These changes are to be welcomed as beneficial to international cooperation, but also bring changes to liabilities risks associated with international movement of nuclear materials.

The attached [global nuclear liabilities map](#) shows the current geographic extent of the Paris Convention, Brussels Supplementary Convention, Vienna Convention, Joint Protocol and Convention on Supplementary Compensation.

Convention on Supplementary Compensation

The latest change is to the status of Canada. Following major revisions to domestic nuclear liabilities legislation, Canada ratified the Convention on Supplementary Compensation on 6 June 2017 and the convention took effect in Canada on 4 September 2017. This ensures consistent allocation of jurisdiction between the US and Canada in the event of a nuclear incident.

Paris / Brussels Conventions: ratification of 2004 Protocols

Ratification of the 2004 Protocols by EU member states (including the UK) is now expected to take place around the middle of 2019 at the earliest.

The changes will substantially reduce risks of nuclear liabilities within Paris / Brussels jurisdictions falling outside the convention regime. Limited risks of cross-border liabilities in non-Paris / Brussels jurisdictions remain.

The UK Nuclear Installations (Liability for Damage) Order 2016 sets out extensive changes to the Nuclear Installations Act 1965. Those changes will take effect when the UK ratifies the 2004 Protocols and the Protocols enter into force.

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