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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Nuclear Installations Act 1965 (c. 57) (“the 1965 Act”). It implements—

- (a) the Protocol of 12th February 2004 which amends the Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982 (the “Paris Convention”)(1); and
- (b) the Protocol of 12th February 2004 which amends the Convention of 31st January 1963 Supplementary to the Paris Convention, as amended by the Additional Protocol of 28th January 1964 and by the Protocol of 16th November 1982 (the “Brussels Supplementary Convention”)(2).

The 1965 Act implements the Paris Convention and the Brussels Supplementary Convention which together establish an international regime governing liability for the payment of compensation following a nuclear incident. Not all parties to the Paris Convention are parties to the Brussels Supplementary Convention, which requires additional public funds to be made available to meet claims.

The 1965 Act imposes a strict liability regime on operators of nuclear licensed sites for injury or damage caused by a nuclear occurrence, and it requires operators to have in place insurance or other cover.

The substantive provisions in the Order do not come into force until ratification of the Protocols, which is not expected to be before January 2017.

### **Principal changes made by the Order to the 1965 Act**

The type of damage for which compensation can be claimed under the 1965 Act is extended beyond personal injury and property damage so that, in addition, compensation is payable in respect of the cost of measures of reinstatement related to the impaired environment, loss of income derived from the environment, the cost of preventive measures (including measures taken in response to a threatened occurrence, an “event”) and personal injury and property damage caused by such measures (articles 3 and 7 to 10 and Schedule 1). Consequential amendments are made to the provisions in the 1965 Act concerning the right to compensation to reflect these additional types of claim (article 11).

The provisions on liability relating to carriage of nuclear matter are amended so that liability is transferred from one operator to another, only where the receiving operator has a direct economic interest in the nuclear matter being carried (article 3).

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(1) The Protocol of 12th February 2004 amending the Paris Convention has been published in the Miscellaneous Series No. 6 (2015) Cm. 9135; the Convention of 29th July 1960, as amended by the Additional Protocol of 28th January 1964 was published in the Treaty Series No. 69 (1968), Cmnd. 3755; the Protocol of 16th November 1982 was published in the Treaty Series No. 6 (1989), Cm. 659. The Protocols and Conventions are also available via UK Treaties Online (<http://treaties.fco.gov.uk/treaties/treaty.htm>).

(2) The Protocol of 12th February 2004 amending the Brussels Supplementary Convention has been published in the Miscellaneous Series No. 7 (2015) Cm. 9136; the Convention of 31st January 1963 Supplementary to the Paris Convention, as amended by the Additional Protocol of 28th January 1964 was published in the Treaty Series No. 44 (1975), Cmnd. 5948; the Protocol of 16th November 1982 was published in the Treaty Series No. 17 (1992), Cm. 1832. The Protocols and Conventions are also available via UK Treaties Online (<http://treaties.fco.gov.uk/treaties/treaty.htm>).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

The liability regime under the 1965 Act is extended to operators of installations for the disposal of nuclear matter (a “relevant disposal site”) (article 4), and to the Crown acting as an operator of a relevant disposal site (article 6).

The liability regime is extended so that claims can be made, up to the Paris Convention limit of €700 million, in respect of damage suffered in the territory or maritime zones of non-Paris Convention countries which have no nuclear installations or have an equivalent and reciprocal liability regime (together, “qualifying territories”) (article 12).

Consequential amendments are made to the provisions in the 1965 Act that allow a person not subject to a duty, but who has paid compensation, to claim under the Act against the holder of the duty (article 13). Similar amendments are made to the provisions allowing for compensation to be reduced where the loss or damage is attributable to an act done intentionally or with reckless disregard as to the consequences (article 14). To avoid double recovery when a claim is made for compensation for damage to property, the court is to take into account any measures of reinstatement affecting that property (article 15).

The existing protection for ships and aircraft is extended to include events as well as occurrences (article 16).

The time within which claims for radiation-linked personal injury under the 1965 Act must be brought against an operator is increased from 10 to 30 years from the date of the occurrence or event. All other claims under the 1965 Act must be made within 10 years of the date of the occurrence or event (article 17). The 20-year time limit for bringing claims in respect of stolen, lost, jettisoned or abandoned nuclear matter is removed (article 18).

The liability limit of operators in the United Kingdom in respect of claims arising from an occurrence or event is increased to €700 million initially, rising incrementally to €1200 million over 5 years. The power to prescribe cases where a lower liability limit applies is amended to allow for the prescription of low and intermediate level risk sites and low risk carriage (articles 19, 21 and 22).

The amount of public funds that is required to top up the amount available for compensation, where the applicable liability limit is exhausted, is increased to €1500 million (article 30) where the claim is for damage incurred in a country that is a party to the Brussels Supplementary Convention (a “special relevant claim”), or €700 million otherwise. Claims on such public funds are to be made by bringing proceedings against the appropriate authority (articles 20 and 21).

Where, under the Paris Convention, courts in the United Kingdom have jurisdiction in relation to claims, provision is made to allocate jurisdiction between the High Court of Justice, the High Court of Session and the High Court of Justice in Northern Ireland (article 23). Amendments are made to the provisions in the 1965 Act dealing with jurisdiction, shared liability and foreign judgments (articles 24 and 25).

A claimant is required to notify the Secretary of State of claims relating to the 1965 Act, the Paris Convention or Brussels Supplementary Convention (article 26). The Secretary of State is entitled to be joined as a party to proceedings on such claims. The government of a country that is a party to the Brussels Supplementary Convention is entitled to be joined as a party to proceedings on a claim against an operator in that country or an overseas territory of that country to which the Brussels Supplementary Convention applies (article 27).

A government of a foreign country is permitted to represent its nationals or persons domiciled or resident in that country in proceedings in the United Kingdom under the 1965 Act (article 28). A power is conferred on the Secretary of State to represent United Kingdom nationals or persons domiciled or resident in the United Kingdom in claims covered by the Paris Convention in other Paris Convention countries or territories (article 29).

Various amendments are made to the provisions in the 1965 Act dealing with the obligation on Parliament to make public funds available to meet claims. Limitation periods are imposed,

exceptions are provided for, and the amount to be made available is limited in the case of certain types of claim (articles 30 and 31).

Operators of nuclear licensed sites must make financial provision (by insurance or otherwise) to cover their potential liability. This requirement is extended to operators of relevant disposal sites, and provision is made for different levels of liability depending on the category into which the particular operator falls according to section 16(1) of the 1965 Act (article 32). The requirement on operators to notify the Minister once claims in a specified period reach a set amount is also extended to operators of relevant disposal sites (article 33).

A power is conferred on the Secretary of State to make arrangements with any person for the purpose of enabling operators to put in place the insurance or other cover required by section 19 of the 1965 Act. Provision is made for the notification of Parliament where any such arrangements are made (article 34).

In the case of claims involving nuclear matter in the course of carriage, provision is made to limit the amount of compensation available for damage to the means of transport so that other claims take priority up to €80 million (article 35). The power to enable registration of persons shown to have been within an area on the happening of a nuclear occurrence is extended to the happening of an event (article 36). Provision is made for the conversion of euros to sterling (article 37).

The interpretation provisions in section 26 of the 1965 Act are amended to include, in particular, various definitions relating to jurisdiction and geographical extent of the liability regime, including: “relevant reciprocating territory”, “qualifying territory”, “relevant maritime zone” and “exclusive economic zone” (article 38).

Consequential amendments are made (article 39 and Schedule 2) to the Congenital Disabilities (Civil Liability) Act 1976 so that injury caused by preventative measures is treated in the same way as injury caused by nuclear occurrences under the 1965 Act. Provisions in the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 are revoked as this Order amends the 1965 Act so as to provide expressly for certain functions to be exercisable by the Scottish Ministers. Other consequential amendments to secondary legislation provide for relevant disposal sites to be dealt with under certain statutory regimes (including the radioactive contaminated land regime) in the same way as nuclear licensed sites.

Provision is made to determine which claims fall within the existing liability regime, and which claims fall within the revised regime. The power under section 19(1) of the 1965 Act is extended so that operators’ post-commencement insurance arrangements can be approved in advance of commencement of the revised regime (article 40).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).