

NI Euratom Briefing Note - Update

Background.

The Nuclear Institute attended the BEIS Euratom Industry Forum on the 19 July in London. The forum was addressed by Robin Walker MP Parliamentary Under Secretary of State, Department for Exiting the European Union (DExEU) and Richard Harrington MP, Minister for Business and Industry BEIS. Other speakers included: Tom Greatrex, CE NIA; Dr Katrina McLay Programme Director Euratom Exit BEIS; David Wagstaff Head of Euratom Exit, Negotiations and Strategy BEIS; Lynne Mckey Head of Domestic Safeguards Policy ONR; Mark Doran EU Exit Immigration Strategy Home Office. The briefing took the form of a detailed canter through the progress being made to implement the Government policy of exiting from the Euratom Treaty at the same time as the UK leave the EU following the decision by referendum in 2016.

In February 2017 the Nuclear Institute prepared a briefing note to inform the debate taking place in Parliament following the UK Government's somewhat unexpected inclusion of Euratom in the Brexit Bill. At the time the Nuclear Institute was given the impression, alongside much of the rest of the UK Nuclear sector, that a key reason for inclusion for the uncontroversial Euratom Treaty, first signed in 1957, in the Brexit bill was associated with the common dependency of the European Court of Justice (ECJ) which represented one of the Government's "Red Lines". Following extensive debate the Nuclear Institute made 11 recommendations to government, which are repeated below together with an assessment of the degree to which they have been taken up by those responsible for managing the Brexit process.

Progress against NI Recommendations

1. The Government should make clear its timetable for replacing the provisions of the Euratom treaty with alternative arrangements.

The government do not expect to complete alternative arrangements before March 2019 and are therefore dependent on the Transition Period to the 31 Dec 2020 to complete and implement alternative arrangements. In the event that negotiations result in "no deal" the Euratom Treaty will cease to be in force when the UK exits the EU in 2019. To mitigate this risk the Government is contingency planning for a "no deal" outcome and is expected to issue some "notices" shortly which will include nuclear matters.

2. In order to minimise the wider risks to civil society, the Government should pursue an alternative form of membership of Euratom similar to that which Switzerland enjoys unless there are compelling reasons not to do so.

The Government has expressed its intention to drive for a close association with Euratom although it has not specifically described the Swiss model as one it would follow. UK policy is to seek a close association with Euratom: a new relationship that is more comprehensive and broad than any existing agreement between Euratom and a third country and which would help ensure that the UK's standing as a leading and responsible civil nuclear state is maintained.

Government policy is to protect jobs, growth and security; establish "frictionless" borders; co-operate on energy, transport and workforce mobility; and maintain existing operational security capabilities. For example, the Government states that it is seeking "cooperation" on safeguards with Euratom.

Given that the July 2018 White Paper “The Future Relationship between the United Kingdom and the European Union” recognises a limited ongoing role for the ECJ, ministers recognised that there were increased opportunities for close cooperation with Euratom. Without contradicting the policy summarised above ministers did not deny that some aspects of the Euratom treaty, for example “Safeguards” could remain effectively in force after Brexit. However Ministers did admit that the influence of the ECJ on Euratom was “minuscule” and no longer represented the key driver for exit from the treaty, this now appears to be based on legal advice (not publically available) from the Attorney General.

3. The Government needs to ensure seamless continuity of legislation, regulatory expectations and industry’s compliance arrangements throughout the exit process and afterwards.

Richard Harrington MP reported that the “Euratom Bill” (Nuclear Safeguards Bill) was the first of the Brexit Bills to receive Royal Assent. This establishes the legal basis for UK regulation. A formal consultation on regulation post Brexit was launched in July 2018 and responses are required by September. The ONR are taking on this responsibility and work is continuing at pace to prepare. The ONR have a plan, which is technically deliverable, but there remain a number of high risk aspects which could cause problems or force inefficient work-around solutions especially if the UK leave the EU on “no deal” terms in 2019. For example 14 new inspectors have been recruited and are under training however there is much to achieve before the deadline and a 100% pass rate cannot be assumed.

4. Prior to withdrawal from Euratom the basic standards applied to the nuclear industry should be checked and amended as necessary to ensure that each remains valid and effective.

The ONR reported that they were taking a “pragmatic” approach to standards etc, especially during the transition period and will wherever possible continue with current practice. An agreement has been reached with the IAEA and discussions are ongoing about the hand over of safeguards arrangements indicating that in the short term there will be little change in the underlying standards or regulatory requirements. However they are relying on industry to do a lot of the work by indicating to the ONR areas where standards are not clear or conflict.

5. An agreement in replacement of Euratom will be needed in order to continue R&D work in collaboration with remaining members of the EU and many other countries.

The UK has established an agreement with the IAEA and a “3rd Country” bilateral agreement with the USA (although this remains to be ratified by the USA - which is considered low risk). Other bilateral agreements are in course of negotiation with Canada, Japan and Australia. The nuclear section of the Withdrawal Agreement with the EU was one of the first to be concluded and political talks have, by and large, gone well however the legal aspects do not get offered to the European Council for endorsement until October 2018, which could result in a “no-deal” outcome if not agreed. The section on Civil Nuclear in the July 2018 white paper was not seen to be contentious.

6. IAEA guidance, forums and activities should be afforded increased priority, which will force a review of allocated resource.

The UK is recruiting to bolster the number of people in the ONR and an agreement has been reached with the IAEA however there is little evidence that the UK is significantly increasing its footprint at the IAEA yet because resources in Government are largely devoted to the Brexit process.

7. Through Euratom the UK has access to bilateral and multilateral treaties and cooperation agreements that need to be replaced to avoid interruption of access to nuclear technology and decommissioning skills and intellectual property.

The Government’s declared intention is to seek “close association” by means of a Nuclear Cooperation Agreement (NCA) with the EU, for which there is precedence. However there is no prescribed format for the form or content of such an agreement. The government will seek “cooperation” on safeguards and nuclear

safety; “association” for R&D and Training; “continuity of supply” for goods and services; “minimised” barriers to and “simplification” of export controls; and “information and cooperation” on medical isotopes

With respect to EU workers, which the Government recognises are vital to current and future nuclear power aspirations as well as other aspects of the nuclear sector, free movement will continue as now until the end of the transition period. Subject to certain residency qualifications EU personnel will be able to stay after Brexit with their rights protected however Free Movement will end at the end of the transition period and the Home Office is working on a future immigration scheme which will be published in a White Paper by the end of 2018 for implementation in December 2021 after which arrangements will be “very different”. The government aspires to achieve reciprocal agreement to visa free travel (for up to 6 months), streamline processes at borders for UK and EU citizens and to build on existing arrangements with countries with which we have free trade agreements. Mark Doran, from the Home Office, was not however able to assure the meeting that the current freedom of young professionals in the nuclear sector to travel to study and develop their careers through work placements etc in Europe would be protected post 2019.

- 8. The established mechanisms for discussion of nuclear issues with Ireland, such as the UK-Irish Contact Group, will need to be reviewed and where necessary extended and strengthened in light of the Euratom treaty.**

Specific nuclear matters with respect to the Republic of Eire were not discussed at the meeting.

- 9. The Government should ensure that the well-respected UK nuclear regulators retain at least associate status at ENSREG meetings so as to maintain alignment with EU nuclear regulatory developments and in order to influence decisions that may have an effect on the UK.**

While it was not specifically stated the ONR speakers gave the impression that continued close working with Europe on regulatory standards etc was very much the intention. SSAC Assessment Principles, Technical Assessment Guides and Technical Inspection Guides are all in development. Future relationships with the EU are still for agreement depending on the outcome of negotiations, which are seeking a “close association”.

- 10. The ONR should set up a State System of Accountancy for safeguarded nuclear materials that, as closely as practicable, mirrors that used by Euratom.**

The ONR have a plan to deliver a UK system of accountancy that meets IAEA requirements by the end of the Transition Period. This depends on the recruitment and training of specialised personnel and inspectors and the delivery of a bespoke IT system (SIMRS). Plans are reported to be progressing well with recruitment of 14 new inspectors largely complete and training in hand. The contract has been awarded for the SIMRS system and the first work package has been completed to schedule. The system is currently reported to be “in build” with validation and verification scheduled for December 2018 prior to roll out from Jan 2019. However these programmes include elements of risk, especially with the £10m IT element, so a contingency plan using manual systems and paper recording is also being developed.

A significant industry concern is how the ONR arrangements will be paid for. Currently industry does not reimburse Euratom unlike the ONR which charges licensees for its regulatory services. The government have not announced how they will recover the additional costs of safeguarding etc.

- 11. The Government must ensure that leaving the EU does not diminish the UK commitment to ensuring the continued development and implementation of robust arrangements for the management of current and foreseeable spent fuel and radioactive waste arisings.**

The ONR reported that their approach to safety regulation post Brexit would continue their policy of “proportional and targeted” regulation that is “graded” and closely linked to safety and security. Systems based inspections would take account of the size of holdings, the storage arrangements and their stage in the life cycle between design and POCO.

Summing Up

In his summing up statement Tom Greatrex reported that good progress had been made in this aspect of Brexit but there remained a lot to do, there was certainly no room for complacency. With respect to new systems of regulation and safeguards concerns remained to be addressed about the implementation of the changed arrangements and the costs of the transition. There was still much to be achieved to establish a satisfactory set of bilateral international agreements and the proposed “closer agreement with Euratom than any other country” would be a challenging negotiation. The intentions for free movement of skilled people were welcome but failed to address the Nuclear sector’s periodic demand for semi-skilled workers in support of the UK new nuclear construction programme.

Overall there has been progress but there is a lot yet to achieve, especially in the unlikely but possible event of “no deal”, before the risks to the UK nuclear sector from Brexit have been mitigated.