

## **CHAPTER 8**

### **INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS**

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## CHAPTER 8-0

### INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS

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#### INTERFACE WITH HSE

##### INTRODUCTION

1 This chapter contains in its annexes the official agreements between the MOD and Health and Safety Executive (HSE), the MOD and The Health and Safety Inspectorate of the Department of Economic Development Northern Ireland and between the MOD, HSE and the United States Visiting Forces (USAF) in the United Kingdom.

##### ENFORCEMENT BY CROWN NOTICES

2 The HSE will use Inspectors' Notices where they are considered necessary following an inspection of MOD premises. Inspections will be undertaken using the procedures contained in the MOD/HSE General Agreement at Chap 8-1 and 8-2. Inspectors will discuss with local management the kind of remedial measures, which are considered appropriate, and the time in which it might be reasonable to complete them. Notices will be used only in circumstances where enforcement notices would be used in the private sector, that is where in the discretion of the inspector he feels it is necessary.

3 The forms of notices, which will be used, are shown at Chap 8-4. They are mainly self-explanatory; attention is drawn to those paragraphs, which give guidance to recipients and stress the exemption of the Crown from the enforcement provisions of the Act, i.e. the documents have no legal standing. It is however stressed that they are important documents and all concerned are reminded that it is the responsibility of all employees of MOD, at all levels, to take full account of any danger, whether to their own staff or the public, to health or safety notified by any means. Irrespective of how the information reaches them, they are expected to do all that is reasonably practical to deal with the hazard.

4 These documents can be served in any MOD unit or establishment to a named person.

5 Failure to comply with the requirements of a Crown Notice can lead to Crown Censure.

##### ENFORCEMENT BY CROWN CENSURE

6 The HSE will, if they consider appropriate, on the committing of an offence relating to health and safety by MOD, action a Crown Censure in lieu of prosecution. Chap 8-5 details the agreed format of this Censure. This action will only be taken where the HSE would have prosecuted a private company, had they committed the same offence.

##### MOD PROCEDURE FOR UNITS AND ESTABLISHMENTS IN UK

7 A unit or establishment receiving either type of notice or summons to a Crown Censure hearing is to forward the document together with a full background report to their TLB Holder or Chief Executive of a trading agency through normal command channels, and inform the issuing inspector accordingly. A copy of the notice and report should be sent direct to the appropriate H&S Focal Point and D SEF Pol.

8 The unit or establishment should also ensure a MF 2000 is raised covering the event, as an enforcement event, in accordance with JSP 442. This should give brief details in the event summary of the HSE requirement and any dates that need to be met. The MF 2000 should be forwarded to MOD incident mainframe c/o CHASP Admin, PPA, PO Box 42, Stockport SK1 1ED.

**CHAPTER 8-1****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

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**GENERAL AGREEMENT BETWEEN THE MINISTRY OF DEFENCE AND THE HEALTH AND SAFETY EXECUTIVE****INTRODUCTION**

1 This agreement sets out the principles which apply to the Ministry of Defence (MOD)'s observance of health and safety legislation in respect of members of the military, naval and air forces of the Crown, MOD civilian employees and others affected by MOD activities and to the Health and Safety Executive (HSE)'s actions as the regulatory authority. It covers all MOD activities. A separate agreement sets out arrangements for monitoring of United States Visiting Forces' observance of health and safety legislation. The arrangements made in this agreement assume conditions not amounting to armed conflict.

There are four Annexes:

- Annex A sets out the arrangements for inspection by HSE;
- Annex B deals with arrangements for specified MOD and MOD related nuclear sites;
- Annex C deals with arrangements for inspection of HM Ships and Submarines; and
- Annex D deals with special arrangements for particularly sensitive activities.

2 MOD recognises its duties under the Health and Safety at Work etc Act (HSWA) in relation to all units, establishments and activities. These responsibilities are reflected in the Health and Safety Policy Statement of the Secretary of State for Defence. The full protection, rights and responsibilities of the Act will apply to all MOD civilian employees and to MOD Service Personnel. Where MOD has been granted exemptions from specific regulations, it is the policy of the Secretary of State for Defence that health and safety standards and arrangements will be, so far as is reasonably practicable, as least as good as those required by statute.

3 HSE recognises that judgements about the reasonably practicability of action by an employer must take into account the societal benefits from the overall purpose of the organisation. It follows that, in determining what steps are necessary for MOD to ensure the health and safety of employees and others, the requirements of defence as well as cost must be considered. Therefore, HSE will continue to monitor MOD's observance of health and safety legislation having due regard to defence imperatives.

## **SECURITY**

4 HSE inspectors will conduct inspections and handle classified information in accordance with the Manual of Security in Government Departments. They should be allowed access to classified information as required to carry out their duties, subject to the inspector having the appropriate level of security clearance and the application of the need to know principle. Any difficulties should be reported through normal command or management channels for clarification by the relevant security directorate. Specific security arrangements for dealing with disclosure of information on nuclear matters and arrangements for particularly sensitive activities have been agreed with the HSE and are the subject of Annexes B and D to this Agreement.

## **DISCLOSURE OF INFORMATION**

5 Disclosure of information obtained by inspectors as a result of reports made to them or inspections carried out by them is subject to the provisions of the HSWA and the Code of Practice on Open Government which regulate such disclosure in respect of its purpose and the intended recipient. Classified information will not be disclosed except after prior discussion and agreement with MOD. In any cases of doubt, HSE will consult MOD as to the grounds for withholding any information.

6 HSE inspectors are obliged by the HSWA Section 28(8) to give certain information about matters affecting the safety, health and welfare of those employed to employees and their representatives. In conforming with this requirement, HSE inspectors will disclose information only to the named safety representative or a trade union official directly associated with the establishment and matter under review and who has the requisite security clearance. In the case of HM Forces, inspectors will give the information to the CO who will receive it on behalf of the Service personnel under his control.

## **ENFORCEMENT**

7 There is no Crown exemption from the HSWA; MOD is bound by the general duties imposed by the Act and by Regulations made under it except where specific exemptions apply. However, the Crown cannot be prosecuted for breaches of the law, including failure to comply with improvement and prohibition notices. In lieu of this, HSE has made arrangements for censuring Crown bodies in respect of offences which would have led to prosecution if they had occurred in the private sector and has instituted a procedure for issuing Crown Notices. MOD has agreed to comply with these Notices. HSE inspectors who propose to invoke this procedure for formal censure of MOD will consult HSE's Defence, Fire and Police Unit (DFP Unit) who will inform the Directorate of Safety, Environment and Fire Policy (D SEF Pol) if the procedure is to be followed.

8 The HSWA places statutory duties on individuals both as employers and employees. HSE has, however, undertaken not to prosecute individual Crown servants in substitution for their department. HSE also recognises that HM Forces have powers to deal with disciplinary charges against their members. Only in exceptional circumstances would a criminal prosecution be instituted against a member of the Services under the HSWA.

## **LIAISON ARRANGEMENTS**

9 Chief Environment and Safety Officer (MOD) (CESO(MOD)) and the Head of Sector responsible for the Services Sector, HSE will meet regularly to monitor the application of this agreement. Disagreements between MOD and HSE about the application of this General Agreement which cannot be resolved locally should be referred through the chain of command for discussion at the HSE/MOD Joint Liaison Committee (JLC) if necessary.

10 The MOD/HSE JLC will:

- 10.1 Seek to reconcile conflicts between defence imperatives and health and safety legislation;
- 10.2 Discuss proposals for new health and safety legislation, with particular reference to their application to MOD activities; and

10.3 Deal with problems arising from the implementation of this General Agreement and any detailed agreements made under it.

11 Chairmanship of the JLC will rotate between MOD and HSE. The permanent membership of the JLC will be:

MOD	
Directorate of Safety, Environment & Fire Policy (D SEF Pol)	CESO(MOD)
The Royal Navy	CESO(RN)
The Army	CESO(A)
The Royal Air Force	CESO(RAF)
Defence Logistics Organisation	DLO HQ Safety
	ADES
D Med Pol	
Central Staff	
Defence Procurement Agency	HSE Advisor DPA
HSE	
The Head of Sector responsible for the Services Sector	
Head of Defence, Fire and Police Unit	
Head of the HSE Policy Branch with responsibility for MOD	
Chief Inspector of Explosives	
Others (as necessary)	
HSE's Nuclear Safety Division	
Chairman Naval Nuclear Technical Safety Panel	
HQ US 3rd Air Force	
Department of Economic Development (NI)	

12 The working of this agreement and of the JLC is subject to the oversight of 2nd PUS and the Director General HSE who will, if necessary, seek to resolve any difficulties that cannot be reconciled in the JLC. In any event, the agreement will be reviewed jointly by MOD and HSE after two years<sup>1</sup>.

.....  
**MR TIMOTHY WALKER**  
 Director General  
 on behalf of the Health and Safety Executive  
 October 2001

.....  
**SIR ROGER JACKLING KCB CBE**  
 Second Permanent Under Secretary of State  
 on behalf of the Ministry of Defence  
 October 2001

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<sup>1</sup> The Agreement was reviewed in 1998 and re-endorsed with only minor editorial amendments. A further review took place in 2000, but in future the Agreement will be routinely reviewed every five years, or when agreed by the MOD/HSE Joint Liaison Committee.

**CHAPTER 8-1 ANNEX A****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

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**ARRANGEMENTS FOR INSPECTION OF MOD ESTABLISHMENTS BY HSE INSPECTORS**

- 1 General
- 5 Inspection arrangements
- 10 Military and operational training

**ARRANGEMENTS FOR INSPECTION OF MOD ESTABLISHMENTS BY HSE INSPECTORS****GENERAL**

1 This annex details procedures to be followed by HSE and by MOD in arranging, carrying out and reporting on inspections of MOD units, establishments and activities under the terms of the HSWA. These procedures are intended to facilitate such inspections, recognising the statutory right of HSE to carry them out in all areas covered by the HSWA and their commitment to do so in such a way as not to compromise national security and the operational capability of MOD. Any difficulties should be referred through the normal channels, and will if unresolved be discussed between CESO(MOD) and HSE's Crown, Fire and Police National Interest Group (CFP NIG).

2 Inspections by HSE are for the purpose of discharging its functions as the regulatory authority and are additional to those, which MOD undertakes for its own management purposes. HSE's inspections in practice may be broadly classified as follows:

2.1 Planned inspections as part of HSE's annual programme; these might vary from a half-day visit by a single inspector to a team inspection over a number of days. Substantial initiatives planned by HSE will be brought to the attention of CESO(MOD) by HSE's CFP NIG during routine liaison meetings so that any overlaps with MOD's own inspection programmes can be discussed.

2.2 Reactive inspections responding, for example, to an accident, incident or a complaint. Although the accident and ill health reporting requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) do not apply to members of the armed forces or visiting forces on duty, HSE inspectors may learn of incidents involving them by other means, and decide to investigate using their powers under the Health and Safety at Work etc. Act 1974.

2.3 Inspections for special purposes, for example, to seek information on a specific health or safety topic.

3 In all cases the procedures in this annex should be followed, recognising that reactive inspections may require a more urgent response.

4 The Health and Safety at Work etc Act 1974 applies to military aircraft in flight within the baseline. However, HSE will not seek to investigate issues relating to airworthiness or aircraft crashes. Nevertheless, other issues relating to the health and safety of members of aircraft crew or ground staff may be of interest to HSE, and such cases will be discussed with D SEF Pol before approaching the operational unit concerned.

## **INSPECTION ARRANGEMENTS**

5 Inspection of most MOD units and establishments is undertaken by the HSE's Field Operations Division, which is organised into seven geographical regions, each under the control of a Regional Director, with inspection activities managed by Heads of Operations. Inspections of explosives and nuclear facilities are also undertaken by inspectors from the Explosives and Nuclear Installations Inspectorates respectively.

6 If some time has passed since the last HSE contact with the establishment or if HSE proposes a substantial inspection initiative, inspectors will write to the Commanding Officer or Head of Establishment in order to make an appointment for a visit to the Establishment and to obtain the name of an individual nominated to deal with the visit. The Commanding Officer or Head of Establishment should at this stage indicate to the inspector any areas or activities subject to the provisions of Annex D (Special arrangements for particularly sensitive activities). Failure to agree a mutually convenient date for the inspection or any other difficulties that arise should be discussed by the CO or Head of Establishment with the inspector's senior officer. Special arrangements, which apply, to the inspection of HM Ships and Submarines and other MOD(N) vessels are detailed in Annex C.

7 On receipt of notification of an inspection, the CO or Head of Establishment should inform MOD through the chain of command.

8 Inspectors carry a warrant. During all inspections of MOD units and establishments, the inspector will be escorted. Commanding Officers have final authority over access to areas under their command. Any decision to refuse access should be based on consideration of the health and safety of those who would be affected, the operational and security needs, the powers of the HSE inspector and legislative requirements.

9 Any difficulties in relation to access will be referred through normal command and management chains for resolution.

## **MILITARY AND OPERATIONAL TRAINING**

10 By its very nature, military and operational training does not lend itself to inspection by observation. HSE inspectors may inspect military training areas, establishments and units where military training and/or operational training is being undertaken. The HSE recognises the requirement to conduct hazardous training. Its principal interest is in the MOD's procedures for controlling and managing hazardous training activities. If exceptionally an inspector feels that such training should be halted or interrupted, the inspector will raise this through the command chain.

11 Arrangements for an HSE inspector's visit will follow the procedures in paragraphs 4 - 8 of this annex. Where military and operational training is concerned, the CO will take into account the requirement for military training, the risks to Service personnel of any interruption caused by the inspection and the risks to the safety of the HSE inspector in agreeing the timing of an inspection.

12 HSE inspection of certain particularly sensitive training activities is the subject of specific arrangements in Annex D to the General Agreement.



**CHAPTER 8-1 ANNEX B****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

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	ADDITIONAL ARRANGEMENTS FOR SPECIFIED MOD AND MOD RELATED NUCLEAR SITES
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2	Introduction
	Application of statutory requirements to defence activities
6	Health and safety at work etc act
7	Nuclear installations act
13	Regulations
16	Nuclear reactors (environmental impact assessment for decommissioning) regulations
17	Future legislation
	General
18	Access to sites
21	Access to information
27	Reporting of incidents
28	Defence nuclear accident response
	Liaison and resolution of issues
35	High level liaison
36	Regulatory liaison
37	Senior operational liaison
38	Operational liaison

## Appendix

- 1 List of sites covered by Annex B to The General Agreement between MOD and HSE
- 2 Regulation of Operations at AWE Sites

**ADDITIONAL ARRANGEMENTS FOR SPECIFIED MOD AND MOD RELATED NUCLEAR SITES****SCOPE**

1 This Annex covers defence related nuclear activities undertaken on the sites listed in Appendix 1 (hereafter called Site(s)). It should be read in conjunction with the General Agreement, which also applies to the activities covered here.

**INTRODUCTION**

2 This annex sets down the arrangements additional to the MOD/HSE Agreement for HSE activities including inspection, assessment and audit (hereafter called "inspection") in relation to nuclear and radiological hazards against the requirements of the:

- 2.1 Health and Safety at Work etc Act 1974 – HSWA;
- 2.2 The Nuclear Installations Act 1965 (as amended) – NIA;
- 2.3 The Ionising Radiations Regulations 1999 – IRR;
- 2.4 The Radiation (Emergency Preparedness and Public Information) Regulations 2001 – REPPPIR;

2.5 The Nuclear Reactors (Environmental Impact Assessment of Decommissioning) Regulations 1999 – NR(EIAD)R;

2.6 The Atomic Weapons Establishment Act 1991 & Amendment Order 1396/1997 – AWE Act

3 The Secretary of State for Defence is answerable to Parliament for the nuclear and radiological safety of all defence related nuclear activities.

4 On all Sites, the regulation of nuclear and radiological safety in accordance with the legislation identified in paragraph 2 is the duty of HSE's Nuclear Installation Inspectorate (NII). Within NII a Deputy Chief Inspector has been appointed with specific responsibility for defence related nuclear activities.

5 In some cases the legislation in paragraph 2 does not apply to defence related nuclear activities or it may be otherwise disapplied or exemptions may be provided. Therefore, MOD has appointed internal regulators for the naval nuclear propulsion and nuclear weapons programmes<sup>1</sup>. The working level relationship between NII and the MOD regulators may be further clarified by letters of understanding.

## APPLICATION OF STATUTORY REQUIREMENTS TO DEFENCE ACTIVITIES

### Health and Safety at Work etc Act

6 The HSWA applies to all employers including MOD. Inspectors from HSE's NII are appointed under section 19(1) of the HSWA and as such have all the powers of HM Inspectors of Health and Safety provided by the HSWA. In the use of these powers on the Sites that they inspect, they will follow the requirements of the General Agreement, and other annexes unless modified or otherwise covered by this annex.

### Nuclear Installations Act

7 Where the MOD, a Crown Department, is in direct control of relevant nuclear activities, the NIA 1965 does not apply. However, the NIA does apply where a commercial organisation, under contract to MOD, is in control of relevant nuclear activities even if working with MOD-owned assets, unless a further legal exemption exists (see below).

8 **Nuclear Weapons** The AWE Sites are subject to the requirements of the NIA by virtue of the AWE Act. However, the licence conditions attached to the Site licence shall not apply to the extent that such conditions affect the design of a nuclear device<sup>2</sup>, or any other device (other than a nuclear reactor) intended to simulate<sup>3</sup> the properties of a nuclear device (see Appendix 2 to this Annex). Nuclear devices are also exempt from licensing requirements when they are at other Sites. For such activities the HSWA, IRR and REPIR apply as detailed in this annex.

9 **Submarine Reactors** The licensing requirements of the NIA do not apply to the use of a site for activities involving nuclear reactors "comprised in a means of transport" (see Section 1(1)(a) of the NIA). This is interpreted as exempting from licensing requirements only activities involving "completed" nuclear reactors<sup>4</sup> operating or under commissioning in a submarine. For such activities HSWA, IRR and REPIR apply as detailed in this annex.

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1 The Chairman, Naval Nuclear Regulatory Panel (CNNRP) for the naval nuclear propulsion programme and the Nuclear Weapon Regulator (NWR) for the nuclear weapons programme. These regulators are empowered by the Secretary of State for Defence though the Chairman of the Defence Nuclear Safety Board.

2 The term nuclear 'device' is taken to mean all those devices whose design intent is to be able to produce an uncontrolled nuclear reaction.

3 The installation or operation of any nuclear reactor is a licensable activity and pulsing reactors may be used to simulate some properties of "completed" nuclear devices. It is intended that these will be treated as not being exempt.

4 A nuclear reactor is "complete" when it is in compliance with its safety case for its commissioning or normal operation.

10 **Bulk Storage of Depleted Uranium** Bulk storage of natural uranium is exempt from the requirements of the NIA – see the definition of “excepted matter” in Section 26(1) of the NIA. For the purposes of this annex it is agreed that bulk storage of “depleted uranium metal and alloys” shall be treated similarly where its total radioactivity and fissile material content is no greater than those of an equivalent mass of natural uranium. For such activities HSWA, IRR and REPPiR apply as detailed in this annex.

11 **Emergency Arrangements** Where a licensee is reliant upon assistance from MOD in its emergency arrangements, NII accepts that the licensee can take due account of such arrangements in meeting the requirement of licence conditions provided NII is satisfied with the adequacy of MOD assistance.

12 **Licences, Approvals, Consents, Agreement, etc** MOD recognises the right of NII to issue Licences, and any Approvals, Consents, Directions, Agreements, Notification and Specifications under nuclear site licences to licensees without reference to MOD. The NII and the responsible MOD operations officer<sup>5</sup> shall liaise in respect of MOD contractual approvals of licensees operations and the implications of issuing of Licences, Approvals, etc. If MOD notifies NII that it has concerns about a proposed regulatory activity, then NII undertakes to inform MOD<sup>6</sup> before issuing any such Licence, Approvals, etc in adequate time to allow a response unless any delay involved would be detrimental to the regulatory process.

### **Ionising Radiations Regulations and Radiation (Emergency Preparedness & Public Information) Regulations**

13 IRR and REPPiR apply to all relevant activities on the Sites.

14 **Exemption from IRR or REPPiR** Where MOD proposes to seek a Secretary of State for Defence exemption<sup>7</sup> from aspects of the IRR or REPPiR as is allowed by Regulations 40(2) and 40(5) of IRR or Regulations 18(2) and 18(3) of REPPiR, MOD will:

14.1 Notify HSE of the proposal and its circumstances and any alternative arrangements;

14.2 Give HSE the opportunity to comment before a decision is reached;

14.3 Notify HSE of the decision on the proposal, its period of applicability and any other conditions attached to the decision; and

14.4 Notify HSE when the decision is rescinded;

15 Where urgent and vital defence operations are concerned, the above requirements should be followed as far as is reasonable given the circumstances prevailing.

### **Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations**

16 Regulation 3(3) of NR(EIAD)R exempts projects “serving national defence purposes”. Notwithstanding this, and in accordance with the Secretary of State for Defence’s Policy Statement (see main Agreement), MOD expects to apply the processes called for in NR(EIAD)R where appropriate. The relevant MOD regulator will conduct the consultation process (Regulation 8 etc.). The NII agrees to provide formal comment, as a consultation body, where appropriate.

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5 The term “MOD operations officer” denotes the relevant duty holder (including, where appropriate, the person managing a contract) within MOD and distinguishes him/her from the MOD regulator.

6 The responsible MOD operations officer and the relevant MOD regulator.

7 Such proposals would be in the interest of national security or because suitable alternative arrangements have been agreed.

## Future Legislation

17 MOD and HSE will form a working group to review this annex in the light of any relevant new legislation that is made.

## GENERAL

### Access to Sites

18 General access to Sites shall follow the procedures in Annexes A and C. If access is required to a submarine, the Head of the Establishment shall arrange any necessary agreement from the Commanding Officer of the submarine.

19 MOD undertakes to ensure that NII inspectors are provided with personnel safety information, particularly doses incurred while on a MOD-controlled Site, in a form and at a time that does not impede their access or egress from the Site.

20 Any difficulties in relation to access should be referred through normal command and management chains for resolution.

### Access to Information

21 Information<sup>8</sup> is required by the NII:

21.1 From the licensee of a licensed Site to justify the safety of the operation on the licensed Site to demonstrate compliance with the requirements of the conditions attached to the Site licence, the HSWA and other appropriate legislation such as IRR and REPPIR.

21.2 From MOD associated with its duties under the HSWA, IRR and REPPIR and in circumstances where the MOD considers it appropriate to adopt the procedures laid down in the NR(EIAD)R (see Para 16):

21.3 From other employers whose employees may be working with ionising radiation on the Sites.

22 MOD undertakes to facilitate the ability of the licensee and other employers on the sites covered by this agreement to fulfil their duties by providing them with adequate and timely information.

23 In particular, MOD will provide, cause or allow to be provided, sufficient technical and other safety related information to the licensee or other employer, which may then be made available to HSE, to enable the licensee to comply with the nuclear site licence conditions, IRR and REPPIR in respect of activities:

23.1 On the nuclear license site; or

23.2 Which are off the licensed site but which could impinge upon its safety.

24 HSE will ensure that appropriate arrangements are in place to handle information classified under the Official Secrets Acts. All such information will be excepted from public availability under the terms of REPPIR regulation 16(6).

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<sup>8</sup> "Information" in this context means adequate information to define the hazard, justify the risks and demonstrate adequate management of the risks. Thus, it will include safety justifications, safety cases, and Hazard Identification & Risk Evaluation (HIREs) under REPPIR.

25 HSE's NII inspectors have the right to obtain clarification of the information provided (except where MOD itself may be constrained in obtaining US-sourced information under the terms of the 1958 Agreement and/or Polaris Sales Agreement<sup>9</sup>). Where this relates to information on reactor plant or nuclear device design or operation or other matters out with the control of the licensee, then clarification shall be obtained from the operator, facilitated where necessary by the MOD Regulator, keeping the licensee suitably informed of the request.

26 However, in gaining access to such information NII will not seek to influence the design of nuclear submarine reactors<sup>10</sup>, nuclear devices<sup>11</sup> or Strategic Weapon Systems provided through the Polaris Sales Agreement. NII will neither seek to influence the operational deployment of such items nor activities<sup>12</sup> associated with their operational deployment. Amplification of this understanding in respect of nuclear devices is provided in Appendix 2 to this Annex. When using such information in making technical assessments, NII acknowledge that their Safety Assessment Principles for Nuclear Plants may not apply. MOD has Safety Principles and Safety Criteria that it applies to the naval nuclear propulsion and nuclear weapons programmes.

### Reporting of Incidents

27 The NII shall be informed of safety related incidents<sup>13</sup> that occur on the Sites in accordance with the requirements of the appropriate legislation. NII shall consult with MOD before passing any information concerning such an incident outside of NII and only provide detailed information on the circumstances surrounding the incident with MOD's agreement. MOD Ministers shall discharge their responsibilities by reporting to Parliament incidents affecting the Sites<sup>14</sup>.

### Defence Nuclear Accident Response

28 This section provides information on the role of NII in the response to a defence nuclear accident wherever it may occur in Great Britain.

29 At licensed Sites, MOD undertakes (see Para 11) to provide elements of the accident response organisation including a Military or MOD Co-ordinating Authority (MCA). MOD is the Lead Government Department (as defined in the national guidelines "Dealing with Disaster") for all defence nuclear accidents.

30 In the event of a defence nuclear accident it may be anticipated that the public, pressure groups, the media and Parliament might question the HSE. They would be looking for opinion and comment from the health and safety regulator. It is, therefore, in the interests of both NII and MOD to ensure that information about the accident, its circumstances and the response is shared. In addition, the NII's statutory responsibilities give it the right to receive certain information needed in order to fulfil its functions:

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9 The "1958 Agreement" is the "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for co-operation on uses of atomic energy for mutual defence purposes". The "Polaris Sales Agreement" is the "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government and the Government of the United States of America dated 6 April 1963".

10 The term nuclear submarine reactor is taken to be the same as that covered by nuclear steam raising plant.

11 This includes activities, excluding nuclear reactor operation, intended to simulate the properties of nuclear devices.

12 In relation to the power range testing of nuclear submarine reactors this means that HSE inspectors will not seek to change the types of test necessary for ensuring their operability but may seek confirmation that adequate arrangements are in place to minimise the risk to the public and employees.

13 A "safety related incident" is taken to mean incidents, which may affect the safety of personnel on the Sites or the public or attract reasonable public concern. It does not include incidents that solely relate to the operability of the nuclear submarine or nuclear device.

14 This is not intended to curtail or restrain NII inspectors from carrying out investigation, reporting on their findings, etc in accordance with their powers under the HSWA.

- 30.1 To ensure that appropriate health and safety legislative requirements are being adhered to;
  - 30.2 To inform any subsequent investigations or legal actions;
  - 30.3 To provide independent information / advice (to senior managers in HSE, relevant authorities and the Government).
- 31 The sharing and provision of information may take place at several levels.
- 32 As the Lead Government Department, MOD is responsible for co-ordinating the central Government response. This is achieved primarily through the Nuclear Accident Information and Advisory Group (NAIAG). As the Government's principal source of independent health and safety information/advice, the NII would be invited to be a member of the NAIAG.
- 33 In accordance with "Dealing with Disaster", the response to any accident would be led locally by the emergency services and local authorities. It is anticipated that a significant defence nuclear accident (with the potential for the release of radioactive material) would require the convening of a Strategic Co-ordinating Group (SCG) by (initially) the Chief Constable of the police force local to the incident. MOD response at the SCG would be led by a MCA. It is expected that the NII would take up a seat at the SCG. In addition to acquiring information NII would be available to give independent advice on the protection of the public and workers and of the conduct of activities being undertaken at the accident site to control the accident. If the accident involved assets or sites controlled by a licensee, the NII would be able to provide additional advice to the SCG about the conduct of the licensee.
- 34 In accordance with HSE's responsibilities under the HSWA, the NII would require access to information and to the accident site both during the accident phase and in assisting the investigating authorities (of which they may be more than one) with any subsequent investigation. Arrangements for such access are to be made in accordance with this Annex.

## **LIAISON AND RESOLUTION OF ISSUES**

### **High Level Liaison**

35 An annual meeting will be held, co-chaired by the Chief Inspector of Nuclear Installations and the Chairman of the Defence Nuclear Safety Board (or by agreement their nominees), to liaise on relevant matters, including the workings of this Annex, and to resolve any outstanding issues. This meeting will be attended by the NII DCI with responsibility for defence related sites, the HSE SPD, the MOD internal regulators and the MOD Chief Environment & Safety Officer.

### **Regulatory Liaison**

36 At least annually a meeting will be held between the NII DCI for defence related sites and the relevant MOD internal regulator (or by agreement their nominees). These meetings will consider regulatory liaison, and where appropriate, the detailed working of this Annex. The meeting will consider issues, which cannot be resolved by normal regulatory liaison means.

### **Senior Operational Liaison**

37 An annual meeting will be held, co-chaired by the Chief Inspector of Nuclear Installations and the Chief Executive Warship Support Agency to liaise on operational issues, including the application of this annex, and to resolve any outstanding issues. This meeting will be attended by the NII DCI for defence, other relevant MOD operations officers and by the MOD internal regulators.

**Operational Liaison**

38 On a frequency and at a level, to be agreed by the parties involved, operational liaison meetings will be held between the NII and relevant MOD operations officers. Such meetings, which will normally be attended by the relevant MOD internal regulator, will review operational matters associated with the inspection and assessment of the activities covered by this annex including the resolution of issues that cannot be resolved by the appropriate NII Inspector and MOD's operations office.

## CHAPTER 8-1 ANNEX B APPENDIX 1

### ADDITIONAL ARRANGEMENTS FOR SPECIFIED MOD AND MOD RELATED NUCLEAR SITES

#### LIST OF SITES COVERED BY ANNEX B TO THE GENERAL AGREEMENT BETWEEN MOD AND HSE

- AWE Aldermaston \*
- AWE Burghfield \*
- HM Naval Base, Clyde (Faslane and Coulport)
- HM Naval Base, Devonport
- Vulcan Naval Reactor Test Establishment, Dounreay
- Devonport Royal Dockyard \*
- Rosyth Royal Dockyard \*
- BAE SYSTEMS Marine Limited, Barrow \*
- Rolls Royce Marine Power Operations Limited, Derby \*
- British Nuclear Fuels Limited, Sellafield \* (in respect of MOD used fuel & SNM)
- Z-berths in Great Britain

\* Sites licensed under the NI



**CHAPTER 8-1 ANNEX B APPENDIX 2****ADDITIONAL ARRANGEMENTS FOR SPECIFIED MOD AND MOD RELATED NUCLEAR SITES****REGULATION OF OPERATIONS AT AWE SITES**

*A Letter of Understanding in respect of the Regulation of Operations at AWE Sites was signed by Chief Inspector NII and the then DG(Nuc) on 16 June 1997. This appendix contains the text of that letter, suitably updated, for organisational and legislative changes.*

1 The purpose of this letter is to establish a mutually agreed understanding and interpretation of the disapplication of the use of the conditions attached to the Nuclear Site Licence granted under the provisions of the NIA. It is in addition to Annex B of the General Agreement between MOD and HSE, which is amplified by this letter.

2 It is agreed that the intent of the wording of paragraph 6(1) of the Schedule to the AWE Act is to exclude HSE from consideration of the design of a nuclear device. The following points are agreed as an aid in identifying the operations where design issues may arise.

2.1 Operations involving a nuclear device when it incorporates fissile and explosive material. These specifically include all activities on a nuclear warhead from the point in the assembly process at which the explosive components are brought into proximity with the fissile components, until the point in disassembly at which the explosive components are separated from the fissile components, and removed from the assembly facility.

2.2 Operations intended to simulate the properties of nuclear devices. These specifically include all experiments in which fissile material and explosive material (or simulated explosive material) are incorporated in an experimental assembly. It also includes experiments where energy is applied to fissile materials in order to investigate processes, which occur in a nuclear device.

3 It is understood that, irrespective of the disapplication of the use of licence conditions where they affect the design of a nuclear device, AWE operations are legally subject to NII inspection in respect of the HSWA and regulations made under the Act.

4 In respect of NII's non consideration of nuclear device design issues, the following points of agreement apply:

4.1 MOD is implementing and will maintain an adequate oversight arrangement, which considers the adequacy of the safety assessment for nuclear device related activities. This includes design considerations and the standards set for process safety controls.

4.2 MOD undertakes to ensure that the nuclear site licensee considers carefully any comments given by NII that are intended to improve nuclear safety in areas of their interest but which may affect nuclear device design matters.

4.3 NII will liaise with the MOD's Nuclear Weapon Regulator to ensure the boundaries between MOD and NII assessments are defined and understood.

4.4 NII will not seek information on the design of nuclear weapons, which is not relevant to radiological safety.

4.5 NII undertakes not to challenge or seek changes in the design of nuclear weapons including materials used in their construction.

4.6 A HIRE based on the requirements of REPIR will be produced to summarise the hazards, risks and consequences associated with possible accidents involving nuclear devices as an input to the assembly process safety case and the facility safety case.

4.7 Any such HIRE will not include detailed information on the design of nuclear devices nor will it provide a detailed analysis of the likelihood of events, which could lead to accidental initiation of explosives in the device. It will include, however, an identification and specification of the system and controls, which are required to avoid accidents/incidents, and identify the measures taken to mitigate the consequences of any accidents.

4.8 NII acknowledges that its published Safety Assessments Principles for Nuclear Plants may not be appropriate for certain matters consequent on the design of nuclear devices.

4.9 NII retains the right to investigate fully any accident/incident on AWE Sites.

**CHAPTER 8-1 ANNEX C****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

## Para

**ARRANGEMENTS FOR INSPECTION OF HM SHIPS, SUBMARINES AND AUXILIARIES BY HSE INSPECTORS**

- 1 Introduction
- 2 Application of the law
- 6 Obtaining entry for inspection
- 10 Nuclear issues and sensitive activities
- 11 Conduct of inspections
- 13 HSE enforcement action
- 14 Crown prohibition or improvement notice
- 15 HSE intention to formally censure MoD (crown prosecution)

**ARRANGEMENTS FOR INSPECTION OF HM SHIPS, SUBMARINES AND AUXILIARIES BY HSE INSPECTORS****INTRODUCTION**

1 The HSE may wish to visit to inspect relevant aspects of the MOD health and safety organisation, which may include HM Ships, Submarines and Auxiliaries alongside in the United Kingdom or in refit at any time, subject to the provisions of this protocol. Exceptionally the HSE may request to visit a vessel at sea. In carrying out such inspections the HSE will not seek to influence the design or operational capability of MOD ships.

**APPLICATION OF THE LAW**

2 The Health and Safety at Work etc Act 1974 (HSWA) applies up the baseline of UK territorial waters (e.g. within harbours, ports and certain inland waters). Beyond the baseline, but within territorial waters (generally out to 12 nautical miles), paragraph 8 of HSWA (Application outside Great Britain) Order 1995 No 263 applies to certain activities carried out by, or associated with, ships. Beyond UK territorial waters HSWA does not apply to ships but the safety of those serving at sea in UK registered merchant vessels is provided for by the Merchant Shipping Acts (MSA).

3 Merchant shipping law is enforced by the Marine and Coastguard Agency of the Department of the Environment, Transport and the Regions (DETR). HSE and DETR have established a Memorandum of Understanding (MOU) on the operational demarcation and overlap of their respective legislation in relation to work at the water margin, such as during the loading and unloading of ships. The MOU sets out the primary concerns of the Agency as the safety of ships, their crews, passengers and cargoes on board, and marine pollution matters, whilst HSE is primarily concerned with the safety and activities of shore-based personnel, and facilities on land and offshore installations.

4 MOD owned Ships, in particular warships, are not normally registered under the MSAs but are regulated under the authority of the Secretary of State for Defence by a Ship Safety Board, which in principle and practice mirrors the role of the Marine and Coastguard Agency for merchant ships. Selective classes of MOD owned vessels (RFAs, yachts and commercially managed Fleet Auxiliaries), are or can be registered under the Merchant Shipping Acts using specific Orders in Council (OIC). These OIC specify the degree to which MOD elects to comply with the MSA, supplemented where necessary by Letters of Agreement (LOA) between MOD and DOT, by which MOD may agree to beneficially adopt certain additional MSA requirements. Such agreements are regularly reviewed to reflect changes in the law and/or military requirements.

5 The arrangements between MOD and the HSE with respect to access and the inspection of unregistered MOD vessels need to be clarified and work on this will take place. Pending completion of this work:

5.1 MOD will continue to regulate all aspects of ship safety on behalf of the Secretary of State for Defence through the mechanism of the Ship Safety Board. This includes inspection of all activities carried out by the Commanding Officer or Ships Company of a Warship, Submarine or Auxiliary.

5.2 MOD registered vessels are also subject to inspection by the Marine and Coastguard Agency and for certain activities by the HSE (see paragraphs 2 and 4).

5.3 HSE will not as a matter of course wish to carry out planned inspection of individual unregistered MOD vessels in service.

### **OBTAINING ENTRY FOR INSPECTION**

6 Navy Base Safety Groups will appoint a Local Responsible Officer (LRO) to act as the administrative co-ordinator for all HSE inspections. The LRO will liaise with all local HSE inspectors, Commanding Officers, Type Commanders, Directors General Naval Base and Supply and other relevant higher-level budget holders. In the case of ships undergoing refit or visiting commercial ports, MOD will similarly appoint a LRO to be the local representative of the Naval Support Command, to support and provide advice on legislation to the Refitting Authority/Commanding Officer.

7 It is unlikely that an HSE inspector would request access to one of HM Ships or Submarines at sea. However, should such circumstances arise the LRO would co-ordinate all arrangements through CESO(N). The authority of the Commanding Officer with regard to his vessel is referred to in paragraph 9 below.

8 Before inspection on board a vessel in service, it is essential that the LRO make prior contact with the Commanding Officer who may refer the request to his Type Commander. It should then be possible to make an appointment at a time convenient to both parties. Any difficulty should be referred through the command chain and to CESO(N). The HSE inspector will similarly refer the position through the HSE management chain.

9 When carrying out an inspection on board a MOD vessel, the HSE inspector should bear in mind that the Commanding Officer has the final authority with regard to the access to his ship. In making his decision the Commanding Officer will take into account the safety of his crew, the safety of others, the operational and security needs, and the powers and requirements of the HSE inspector.

### **NUCLEAR ISSUES AND SENSITIVE ACTIVITIES**

10 The application of the various nuclear related Acts and regulations are covered in Annex B to the General Agreement. Arrangements for particularly sensitive activities are covered in Annex D to the General Agreement.

### **CONDUCT OF INSPECTIONS**

11 All HSE inspectors carry a warrant. When inspecting HM Ships, Submarines and Auxiliaries inspectors will conform to the security arrangements of the vessel concerned. Inspectors will be subject to visitor control procedures and must be accompanied at all times by an officer nominated by the Commanding Officer or, with the Commanding Officer's agreement, by a person nominated by the Naval Base Safety Group.

12 Operational capability should not be impeded by the process of an inspection. If exceptionally the inspector considers that there is a need to interrupt or stop an activity, the inspector will raise this through the command chain to enable a judgement on the operational implications to be made.

**HSE ENFORCEMENT ACTION**

13 Action to be taken by the Commanding Officer in the event of Enforcement Action by the HSE inspector.

**Crown Prohibition or Improvement Notice**

14 If the inspector serves or makes it clear that it is his intention to serve a Crown Prohibition or Improvement Notice, the Commanding Officer is to request advice from his command authority immediately. Where a Prohibition Notice is served on a piece of equipment or work process that would affect the operational requirements then the Commanding Officer should point this out to the inspector and inform the command authority immediately, and CESO(N) should be informed.

**HSE Intention to formally censure MOD (Crown Prosecution)**

15 The command authority should be informed immediately for advice. The command authority will inform CESO(N) and D SEF Pol.

**CHAPTER 8-1 ANNEX D****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

Para

**SPECIAL ARRANGEMENTS FOR PARTICULARLY SENSITIVE ACTIVITIES**

- 1 General
- 4 Inspection arrangements
- 9 Special arrangements

**SPECIAL ARRANGEMENTS FOR PARTICULARLY SENSITIVE ACTIVITIES****GENERAL**

1 Some activities carried out by MOD are particularly sensitive and are protected not only by a high level of security classification but also by a very tightly constrained need-to-know. Access to information relating to such activities is highly restricted and available only to nominated persons who have been cleared by the appropriate security directorate.

2 This Annex details procedures to be followed by MOD and HSE where access to certain sensitive areas and activities should, for good reason, be subject to control. Specific guidance on areas subject to controlled access is issued to MOD Units and Establishments by individual services through the chain of command. Copies of this guidance will be furnished by individual services to CESO(MOD).

3 It is not intended that this annex should be used to restrict unnecessarily the access of HSE inspectors to MOD sites. Where these arrangements are invoked, Commanding Officers and Heads of Establishment must notify details to their chain of command HSW focal point so that details can be furnished to CESO(MOD).

**INSPECTION ARRANGEMENTS**

4 If some time has passed since the last HSE contact with the establishment or if HSE proposes a substantial inspection initiative, Inspectors will write to the Commanding Officer and Head of Establishment in order to make an appointment for a visit to the establishment and to obtain the name of an individual nominated to deal with the visit. At this stage, the existence of any areas or activities subject to the provisions of this annex should be brought to the attention of the inspector and MOD should be informed through normal command chains.

5 In most cases, it is likely that the inspector will be able to proceed without access to the activities in question. Inspection places emphasis on management systems with sampling to verify findings from interviews and the examination of documents. Physical and detailed investigation of every activity is therefore not essential. Commanding Officers and Heads of Establishment should co-operate with the inspector to facilitate the inspection by providing access to documents and to work areas so far as is possible within the bounds of the special security requirements.

6 The Commanding Officer or Head of Establishment should ensure that the escort accompanying the inspector is properly briefed and competent to ensure that security requirements are met.

7 Any difficulties arising in making arrangements for or carrying out the inspection should be referred through normal management and command chains for resolution.

8 CESO(MOD) will maintain records of when these arrangements are invoked and will discuss them at the routine liaison meetings with HSE's Crown, Fire and Police National Interest Group (CPF NIG).

**SPECIAL ARRANGEMENTS**

9 There may be occasions where an inspection cannot proceed without access to particularly sensitive information. This might be the case, for example, when a reactive inspection is required following an accident, particularly where members of the public or civilian staff are involved. There may also be cases where MOD would wish to seek HSE advice on compliance with specific statutory requirements in such areas. All such cases except those covered by paragraphs 22-29 of Annex B will be referred through normal channels to CESO(MOD) and HSE's CFP NIG for discussion. That discussion will also involve the appropriate MOD branches and security directorate.

10 The aim of any such discussion will be to seek ways in which HSE can fulfil their mandate without access to particularly sensitive information. However, should that prove impossible and it is agreed that a need to know exists, a member of the CFP NIG will be briefed and cleared to have access to the necessary information. All procedures required by the appropriate security directorate regarding the collection, storage and dissemination of that information will be followed.

11 To facilitate this process, one or more members of the CFP NIG is cleared to DV (Developed Vetting) level and CESO(MOD) is informed of their names.

12 2nd PUS and Director General HSE will be asked to seek to resolve any difficulties that cannot be resolved between CESO(MOD) and the CFP NIG or, more formally, in the Joint Liaison Committee.

**CHAPTER 8-2****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

## Para

**GENERAL AGREEMENT BETWEEN THE MINISTRY OF DEFENCE AND THE HEALTH AND SAFETY EXECUTIVE FOR NORTHERN IRELAND (HSENI)**

- 1 Introduction
- 5 Security
- 6 Disclosure of information
- 8 Enforcement
- 10 Liaison arrangements

## Annex

- A Arrangements for inspection of MoD establishments by HSENI inspectors
- B Arrangements for inspection of HM ships, submarines and auxiliaries by HSENI inspectors
- C Special arrangements for particularly sensitive activities

**GENERAL AGREEMENT BETWEEN THE MINISTRY OF DEFENCE AND THE HEALTH AND SAFETY EXECUTIVE FOR NORTHERN IRELAND (HSENI)****INTRODUCTION**

1 This agreement sets out the principles which apply to the Ministry of Defence (MOD)'s observance of health and safety legislation in respect of members of the military, naval and air forces of the Crown, MOD civilian employees and others affected by MOD activities in Northern Ireland and to the actions of the Health and Safety Executive for Northern Ireland (HSENI) as the regulatory authority. It covers all MOD activities. The arrangements made in this agreement assume conditions not amounting to armed conflict; arrangements at other times will be the subject of agreement in the Health and Safety Executive (HSE)/MOD Joint Liaison Committee (JLC) (see paragraphs 10 and 11 below).

2 There are three Annexes:

- 2.1 Annex A sets out the arrangements for inspection by HSENI;
- 2.2 Annex B deals with arrangements for inspection of HM Ships and Submarines; and
- 2.3 Annex C deals with special arrangements for particularly sensitive activities.

3 MOD recognises its duties under the Health and Safety at Work (Northern Ireland) Order 1978 (HSW(NI)O) in relation to all units, establishments and activities in Northern Ireland. These responsibilities are reflected in the Health and Safety Policy Statement of the Secretary of State for Defence. The full protection, rights and responsibilities of the Order will apply to all MOD civilian employees and to MOD Service personnel in Northern Ireland. Where MOD has been granted exemptions from specific regulations, it is the policy of the Secretary of State for Defence that health and safety standards and arrangements will be, so far as is reasonably practicable, at least as good as those required by statute.

4 HSENI recognises that judgements about the reasonable practicability of action by an employer must take into account the societal benefits from the overall purpose of the organisation. It follows that, in determining what steps are necessary for MOD to ensure the health and safety of employees and others, the requirements of defence as well as cost must be considered. Therefore, HSENI will continue to monitor MOD's observance of health and safety legislation having due regard to defence imperatives.



## **SECURITY**

5 HSENI inspectors will conduct inspections and handle protectively marked information in accordance with the Manual of Security in Government Departments. They should be allowed access to protectively marked information as required to carry out their duties, subject to the inspector having the appropriate level of security clearance and the application of the "need to know" principle. Any difficulties should be reported through normal command or management channels for clarification by the relevant security directorate. Arrangements for particularly sensitive activities have been agreed with the HSENI and are the subject of Annex C to this agreement.

## **DISCLOSURE OF INFORMATION**

6 Disclosure of information obtained by inspectors as a result of reports made to them or inspections carried out by them is subject to the provisions of the HSW(NI)O and the Code of Practice on Open Government which regulate such disclosure in respect of its purpose and the intended recipient. Protectively marked information will not be disclosed except after prior discussion and agreement with MOD. In any case of doubt, HSENI will consult MOD as to the grounds for withholding any information.

7 HSENI inspectors are obliged by the HSW(NI)O Article 30(8) to give certain information about matters affecting the safety, health and welfare of those employed to employees and their representatives. In conforming with this requirement, HSENI inspectors will disclose information only to the named safety representative or a trade union official directly associated with the establishment and matter under review and who has the requisite security clearance. In the case of HM Forces, inspectors will give the information to the CO who will receive it on behalf of the Service personnel under his control.

## **ENFORCEMENT**

8 There is no Crown exemption from the HSW(NI)O; MOD is bound by the general duties imposed by the Order and by Regulations made under it except where specific exemptions apply. However, the Crown cannot be prosecuted for breaches of the law, including failure to comply with improvement and prohibition notices. In lieu of this, HSENI have instituted a procedure for issuing Crown Notices. MOD has agreed to comply with these Notices. HSENI may make arrangements for censuring Crown bodies in respect of offences which would have led to prosecution if they had occurred in the private sector. HSENI inspectors who propose to invoke this procedure for formal censure of MOD will consult HSENI's Chief Executive who will inform the Directorate of Defence Health and Safety if the procedure is to be followed.

9 The HSW(NI)O places statutory duties on individuals both as employers and employees. HSENI has, however, undertaken not to prosecute individual Crown servants in substitution for their department. HSENI also recognises that HM Forces have powers to deal with disciplinary charges against their members. Only in exceptional circumstances would a criminal prosecution be instituted against a member of the Services under the HSW(NI)O.

## **LIAISON ARRANGEMENTS**

10 Chief Safety Officer (MOD) and the HSENI's Chief Executive will liaise as necessary concerning the application of this agreement. Disagreements between MOD and HSENI about the application of the agreement which cannot be resolved locally should be referred through the chain of command for discussion at the HSE/MOD JLC if necessary.

11 The MOD/HSE JLC will:

11.1 Seek to reconcile conflicts between defence imperatives and health and safety legislation;

11.2 Discuss proposals for new health and safety legislation, with particular reference to their application to MOD activities; and

11.3 Deal with problems arising from the implementation of this agreement and the HSE/MOD General Agreement and any detailed agreements made under them.

12 Chairmanship of the HSE/MOD JLC will rotate between MOD and HSE. The permanent membership will be:

<b>MOD</b>	Directorate of Defence Health and Safety	-	CSO(MOD)
	The Royal Navy	-	CESO(N)
	The Army	-	CESO(A)
	The Royal Air Force	-	CESO(RAF)
	Procurement Executive	-	AD Safety Pol
	D Med Pol		
	Central Staff	-	CSO(HQ)
<b>HSE</b>	The Superintending Inspector responsible for CFP NIG		
	Head of CFP NIG		
	Head of the HSE Policy Branch with responsibility for MOD		
	Chief Inspector of Explosives		
<b>Others</b> (as necessary)	HSE's Nuclear Safety Division		
	Chairman Naval Nuclear Technical Safety Panel		
	HQ US 3rd Air Force		
	Health and Safety Executive for Northern Island		

13 The working of this agreement and of the HSE/MOD JLC is subject to the oversight of 2nd PUS and the Director General HSE who will, if necessary, seek to resolve any difficulties that cannot be reconciled in the HSE/MOD JLC. In any event, the agreement will be reviewed jointly by MOD and HSENI after two years.

L M<sup>c</sup>BRINN  
Chairperson  
Health and Safety Executive for  
Northern Ireland

R HATFIELD  
Personnel Director  
on behalf of the Ministry of Defence

**CHAPTER 8-2 ANNEX A****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

Para

**ARRANGEMENTS FOR INSPECTION OF MOD ESTABLISHMENTS BY HSENI INSPECTORS**

- 1 General
- 4 Inspection arrangements
- 9 Military and operational training
- 12 Other disciplined services

**ARRANGEMENTS FOR INSPECTION OF MOD ESTABLISHMENTS BY HSENI INSPECTORS****GENERAL**

1 This annex details procedures to be followed by HSENI and by MOD in arranging, carrying out and reporting on inspections of MOD units, establishments and activities under the terms of the HSW(NI)O. These procedures are intended to facilitate such inspections, recognising the statutory right of HSENI to carry them out in all areas covered by the HSW(NI)O and their commitment to do so in such a way as not to compromise national security and the operational capability of MOD. Any difficulties should be referred through the normal channels, and will if unresolved be discussed between CSO(MOD) and HSENI's Chief Executive.

2 Inspections by HSENI are for the purpose of discharging its functions as the regulatory authority and are additional to those, which MOD undertakes for its own management purposes. HSENI's inspections in practice may be broadly classified as follows:

2.1 Planned inspections as part of HSENI's annual programme; these might vary from a half-day visit by a single inspector to a team inspection over a number of days. Substantial initiatives planned by HSENI will be brought to the attention of CSO(MOD) by HSENI's Chief Executive so that any overlaps with MOD's own inspection programmes can be discussed.

2.2 Reactive inspections responding, for example, to an accident, incident or a complaint.

2.3 Inspections for special purposes, for example, to seek information on a specific health or safety topic.

3 In all cases the procedures in this annex should be followed, recognising that reactive inspections may require a more urgent response.

**INSPECTION ARRANGEMENTS**

4 Inspection of most MOD units and establishments is undertaken by the Defence and Disciplined Services sector of HSENI. This sector is headed by a Principal Inspector who reports directly to the responsible Chief Inspector.

5 HSENI inspectors will liaise with the office of the Chief Environmental, and Safety Advisor (NI) in order to facilitate arrangements prior to undertaking a visit to a MOD unit or establishment. That office will contact the Commanding Officer or Head of Establishment regarding the proposed visit. The Commanding Officer or Head of Establishment may require an inspector to follow up such initial enquiries by submitting a written request to visit the unit or establishment, and should at this stage indicate to the inspector any areas or activities subject to the provisions of Annex C (Special arrangements for particularly sensitive activities). Failure to agree a mutually convenient date for the inspection or any other difficulties that arise should be discussed by the Commanding Officer or Head of Establishment with the inspector's senior officer. Special arrangements, which apply, to the inspection of HM Ships and Submarines and other MOD(N) vessels are detailed in Annex B.

6 On receipt of notification of an inspection, the Commanding Officer or Head of Establishment should inform MOD through the chain of command.

7 Inspectors carry a warrant. During all inspections of MOD units and establishments, the inspector will be escorted. Commanding Officers have final authority over access to areas under their command. Any decision to refuse access should be based on consideration of the health and safety of those who would be affected, the operational and security needs, the powers of the HSENI inspector and legislative requirements.

8 Any difficulties in relation to access will be referred through normal command and management chains for resolution.

#### **MILITARY AND OPERATIONAL TRAINING**

9 By its very nature, military and operational training does not lend itself to inspection by observation. HSENI inspectors may inspect military training areas, establishments and units where military training and/or operational training is being undertaken. HSENI recognises the requirement to conduct hazardous training. Its principal interest is in the MOD's procedures for controlling and managing hazardous training activities. If exceptionally an inspector feels that such training should be halted or interrupted, the inspector will raise this through the command chain.

10 Arrangements for an HSENI inspector's visit will follow the procedures in paragraphs 4 - 8 of this Annex. Where military and operational training is concerned, the Commanding Officer will take into account the requirement for military training, the risks to Service personnel of any interruption caused by the inspection and the risks to the safety of the HSENI inspector in agreeing the timing of an inspection.

11 HSENI inspection of certain particularly sensitive training activities is the subject of specific arrangements in Annex C to this agreement.

#### **OTHER DISCIPLINED SERVICES**

12 Other disciplined services whose activities are subject to inspection by HSENI may make use of MOD facilities for operational or training purposes. In such circumstances, arrangements for a visit by an inspector HSENI will follow the procedures set out in paragraphs 4 - 8 of this Annex. If representatives of another disciplined service are required to accompany an inspector during a visit, suitable arrangements will be made to facilitate those representatives.

**CHAPTER 8-2 ANNEX B****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

## Para

	ARRANGEMENTS FOR INSPECTION OF HM SHIPS, SUBMARINES AND AUXILIARIES BY HSENI INSPECTORS
1	Introduction
2	Application of the law
6	Obtaining entry for inspection
10	Sensitive activities
11	Conduct of inspections
13	HSENI Enforcement Action
14	Crown prohibition or improvement notice
15	HSENI intention to formally censure MOD (crown prosecution)

**ARRANGEMENTS FOR INSPECTION OF HM SHIPS, SUBMARINES AND AUXILIARIES BY HSENI INSPECTORS****INTRODUCTION**

1 HSENI may wish to visit to inspect relevant aspects of the MOD health and safety organisation, which may include HM Ships, Submarines and Auxiliaries alongside in the United Kingdom or in refit at any time, subject to the provisions of this protocol. Exceptionally HSENI may request to visit a vessel at sea. In carrying out such inspections HSENI will not seek to influence the design or operational capability of MOD ships.

**APPLICATION OF THE LAW**

2 The Health and Safety at Work (Northern Ireland) Order 1978 (HSW(NI)O) applies to Northern Ireland out to the seaward limits of United Kingdom territorial waters adjacent to Northern Ireland (e.g. within harbours, ports and certain inland waters as well as to the territorial waters themselves). The HSW(NI)O does not apply beyond United Kingdom territorial waters but the safety of those serving at sea in United Kingdom registered merchant vessels is provided for by the Merchant Shipping Acts (MSA).

3 Merchant shipping law is enforced by the Maritime and Coastguard Agency (MCA) of the Department for Transport (DfT). Demarcation between the HSENI and MCA is based on the agreement reached by the HSE and MCA on the demarcation of their respective duties in relation to work at the water margin such as during loading and unloading of ships (the Scope Agreement). The Scope Agreement establishes the primary concern of the MCA for the safety of ships, their crews, passengers and cargoes on board, whilst the HSENI is primarily concerned with the safety and activities of shore-based personnel and installations on land.

4 MOD owned Ships, in particular warships, are not normally registered under the MCA but are regulated under the authority of the Secretary of State for Defence by a Ship Safety Board, which in principle and practice mirrors the role of the MCA for merchant ships. Selective classes of MOD owned vessels (RFAs, yachts and commercially managed Fleet Auxiliaries) are or can be registered under the Merchant Shipping Acts using specific Orders in Council (OIC). These OIC specify the degree to which MOD elects to comply with the MCA, supplemented where necessary by Letters of Agreement (LOA) between MOD and DfT, by which MOD may agree to beneficially adopt certain additional MCA requirements. Such agreements are regularly reviewed to reflect changes in the law and/or military requirements.

5 The arrangements between MOD and the HSE with respect to access and the inspection of unregistered MOD vessels need to be clarified and work on this will take place. Pending completion of this work:

5.1 MOD will continue to regulate all aspects of ship safety on behalf of the Secretary of State for Defence through the mechanism of the Ship Safety Board. This includes inspection of all activities carried out by the Commanding Officer or Ships Company of a Warship, Submarine or Auxiliary.

5.2 MOD registered vessels are also subject to inspection by the Marine Safety Agency and for certain activities by the HSE (see paragraphs 2 and 4).

5.3 HSENI will not as a matter of course wish to carry out planned inspection of individual unregistered MOD vessels in service.

### **OBTAINING ENTRY FOR INSPECTION**

6 Navy Base Safety Groups will appoint a Local Responsible Officer (LRO) to act as the administrative co-ordinator for all HSENI inspections. The LRO will liaise with all local HSENI inspectors, Commanding Officers, Type Commanders, Directors General Naval Base and Supply and other relevant higher-level budget holders. In the case of ships undergoing refit or visiting commercial ports, MOD will similarly appoint a LRO to be the local representative of the Naval Support Command, to support and provide advice on legislation to the Refitting Authority/Commanding Officer.

7 It is unlikely that an HSENI inspector would request access to one of HM Ships or Submarines at sea. However, should such circumstances arise the LRO would co-ordinate all arrangements through CESO(N). The authority of the Commanding Officer with regard to his vessel is referred to in paragraph 9 below.

8 Before inspection on board a vessel in service, it is essential that the LRO make prior contact with the Commanding Officer who may refer the request to his Type Commander. It should then be possible to make an appointment at a time convenient to both parties. Any difficulty should be referred through the command chain and to CESO(N). The HSENI inspector will similarly refer the position through the HSE management chain.

9 When carrying out an inspection on board a MOD vessel, the HSENI inspector should bear in mind that the Commanding Officer has the final authority with regard to the access to his ship. In making his decision the Commanding Officer will take into account the safety of his crew, the safety of others, the operational and security needs, and the powers and requirements of the HSENI inspector.

### **SENSITIVE ACTIVITIES**

10 Arrangements for particularly sensitive activities are covered in Annex C to this agreement.

### **CONDUCT OF INSPECTIONS**

11 All HSENI inspectors carry a warrant. When inspecting HM Ships, Submarines and Auxiliaries inspectors will conform to the security arrangements of the vessel concerned. Inspectors will be subject to visitor control procedures and must be accompanied at all times by an officer nominated by the Commanding Officer or, with the Commanding Officer's agreement, by a person nominated by the Naval Base Safety Group.

12 Operational capability should not be impeded by the process of an inspection. If exceptionally the inspector considers that there is a need to interrupt or stop an activity, the inspector will raise this through the command chain to enable a judgement on the operational implications to be made.

**HSE ENFORCEMENT ACTION**

13 Action to be taken by the Commanding Officer in the event of Enforcement Action by the HSENI inspector

**Crown Prohibition or Improvement Notice**

14 If the inspector serves or makes it clear that it is his intention to serve a Crown Prohibition or Improvement Notice, the Commanding Officer is to request advice from his command authority immediately. Where a Prohibition Notice is served on a piece of equipment or work process that would affect the operational requirements then the Commanding Officer should point this out to the inspector and inform the command authority immediately, and CESO(N) should be informed.

**HSENI Intention to formally censure MOD (Crown Prosecution)**

15 The command authority should be informed immediately for advice. The command authority will inform CESO(N) and D SEF Pol.

**CHAPTER 8-2 ANNEX C****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

Para

**SPECIAL ARRANGEMENTS FOR PARTICULARLY SENSITIVE ACTIVITIES**

- 1 General
- 4 Inspection arrangements
- 9 Special arrangements

**SPECIAL ARRANGEMENTS FOR PARTICULARLY SENSITIVE ACTIVITIES****GENERAL**

1 Some activities carried out by MOD are particularly sensitive and are protected not only by a high level of security classification but also by a very tightly constrained "need to know". Access to information relating to such activities is highly restricted and available only to nominated persons who have been cleared by the appropriate security directorate.

2 This annex details procedures to be followed by MOD and HSENI where access to certain sensitive areas and activities should, for good reason, be subject to control. Specific guidance on areas subject to controlled access is issued to MOD units and establishments by individual Services through the chain of command. Copies of this guidance will be furnished by individual services to CSO(MOD).

3 It is not intended that this annex should be used to restrict unnecessarily the access of HSENI inspectors to MOD sites. Where these arrangements are invoked, Commanding Officers and Heads of Establishments must notify details to their chain of command HSW focal point so that details can be furnished to CSO(MOD).

**INSPECTION ARRANGEMENTS**

4 If some time has passed since the last HSENI contact with the establishment or if HSE proposes a substantial inspection initiative, inspectors will write to the Commanding Officer and Head of Establishment in order to make an appointment for a visit to the establishment and to obtain the name of an individual nominated to deal with the visit. At this stage, the existence of any areas or activities subject to the provisions of this annex should be brought to the attention of the inspector and MOD should be informed through normal command chains.

5 In most cases, it is likely that the inspector will be able to proceed without access to the activities in question. Inspection places emphasis on management systems with sampling to verify findings from interviews and the examination of documents. Physical and detailed investigation of every activity is therefore not essential. Commanding Officers and Heads of Establishments should co-operate with the inspector to facilitate the inspection by providing access to documents and to work areas so far as is possible within the bounds of the special security requirements.

6 The Commanding Officer or Head of Establishment should ensure that the escort accompanying the inspector is properly briefed and competent to ensure that security requirements are met.

7 Any difficulties arising in making arrangements for or carrying out the inspection should be referred through normal management and command chains for resolution.

8 CSO(MOD) will maintain records of when these arrangements are invoked and will discuss them as necessary with the HSENI's Chief Executive.



**SPECIAL ARRANGEMENTS**

9 There may be occasions where an inspection cannot proceed without access to particularly sensitive information. This might be the case, for example, when a reactive inspection is required following an accident, particularly where members of the public or civilian staff are involved. There may also be cases where MOD would wish to seek HSENI advice on compliance with specific statutory requirements in such areas. All such cases will be referred through normal channels to CSO(MOD) and HSENI's Chief Executive for discussion. That discussion will also involve the appropriate MOD branches and security directorate.

10 The aim of any such discussion will be to seek ways in which HSENI can fulfil their mandate without access to particularly sensitive information. However, should that prove impossible and it is agreed that a need to know exists, a member of HSENI will be briefed and cleared to have access to the necessary information. All procedures required by the appropriate security directorate regarding the collection, storage and dissemination of that information will be followed.

11 To facilitate this process, one or more members of HSENI are cleared to DV (Developed Vetting) level and CSO(MOD) is informed of their names.

12 2nd PUS and Director General HSE will be asked to seek to resolve any difficulties that cannot be resolved between CSO(MOD) and the HSENI's Chief Executive or, more formally, in the Joint Liaison Committee.

**CHAPTER 8-3****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****AGREEMENT BETWEEN THE HEALTH AND SAFETY EXECUTIVE, THE MINISTRY OF DEFENCE AND THE UNITED STATES VISITING FORCES (USVF) IN THE UNITED KINGDOM**

1 This agreement recognises that the status of the US personnel of the USVF in the UK is governed by the NATO Status of Forces Agreement (NATO SOFA) and is in implementation of that Treaty between the US and the UK. The personnel of the USVF covered within the NATO SOFA are:

- 1.1 Members of the Force (military personnel);
- 1.2 Members of the Civilian Component; and
- 1.3 Dependants of either (as defined in Article 1, paragraph 1(c), NATO SOFA).

2 This agreement also recognises that the USVF is obliged to observe, with respect to the personnel of the USVF, at least the minimum standards of occupational safety and health provided for in US legislation.

3 This agreement sets out the action to be taken by the Health and Safety Executive (HSE) and the US Military Authorities to achieve observance of health and safety legislation in respect to military members of the US military, US Department of Defense (DOD) civilians, their dependants in the UK and others involved in or affected by their activities. It covers all land-based USVF activities except conventional and nuclear explosives. The arrangements made in this agreement assume peace-time conditions. Arrangements at other times will be the subject of agreement in the Joint Liaison Committee (JLC) (paragraph 12).

4 US authorities recognise their general duties under sections 2 to 9 of the Health and Safety at Work etc Act 1974 (HSWA) in relation to all their units and establishments operating in the UK. The full protection, rights and responsibilities of the HSWA will apply to all their UK civilian employees in accordance with Article IX, paragraph 4 of the NATO SOFA. In determining whether the steps necessary to ensure the health and safety of employees and others are reasonably practical in USVF military activities and training, and while recognising existing US Government regulations, the requirements of UK and NATO defence as well as cost must be weighed in the balance.

5 The HSE will monitor USVF's observance of health and safety legislation, having due regard to defence imperatives both in development and application of standards and the USVF policy of normally applying to their activities in the UK whichever of the HSWA or US Occupational Health and Safety Act provisions affords the higher standards. HSE's method of inspections will recognise the operational character of the activities undertaken by USVF in the UK and their role in UK/NATO defence.

6 The application of specific health and safety standards (including regulations and approved codes of practice) will be determined on the individual merits of the case after agreement between HSE, USVF and MOD. Unresolved matters may be referred to higher authorities for resolution.

7 The inspection of USVF units and establishments will be carried out in full accordance with US and UK security regulations and with due regard to the command structure of US Forces and their Codes of Discipline. Inspectors will not seek to monitor observance of health and safety legislation in defence operations and military training activities such as those listed in Annex 8A paragraph 11. They will not therefore inspect operational units nor will they concern themselves with such activities in non-operational units and establishments, even where UK civilians might be working. HSE will, however, be allowed right of entry, in respect to civilians in the event of death or serious injury or as a result of serious and responsible complaint by a civilian employee, to such areas where UK civilians and other civilians not referred to in paragraph 1 are working alongside USVF personnel. Additionally, HSE inspectors will be allowed right of access where USVF activities have significant health or safety implications for the general public outside the perimeter fence.

8 HSE will have regular access to non-operational units and the non-operational areas of operational units in accordance with inspection procedures already agreed with MOD in the JLC. This will include access to US and UK contractors and their (US or UK) civilian employees or other individuals employed by DOD contractors. Where contractors' employees are working alongside USVF personnel in operational units or the operational areas of non-operational units, HSE's access will be discussed on a case-by-case basis.

9 US authorities will provide HSE with a list of their units and establishments indicating those areas/units, which they assess as open for routine inspection under the terms of this agreement. This list will be updated as necessary.

10 Inspections will be carried out by suitably cleared HSE inspectors. All inspections will be arranged through the appropriate MOD site representative (in most cases the RAF Commander) who will be the principal focal point of contact for HSE at USVF units and establishments. First inspections will be made by written appointment. All subsequent inspections will be arranged by telephone. HSE will notify the unit of the inspector's name in advance, and it will be for MOD and US authorities to ensure that he has appropriate security clearance or that access on the site can be restricted to less sensitive information/equipment. Where this is not possible HSE will arrange for a special inspection by an appropriately cleared inspector.

11 The specific activities to be inspected and the procedures for inspection, within the general guidelines mentioned above, will be the subject of agreement between HSE, USVF and MOD in the JLC. Notwithstanding these central discussions, both HSE and USVF recognise the need for flexibility in operating this agreement on the part of both HSE inspectors and US Commanding Officers' MOD representatives

12 The JLC exists to take a broad view of the application of the HSWA to MOD and to reconcile conflicts between defence imperatives and health and safety legislation. The JLC will, henceforth, also consider these matters in respect of USVF, i.e. reconcile conflicts between USVF activities and HSW legislation, consider the application of new health and safety legislation to USVF and develop more detailed agreement on areas and activities to be inspected and the procedures and methods of inspection.

13 USVF will have permanent membership on the JLC and will be represented by the USAF. 2nd PUS/MOD and DGHSE oversee the work of the JLC and will resolve any difficulties involving USVF that cannot be resolved in the JLC. Referral to higher US authority is retained in matters of conflict resolutions as may be necessary.

14 Where, following an inspection, HSE believes that there are major matters of concern which ought to be brought to the attention of US authorities and MOD, they will issue a "Notice" equivalent to the system of "Crown Notices" that exists in MOD. Where such a "Notice" is considered appropriate by an HSE inspector it will be served on the MOD representative, whose responsibility it will be both to apprise US authorities of the nature of the "Notice" and the action required and to alert MOD.

## **CHAPTER 8-4**

### **INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS**

#### **CONTENTS**

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**CROWN IMPROVEMENT AND PROHIBITION NOTICES**

1 Introduction

Annex

A Crown Improvement Notice

B Crown Prohibition Notice

#### **CROWN IMPROVEMENT AND PROHIBITION NOTICES**

##### **INTRODUCTION**

1 The forms used by the Health and Safety Executive for improvement and prohibition are contained in the annexes to this chapter.

CHAPTER 8-4 ANNEX A

INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS

CROWN IMPROVEMENT NOTICE

HEALTH AND SAFETY EXECUTIVE IMPROVEMENT NOTICE - FOR CROWN EMPLOYERS

To:.....  
.....

1 This is a formal notice to you that in the opinion of the Health and Safety Executive you are contravening the legal provisions stated at (g), and that you remedy the situation by the specified date. The Crown cannot be prosecuted for contravention of any provisions of the Health and Safety at Work etc Act, or any other of the relevant statutory provisions, nor for failure to comply with this notice. Nevertheless, failure to comply is a serious matter and will result in a formal approach from the Health and Safety Executive to an appropriate person with higher authority in your organisation or, if necessary, from the Chairman of the Health and Safety Commission to the responsible Minister.

2 An inspector may withdraw a notice or extend the period, specified in the notice before the end of that period. You should discuss the matter with the inspector who has issued the notice if you wish him to consider this, and should do so before the end of the period given in it. If the inspector does not agree to withdraw the notice or extend the period, it is open to you, as well as to him, to take up the matter at higher level.

3 The inspector issuing this notice will, at the same time, give a copy to your employees or their representatives in accordance with section 28(8) of the HSW Act.

- a. Inspector's full name: I (a) .....
- b. Inspector's official designation: one of (b) .....
- c. Official address: of (c) ..... Tel No .....
- d. Local of premises/place and activity: hereby give you notice that I am of the opinion that at (d) .....
- e. Delete as necessary: you as (e) an employer/a person wholly or partly in control of the premises
- f. Other specified capacity: (f) .....  
(e) are contravening/have contravened in circumstances that make it likely that the contravention will continue or be repeated
- g. Provisions: (g).....  
The reasons for my said opinion are: .....  
.....  
.....  
.....  
.....  
.....  
.....

I am further of the opinion that you should remedy the said contravention or, as the case may be, the matters occasioning them by:

h. Date:

(h) .....

(e) in the manner stated in the attached schedule which forms part of the Notice.

Signature ..... Date .....

being an inspector approved by an instrument in writing made pursuant to Section 19 of the Health and Safety at Work etc Act and authorised by the Health and Safety Executive to issue this notice.

(e) An improvement notice is also being served on:..... of ..... related to the matters contained in this notice.

CHAPTER 8-4 ANNEX B

INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS

CROWN PROHIBITION NOTICE

HEALTH AND SAFETY EXECUTIVE NOTICE THAT WORK SHOULD BE STOPPED (RISK OF SERIOUS PERSONAL INJURY) FOR CROWN EMPLOYERS

To:.....  
.....

1 This is a formal notice to you that in the opinion of the Health and Safety Executive the activities named involve a risk of serious personal injury and should be stopped. The Crown cannot be prosecuted for contravention of any provisions of the Health and Safety at Work etc Act, or any other relevant statutory provisions, nor for failure to comply with this notice. Nevertheless, failure to comply is a serious matter and will result in a formal approach from the Health and Safety Executive to an appropriate person with higher authority in your organisation or, if necessary, from the Chairman of the Health and Safety Commission to the responsible Minister.

2 Where this notice is not to take immediate effect, an inspector may withdraw the notice or extend the period specified in the notice before the end of that period. You should discuss the matter with the inspector who issued the notice if you wish him to consider this and should do so before the end of the period given in it. If the inspector does not agree to withdraw the notice or extend the period, it is open to you as well as to him to take up the matter at a higher level.

3 The inspector issuing this notice will, at the same time, give a copy to your employees or their representatives in accordance with section 28(8) of the HSW Act.

- a. Inspector's full name: I (a) .....
- b. Inspector's official designation: one of (b) .....
- c. Official address: of (c) ..... Tel No .....

hereby give you notice that I am of the opinion that the following activities, namely .....  
.....  
.....

d. Delete as necessary: which are (d) being carried on by you/about to be carried on by you/under your control

e. Location of activity: at (e) .....

involve, or will involve (d) a risk/an imminent risk, of serious personal injury. I am further of the opinion that the said matters involve contravention of the following statutory provisions:  
.....  
.....  
.....  
because: .....  
.....  
.....

I am further of the opinion that the said activities should not be carried on by you or under your control

d) immediately/after

f. Date:

(f) .....

unless the said contravention and matters included in the schedule, which forms part of this Notice, have been remedied.

Signature ..... Date .....

being an inspector appointed by an instrument in writing made pursuant to Section 19 of the Health and Safety at Work etc Act 1974 and authorised by the Health and Safety Executive to issue this Notice.



**CHAPTER 8-5****INTERFACE BETWEEN ENFORCING AUTHORITIES THE MOD AND OTHER ORGANISATIONS****CONTENTS**

## Para

	<b>CROWN CENSURE OF MOD BY THE HSE</b>
1	Introduction
3	HSE considerations for censure
4	HSE actions
6	MoD representation
9	Crown censure hearing attendance
11	Crown censure hearing proceeding
16	Appeal
18	Recording the censure
22	Notification
24	Related information

**CROWN CENSURE OF MOD BY THE HSE****INTRODUCTION**

1 This chapter will cover the actions taken when the Health and Safety Executive has reached a decision that the Ministry of Defence is in breach of health and safety legislation and if the MOD were not the Crown it would have taken a prosecution in a court. This does not replace the authority vested in the HSE to prosecute MOD individuals if the HSE feel they have been negligent of their duty of care, (Section 7 or 8 of the Health and Safety at Work etc Act (HASAWA) 1974) or have by their consent, connivance or neglect allowed an H&S offence to be committed (Section 37 or Section 36 (2) HASAWA)

2 The intention of the proceedings is to enable the HSE to fulfil its enforcement role in relation to Crown bodies. The procedure is accepted by MOD, and included in General Agreement between MOD and the HSE under the section on enforcement.

**HSE CONSIDERATIONS FOR CENSURE**

3 If as a result of an HSE Investigation the field inspector considers that a breach of legislation has taken place, and that they would have considered taking action against a private employer the HSE are to undertake the following checks:

3.1 The evidence is sound and that there has been a breach of H&S Law and the right sections of law is to be used for the censure.

3.2 That there is no defence in law

3.3 That prosecution would have been in line with current HSE policy

3.4 That had they proceeded to court there was a reasonable chance of achieving a conviction.

**HSE ACTIONS**

4 The HSE issue Intent to Proceed and Summons to a Censure to the Senior Officer of the establishment or organisation considered responsible for the breach of duty. The senior officer will act as the MOD representative for the censure.

**NOTE**

The Censure is against the MOD not the individual named on the summons. The individual is representing the MOD.

5 The HSE will supply, either in writing or at an arranged meeting, either with the summons or soon after, details of the nature of the breach and of their investigation, which has led to the action. This is to be carried out with sufficient time for the MOD representative to take legal advice from their Service or MOD Legal branch before the censure hearing.

**MOD REPRESENTATION**

6 The MOD representative for the Censure will either be the person initially selected by the HSE, and named on the summons, or a more senior officer from the chain of command.

7 At the censure the line manager selected to represent MOD will attend and in addition, the line manager who received the summons, if not the same person. Other MOD personnel may attend at the request of the MOD representative, D SEF Pol are to be offered the opportunity to attend, ex officio, in light of any actions that impact on MOD H&S Policy

8 Official MOD trade union health and safety representatives from the area concerned with the censure may attend as observers

**Crown censure hearing attendance**

9 The Censure hearing will have participating and non-participating attendees as follows

Participating attendees:

## HSE side

- The Chairman a senior HSE official
- The investigating HSE inspector
- An HSE Secretary

## MOD side

- MOD representative
- MOD line Manager summoned (if different)
- MOD Secretary

## In attendance but non-participants, if requested

- D SEF Pol
- HSE advisors
- MOD advisors
- Official Trade Union representative from the area concerned

Other persons who may have a vested interest in the proceedings will only be permitted to attend with the agreement of the MOD Representative.

**Crown censure hearing proceeding**

10 The HSE inspector who conducted the investigation details where HSE consider the law has been breached, indicating the relevant regulations.

11 The HSE Chairman will request the MOD representative to accept three points in order to record the censure, these being that;

11.1 MOD accept there has been a breach of the stated H&S Law

11.2 That had the offenders not been the Crown they would have been prosecuted.

11.3 That there would have been a reasonable chance that a conviction would have resulted.

12 The MOD representative then has the opportunity to refute the breach with supporting evidence or indicate mitigating circumstance. The MOD representative may also indicate the actions that have been taken since the incident that has given rise to the censure.

13 The MOD representative is then officially requested to either accept or decline the censure, in whole or in part.

14 If the censure is accepted by the MOD representative it is recorded in the minutes of the meeting that a Crown Censure has been actioned.

### **APPEAL**

15 If however the MOD Representative declines to accept the Censure, or part of the Censure, The MOD Representative should make a written representation to the relevant HSE Head of Division after consultation with CESO(MOD). The HSE will also reconsider the evidence and if they consider a breach is still valid, and no written representation having been received by them, they will record the censure without further action.

16 If after representations have been made the HSE remains confident that a decision to prosecute would have been justified The HSE Director General will write to PUS and seek agreement to record the censure.

### **RECORDING THE CENSURE**

17 The HSE will produce the minutes of the hearing and forward a copy to the MOD representative for their agreement before publishing.

18 The MOD Representative will ensure that the minutes are a true reflection on the censure proceedings and check that no security problems exist with any subsequent publication of the contents.

19 When agreed by MOD the censure minutes become the record of the censure. A copy will be supplied to the MOD representative. A copy of the minutes is to be supplied to D SEF Pol.

20 The minutes will be held by the HSE as a public record. The Censure will also be recorded in the HSC Annual Report Supplement on Prosecutions.

### **NOTIFICATION**

21 The Department will be required to inform the Minister of any accepted or disputed Censure after first consulting on the submission with the HSE, Crown Fire and Police Division, Principle Inspector.

22 The Censure should be recorded on a MF 2000 as an enforcement action and forwarded to the MOD accident/incident mainframe for inclusion on the MOD database.

### **RELATED INFORMATION**

23 Related information

- HSE/MOD General Agreement
- Inspection of MOD by the HSE and Crown Notices