

MEMORANDUM OF UNDERSTANDING
between
THE HEALTH AND SAFETY EXECUTIVE
and
THE SCOTTISH ENVIRONMENT PROTECTION AGENCY
on
MATTERS OF MUTUAL CONCERN AT LICENSED NUCLEAR SITES IN
SCOTLAND

Introduction

1. This Memorandum of Understanding is between the Health and Safety Executive (HSE) and the Scottish Environment Protection Agency (SEPA). The purpose of this Memorandum is to set out how the regulatory activities of HSE and SEPA on licensed nuclear sites in Scotland will be coordinated. Such coordination should improve the effectiveness with which public sector resources are deployed and avoid the difficulties which might otherwise arise. Day-to-day regulation is conducted by authorised officers of SEPA and inspectors of Her Majesty's Nuclear Installations Inspectorate (HMNII), which is part of HSE. The memorandum relates principally to the regulation of nuclear safety and radioactive waste management.
2. The working arrangements set out in this Memorandum of Understanding will also be followed in applying the principles of nuclear safety and environmental protection to Crown premises, including Defence establishments, where a nuclear site licence would be required if they were not exempt from the relevant Acts and where HSE and SEPA inspect those premises by administrative arrangements or in pursuance of the Ionising Radiations Regulations 1999.

Background

3. By virtue of the Nuclear Installations Act 1965 (as amended), the Health and Safety at Work etc. Act 1974, the Radioactive Substances Act 1993 and the Environment Act 1995 different statutory powers apply to the regulation by HSE and SEPA respectively of radioactive waste management at licensed nuclear sites. Both SEPA and HSE will place conditions on operators on licensed sites. Such requirements may relate to the location of premises and the design of, and/or modifications to, plant, processes, procedures and systems of work, including those for decommissioning activities. In addition to the above there is a range of health and safety and environmental legislation applicable in relation to licensed nuclear sites enforced by HSE and SEPA respectively. Although much of this legislation is not primarily aimed at radioactive waste management, its application may have a peripheral effect on nuclear safety or environmental protection. An example of such legislation is the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, for which HSE are the competent authority and SEPA are statutory consultees.

4. The basic distinction between the responsibilities of HSE and SEPA for regulating nuclear installations is that HSE is concerned primarily with the prevention of accidents and the protection of the workforce and the public from work activity, whilst SEPA is concerned primarily with the effects on the public and the environment arising from disposal of waste, including routine releases. However, there are many practical points where this distinction requires refinement; hence the need for this Memorandum of Understanding.

Objectives

5. The objectives of this Memorandum of Understanding are to facilitate effective and consistent regulation of radioactive waste management on licensed nuclear sites in Scotland by ensuring that:
 - (i) activities of SEPA and HSE in relation to licensed nuclear sites are consistent, coordinated and comprehensive;
 - (ii) the possibility of conflicting requirements being placed on licensees, or others operating on nuclear sites (collectively referred to as 'operators' in this memorandum), is eliminated;
 - (iii) duplication of activity is minimised.

Working Arrangements

6. The working arrangements to achieve these objectives are set out in the attached schedule. They are based upon the following principles:
 - (i) Either SEPA or HSE will, whenever possible, be identified as the body having the primary responsibility in relation to each of the interfaces listed in the schedule.
 - (ii) The body having the primary responsibility will be the normal contact point for the operator for all matters relevant to that particular interface. This will not, however, remove the requirement for the operator to obtain all necessary permits, licences or other consents required from SEPA or HSE.
 - (iii) The operator's formal dealing will, as a general rule, be with the body which has primary responsibility.
 - (iv) The body having the secondary responsibility will be consulted by that having the primary responsibility.
 - (v) Where SEPA and HSE disagree on any matter concerning siting, plant design, operations, discharges etc., they will seek to resolve their differences before any specific requirements are placed upon the operator.
 - (vi) Where such disagreements cannot be resolved by the staff concerned, the matter will be referred to a Joint Review Committee (see paragraph 9 below).
7. Although the above working arrangements and the attached schedule refer primarily to matters relating to Site Licences under the Nuclear Installations Act and Authorisations

under the Radioactive Substances Act, the general principles should be applied in respect of any health and safety or environmental legislation applicable on a nuclear licensed site.

Consultation

8. In dealing with applications for new or varied authorisations, new or varied nuclear site licences or consents under licence conditions, HSE and SEPA will aim to consult at the earliest opportunity and on the fullest information possible to make the process of coming to a decision on such applications as effective as possible. This may involve consultation at more than one stage of consideration of an application. Each case will need to be considered on its merits, but typically consultation between HSE and SEPA may include, as appropriate:
 - on receipt of an application for a licence, authorisation or consent;
 - on the proposed content of any public consultation or public body notification on such an application;
 - on the responses to a public consultation or public body notification, particularly where issues raised are relevant to the other body;
 - on the proposed final decision in relation to the application, particularly if this has changed substantially from versions previously consulted on.

Joint Review Committee

9. A Joint Review Committee will meet whenever the need arises to consider matters referred to it under the terms of this Memorandum of Understanding. It will be chaired by the Chief Inspector of Nuclear Installations for HSE and the Chief Executive of SEPA, or their nominated deputies. SEPA and HSE will provide the joint secretariat. The chair will be taken alternately on an annual basis by SEPA and HSE. HSE will take the chair for the first year commencing from the date the MoU was signed.
10. Committee membership will comprise representatives of SEPA and of HSE.

Responsibilities

11. It is the responsibility of all involved, particularly of authorised officers, inspectors and managers at each level within HSE and SEPA, to ensure that the principles and procedures set out in this Memorandum of Understanding are observed. It is recognised that this may involve discussions particularly between the relevant authorised officers and inspectors at the working level to agree any necessary interpretation.

Schedule

12. The attached Schedule shows where responsibilities interface, which body has primary and secondary responsibility, and the working arrangements required to comply with the Memorandum of Understanding.

Signed

Patricia Henton
Chief Executive
of SEPA

Laurence Williams
Chief Inspector of Nuclear Installations
for HSE

Date: 21 March 2002

SCHEDULE

INTERFACES AND WORKING ARRANGEMENTS

Table 1	Issue of Licences under the Nuclear Installations Act
Table 2	Issue of Authorisations under the Radioactive Substances Act
Table 3	Design Assessment of Plant
Table 4	Inspection of Sites during Operation
Table 5	Periodic Review
Table 6	Investigation of Incidents
Table 7	Enforcement Action

Definitions

Nuclear Safety Principles

Principles regarding the safety and acceptable risk to workers and the general public arising both from the normal operation (including accumulation and storage of radioactive waste and decommissioning) of nuclear facilities and from accidents.

Environmental Protection Principles

Principles that determine the acceptable risk for the general public and protection of the environment arising from the management and disposal of radioactive waste (including waste minimisation and mitigating and remedying the effects of pollution and accidents) from nuclear facilities.

Relevant Licence Conditions

Relevant licence conditions in the standard nuclear site licence are:

- No 4 - Restrictions on nuclear matter on the site;
- No 32 - Accumulation of Radioactive Waste;
- No 33 - Disposal of Radioactive Waste;
- No 34 - Leakage and Escape of Radioactive Material and Radioactive Waste;
- No 35 - Decommissioning
- No 36 – Management of Change

Abbreviations

HSWA - the Health and Safety at Work etc. Act 1974

NIA65 - the Nuclear Installations Act 1965 (as amended)

RSA93 - the Radioactive Substances Act 1993

Table 1: Issue of Licences under the Nuclear Installations Act

Primary Responsibility	Secondary Responsibility
<p>HSE will ensure that the: granting, revocation, or variation of a licence; or attachment, variation or revocation of conditions to a licence will be in accordance with nuclear safety principles. The conditions in the licence may provide for the regulation of the design, construction, commissioning, operation and decommissioning of the facility in question.</p>	<p>SEPA will check that the granting or revocation of a nuclear site licence is consistent with the environmental protection principles and will not prejudice any legal process under RSA93 or other environmental legislation.</p> <p>SEPA will check that the variation of a nuclear site licence, or addition/variation/revocation of a licence condition, that is relevant to radioactive waste management is consistent with the environmental protection principles and will not prejudice any legal process under RSA93 or other environmental legislation.</p>
<p><u>Working Arrangements</u></p>	
<p><u>HSE will consult SEPA before:</u></p> <p>(i) granting or revoking a nuclear site licence; and</p> <p>(ii) varying a nuclear site licence, or adding/ varying/ revoking a licence condition, that relates to the creation, accumulation or disposal of radioactive waste.</p> <p><u>In consequence of that consultation:</u></p> <ol style="list-style-type: none"> 1. SEPA may seek clarification directly from the operator. 2. SEPA will advise HSE of those matters which do not in its view conform with the environmental protection principles. 3. SEPA will advise HSE if in its opinion the issue of a licence would prejudice any legal process under RSA93 or other environmental legislation. 4. HSE will not issue, vary or revoke a licence without consultation with SEPA and taking full and meaningful account of any environmental issues. 5. HSE will not add, vary or revoke a relevant licence condition without consultation with SEPA and taking full and meaningful account of any environmental issues. 	

Table 2: Issue of Authorisations to Nuclear Sites under the Radioactive Substances Act

Primary Responsibility	Secondary Responsibility
<p>SEPA will ensure that any: authorisation granted under RSA93; or variation to an authorisation will be in accordance with the environmental protection principles.</p> <p>The conditions in the authorisation may provide for the commissioning, operation and decommissioning of the facilities in question.</p>	<p>HSE will check that any authorisation granted, or any variation of an authorisation, will be consistent with the nuclear safety principles and will not prejudice any legal process under NIA65 or any other relevant statutory provision of HSWA.</p>
<u>Working Arrangements</u>	
<p><u>SEPA will consult HSE</u></p> <p>(i) on any application for an authorisation, and if considering granting an authorisation on any proposed limitations or conditions: and</p> <p>(ii) on any proposal to revoke or vary an authorisation, including information on any proposed changes to limitations or conditions related to disposal of radioactive waste.</p> <p><u>In consequence of that consultation:</u></p> <ol style="list-style-type: none"> 1. HSE may seek clarification directly from the operator. 2. HSE will advise SEPA of those matters which do not in its view conform with the nuclear safety principles. 3. HSE will advise SEPA if in its opinion the issue or variation of an authorisation would prejudice any legal process under NIA65 or other relevant statutory provisions of HSWA. 4. SEPA will not issue or vary an authorisation without consultation with HSE and taking full and meaningful account of any nuclear safety issues. 5. Where a Direction under Section 23 of RSA93 is issued, or SEPA is informed that such a Direction is intended to be issued, in respect of an authorisation under RSA93, SEPA will advise HSE so that HSE can, if required, advise on the Safety implication of such a Direction or proposed Direction. 	

Table 3: Design Assessment of Plant on Nuclear Licensed Sites

Primary Responsibility	Secondary Responsibility
<p>HSE has responsibility for the assessment of the safety case for new nuclear installations to be licensed or modifications to existing licensed facilities, including decommissioning, for the purposes of the relevant statutory provisions of HSWA.</p> <p>SEPA has responsibility for assessing the effects of radioactive waste disposal on the environment resulting from new nuclear installations to be licensed or modifications to existing licensed facilities including decommissioning.</p> <p>If a new or revised authorisation under RSA93 is required then the arrangements in Table 2 will apply.</p>	<p>SEPA has responsibility for checking that proposals which bear on the disposal of radioactive waste are consistent with the environmental protection principles.</p>
<u>Working Arrangements</u>	
<p>HSE will be the normal contact point for the operator.</p> <p>HSE will negotiate the submission of safety documents and the programme for licensing or plant modification.</p> <ol style="list-style-type: none"> 1. SEPA may seek clarification directly from the operator and will if necessary advise HSE. 2. SEPA will advise HSE of those matters which do not in its view conform with the environmental protection principles. 3. SEPA will advise HSE if in its opinion the issue of a consent would prejudice any legal process under RSA93 or other environmental legislation. 4. HSE will not issue a consent without consultation with SEPA and taking full and meaningful account of any environmental issues. 	

Table 4: Inspection of Nuclear Sites during operation

Primary Responsibility	Secondary Responsibility
<p>1. HSE shall inspect the site as relevant to ensure compliance with the Nuclear Site Licence and other relevant statutory provisions of HSWA.</p> <p>2. SEPA shall inspect the site as relevant to ensure compliance with authorisations under RSA93 and other environmental legislation.</p>	
<u>Working Arrangements</u>	
<p>HSE and SEPA will for each site:</p> <p>(a) where appropriate draw up a schedule of plant / areas of site and issues on the site indicating whether HSE or SEPA will take the lead in inspection. This should aim to avoid unnecessary duplication of inspection, ensure no part of the site is overlooked, and be drawn up in accordance with the aims of this Memorandum of Understanding.</p> <p>(b) discuss inspection plans</p> <p>(c) agree a programme of joint inspection between them as appropriate;</p> <p>(d) exchange information about the matters of mutual interest, this may include exchange of information regarding any proposed modifications to licensed facilities which may result in the requirement for an Article 37 submission.</p> <p>Within the guidelines of the principles set out in this Memorandum of Understanding, SEPA and HSE shall be free to arrange their respective inspection programmes directly with operators.</p>	

Table 5: Periodic Review

Primary Responsibility	Secondary Responsibility
HSE will assess the licensee's Periodic Safety Reviews in accordance with HSE policy.	SEPA is responsible for checking that any conclusions from the assessment are consistent with the environmental protection principles.
SEPA will review authorisations under RSA93 in accordance with SEPA policy .	HSE is responsible for checking that any change in conditions of authorisation under RSA93 is consistent with the nuclear safety principles.
<u>Working Arrangements</u>	
HSE will advise SEPA that it intends to assess a Periodic Safety Review. The arrangements in Table 3 will then apply.	
SEPA will advise HSE that it intends to carry out a review. The arrangements in Table 2 will then apply.	

Table 6: Investigation of Incidents and Accidents involving radioactivity at Nuclear Sites

Primary Responsibility	Secondary Responsibility
<p>HSE will investigate incidents and accidents that could represent a breach of conditions of the site licence and will inform SEPA. HSE will advise the appropriate minister on such incidents and accidents and their effect on safety.</p>	<p>SEPA will advise Scottish Ministers on such incidents and accidents and their consequences for the environment.</p>
<p>SEPA will investigate incidents and accidents that could represent a breach of conditions of authorisation under RSA93, and will inform HSE. SEPA will advise Scottish Ministers on such incidents and accidents and their consequences for the environment.</p>	<p>HSE will advise the appropriate minister on such incidents and accidents and their effect on safety.</p>
<p><u>Working Arrangements</u></p>	
<p>HSE will inform SEPA when it conducts an investigation into an incident or accident with potential consequences for the environment.</p> <p>SEPA will inform HSE when it conducts an investigation into an incident or accident with potential consequences for health and safety.</p> <p>In the investigation of incidents and accidents which are of interest to both HSE and SEPA, there will, where appropriate, be a joint investigation and a single joint report.</p> <p>The body with the primary responsibility will co-ordinate the investigation team. Responsibilities will be decided at the operational level or, if necessary, by the Joint Review Committee.</p>	

Table 7: Enforcement Action relevant to nuclear safety or radioactive waste management at Nuclear Sites

Primary Responsibility	Secondary Responsibility
<p>HSE will take appropriate enforcement action, including the use of powers under the nuclear site licence, Improvement and Prohibition Notices, and referring matters to the Procurator Fiscal for prosecution, in respect of possible breaches of the relevant statutory provisions of HSWA. HSE will advise the appropriate minister on such enforcement actions.</p>	<p>SEPA will advise HSE if the use of any enforcement action might prejudice environmental protection, and if prosecution would affect any legal action it may have proposed.</p>
<p>SEPA will take appropriate enforcement action, including the issue of Enforcement and Prohibition Notices, and referring matters to the Procurator Fiscal for prosecution, in respect of possible breaches of the RSA93 or other environmental legislation. SEPA will advise the Scottish Ministers on such enforcement actions.</p>	<p>HSE will advise SEPA if the issue of any Notice might prejudice nuclear safety, and if prosecution would affect any legal action it may have proposed.</p>
<u>Working Arrangements</u>	
<p>HSE will advise SEPA in advance of its intention to use enforcement action relevant to radioactive waste management except where there is a need to take immediate action and in such cases will advise as soon as possible after it has done so.</p> <p>SEPA will advise HSE in advance of its intention to use enforcement action relevant to nuclear safety except where there is a need to take immediate action and in such cases will advise as soon as possible after it has done so.</p> <p>Where prosecution is being considered for an incident involving both breaches of environmental and health and safety legislation, HSE and SEPA will consider joint action in referring this to the Procurator Fiscal.</p>	