

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE HEALTH
AND SAFETY EXECUTIVE, THE ENVIRONMENT AGENCY AND THE
SCOTTISH ENVIRONMENT PROTECTION AGENCY ON THE
IMPLEMENTATION OF THE SEVESO II DIRECTIVE**

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INTRODUCTION

1. This Memorandum of Understanding (MoU) is between the Health and Safety Executive (HSE), the Environment Agency and the Scottish Environment Protection Agency. In England and Wales, HSE and the Environment Agency are, acting jointly, the Competent Authority (CA) under European Council Directive 96/82/EC of 9 December 1996 on the Control Of Major Accident Hazards involving dangerous substances (the Seveso II Directive) as amended. In Scotland, HSE and the Scottish Environment Protection Agency are, acting jointly, the CA. In this MoU the Environment Agency and the Scottish Environment Protection Agency are jointly referred to as “the Agencies”. The Seveso II Directive is implemented largely by the Control of Major Accident Hazards Regulations 1999, as amended (COMAH). The land use planning requirements of Article 12 of the Directive are separately implemented by planning legislation.
2. HSE and the Agencies work in partnership to meet the CA duties under COMAH. This MoU defines how the organisations work together as an integrated operational authority by identifying how the experience and knowledge of each organisation is applied, how information is shared and by recording key agreements.
3. Since HSE has the primary expertise on health and safety issues and the Agencies have the primary expertise on environmental issues, the COMAH Regulations will be enforced in practice by the parties acting jointly and severally as the CA. The CA is responsible in law for discharging obligations under the Directive and COMAH Regulations. However, HSE and the Agencies can allocate functions between themselves administratively, and that is a purpose of this MoU. Corporate lead for the CA will be provided by the CA Strategic Management Group (CASMG) (see paragraph 11) which will be co-chaired by nominated senior management representatives of each organisation. The CA Implementation Group (CAIG) (see paragraph 12) will ensure that this MoU is reviewed every three years.
4. HSE will be enforcing other relevant statutory provisions at COMAH establishments. The Agencies will also be enforcing relevant environmental legislation at some COMAH establishments. Consequently it is recognised that there will be areas of overlap between the requirements of other legislation and the requirements of COMAH. This MoU relates solely to the application of COMAH at relevant establishments.
5. The MoU aims to ensure the effective co-ordination of the CA's activities under the COMAH Regulations. Such co-ordination will ensure that the risks to people's health and safety and the risks to the environment from major accidents are properly regulated. It will also ensure that there is consistency of regulation and advice, a burden on

industry that is proportionate to risk and arrangements that are transparent and without unnecessary duplication

6. It is the responsibility of all staff within HSE and the Agencies to ensure that the principles and procedures set out in this MoU are observed.

OBJECTIVES

7. The MoU aims to promote high levels of protection from major accidents for people and the environment by ensuring that:
 - a. The activities of HSE and the Agencies, acting together as CA in relation to relevant duties and establishments within scope of the COMAH Regulations, are co-ordinated, consistent, timely, transparent, targeted and proportionate;
 - b. Conflicting requirements are not placed on operators; and,
 - c. HSE and the Agencies actively collaborate on issues of mutual interest and avoid unnecessary duplication of effort.

WORKING ARRANGEMENTS

8. It is recognised that there are many aspects of an operator's activities that are relevant to both environmental and health and safety protection. HSE and the Agencies share common interest in prevention and mitigation systems and other measures. The working arrangements therefore need to be flexible to reflect this. The central feature of the arrangements is that HSE and the Agencies should be aware of each other's respective interests at the outset. They should continue a dialogue and, where appropriate, agree lead responsibilities throughout the processes of assessment, inspection or other intervention. The aim is to ensure that judgements made by the CA about the adequacy of measures for prevention, control and mitigation of major accidents are balanced, co-ordinated and coherent.

PRINCIPLES

9. The working arrangements to achieve these objectives are set out in the attached schedules. They are based on the following principles:
 - a. The CA is responsible for enforcing the COMAH Regulations. However, within the framework of this MoU and based on the primary experience of each organisation, HSE will normally lead in dealing with issues concerning the health and safety of people, and the Agencies will normally lead on issues concerning environmental protection. As many aspects of prevention, control and mitigation are common both to health and safety and the environment, close communication between

the parts of the CA will be essential. The CA will agree who will take the operational lead on a case by case basis;

- b. Detailed methods of working and involvement of staff will be determined at the operational level within the framework of this MoU. The CA will ensure that appropriate contacts are identified to co-ordinate regulatory activities at each COMAH establishment;
- c. For the key regulatory activities which require a response from the CA to the duty holder, the response will reflect an agreed position between HSE and the Agencies. HSE will communicate this to the operator.
- d. HSE and the Agencies will agree jointly any documents such as guidance material, proforma letters and public information leaflets which are to be issued under the authority of the CA.
- e. The CA has a duty to issue Prohibition Notices under Regulation 18. Within the framework of the working arrangements in Schedule 3 to the MoU, HSE and the Agencies recognise that each may need to act unilaterally when an immediate need is identified. The body taking such action will inform its partner in the CA of it at the earliest opportunity if it has not been possible to agree the intended action prior to taking it.

HANDLING DISAGREEMENTS

- 10. If HSE and the Agencies disagree concerning the matters addressed in this MoU, specific requirements will not be placed on operators until those disagreements have been resolved. The first step will be to attempt to resolve them locally. If this is not successful, the matter will be referred to the next level of management within HSE and the Agencies. If the disagreements are not resolved at that level they will be then referred to the CAIG. If resolution is still not possible disagreements will be referred to the CASMG.

CA STRATEGIC MANAGEMENT GROUP (CASMG)

- 11. The CASMG will act as the senior body within the CA. It will endorse this MoU and approve key policy and operating principle decisions on behalf of the CA, resolve key disagreements affecting the integrated operations of the CA, maintain an overview of CA performance via the CAIG and provide a single management focal point for the CA. Membership of the CASMG shall be as set out in Annex 1 of this MoU.

CA IMPLEMENTATION GROUP (CAIG)

- 12. The CAIG will advise on possible amendments to the MoU, keep under review the policies and working arrangements within the framework of

the schedules attached to this MoU, review operational strategy and if possible resolve any problems not resolved at the local management level. Membership of the CAIG and the frequency of, and agenda for, meetings will be by mutual agreement between the relevant Head of Unit (Hazardous Installations Directorate) for HSE, the Head of Industry Regulation for the Environment Agency and the Head of National Environmental Protection and Improvement for the Scottish Environment Protection Agency.

DISCLOSURE OF INFORMATION

13. COMAH establishments are subject to the Environmental Information Regulations 2004 and any information requested must be disclosed unless it is covered by an exemption (including any statutory restriction). To encourage a consistent approach to disclosure, it is important that each part of the CA having responsibilities for a particular establishment is aware of any proposed disclosure to the public. The part of the CA intending to disclose information will therefore make its partner in the CA aware of its intention prior to disclosure.

MONITORING OF PERFORMANCE

14. CAIG will monitor the CA's performance at the operational level against the principles set out in this MoU. Where deficiencies in performance are found CAIG will make enquiries to determine the cause of the deficiency. CAIG will report to the CASMG on an annual basis to ensure a senior management overview of the CA's performance. CAIG will attempt to resolve any problems relating to the CA's performance and where this is not possible will refer the matter to CASMG for a decision.

SCHEDULE 1. ASSESSMENT OF COMAH SAFETY REPORTS

Working Arrangements

- i. HSE will undertake administrative functions on behalf of the CA with responsibility for the receipt and distribution of reports, the arrangements for tracking their status and keeping the relevant Agency informed.
- ii. HSE and the relevant Agency will agree the appointment of an Assessment Manager (AM) and the composition of the assessment team, to act on behalf of the CA, which will be responsible for undertaking the assessment process in accordance with procedures in the CA Safety Report Assessment Manual (SRAM).
- iii. The assessment team will consult with the AM as soon as possible whenever there are grounds for believing that measures for prevention and mitigation of major accidents are seriously deficient.

- iv. Where potentially serious deficiencies are identified, HSE and the relevant Agency will decide jointly who will visit the establishment to confirm the CA's findings.
- v. The CA assessment team will meet, except where they jointly agree otherwise, to discuss the conclusions of the assessment and whether there is a need to prohibit operations, prior to informing the operator.
- vi. No action will be taken to communicate the formal conclusions or to prohibit operations where there are serious deficiencies without agreement by the assessment team.
- vii. The conclusion of the assessment will incorporate the views of the assessment team, and a single response will be sent on behalf of the CA to the operator.
- viii. The same procedures will apply for revised safety reports or reports submitted prior to modifications in accordance with Regulation 8 of COMAH.

SCHEDULE 2. INSPECTION OF COMAH ESTABLISHMENTS

Working Arrangements

Top Tier Establishments

- i. CA inspection plans for Top Tier establishments will be based on a number of sources including findings from COMAH safety report assessment, previous interventions, incidents, investigation and enforcement and national, industry sector and company wide strategies and priorities. Interventions arising from assessment of safety reports will be agreed within the assessment team. HSE and the relevant Agency will consult and agree on all CA inspection plans relating to COMAH activities for each site on an annual basis and review those plans where necessary to ensure adherence to the Regulations' requirements.

Lower Tier Establishments

- ii. CA COMAH inspection plans for Lower Tier establishments will be based on information in operators' Major Accident Prevention Policies (MAPPs), previous interventions, incidents, investigations and enforcement and national, industry sector and company wide strategies and priorities. HSE and the relevant Agency will discuss, exchange, and, where appropriate, review inspection programmes for establishments subject to the Regulations annually at the local level, to ensure adherence to the Regulations' requirements.

General

- iii. The preparation and implementation of inspection programmes will in every case be co-ordinated between HSE and the relevant Agency and it will be agreed how the plan will be implemented;
- iv. HSE and the relevant Agency will identify areas where both parties have similar objectives, and work together to co-ordinate their activities so as to prevent unnecessary duplication of effort and minimise the burden on industry.
- v. Information will be exchanged between the parties as appropriate, e.g. when changes to inspection or other intervention plans are made.
- vi. When only one party undertakes an inspection under COMAH, it will pass a copy of the inspection report to the other party. Additionally, for Lower Tier establishments, it will communicate any identified matter of evident concern relating to the MAPP to the other party.

SCHEDULE 3. FORMAL ENFORCEMENT OF COMAH DUTIES

Working Arrangements

- i. HSE and the relevant Agency will not undertake formal enforcement action in the form of enforcement notices or prosecution arising from the duties in the COMAH Regulations without discussion and agreement about the most appropriate action to be taken.
- ii. The exception will be where immediate prohibition is required and attempts to contact staff in the relevant CA partner are impractical. In those circumstances contact between the parties should take place as soon as is possible.
- iii. Letters relevant to duties in the COMAH Regulations sent to operators by either the relevant Agency or HSE will be exchanged.

SCHEDULE 4. REPORTING AND INVESTIGATION OF COMAH MAJOR ACCIDENTS

Working Arrangements

- i. Accidents, including major accidents, may initially be notified to the CA via HSE, via the relevant Agency, or via both parties. Upon receipt of information about a major accident as defined by the Regulations, the two parts of the CA will exchange information and consult on appropriate action to take as soon as possible.
- ii. Any necessary follow up action with operators following a major accident will be agreed by those involved in the investigation.

- iii. Where an accident has been investigated by the CA and it is a major accident that must be reported to the European Commission, HSE will input the details onto the European Commission's MARS database on behalf of the CA.
- iv. Any accident report linked to COMAH activities that is published will be under the auspices of the CA.
- v. HSE will send major accident reports to the European Commission and maintain the administrative arrangements to support the system.

SCHEDULE 5. COMAH SAFETY REPORT DEROGATIONS

Working Arrangements

HSE will, on behalf of the CA, undertake the administrative functions associated with the processing of applications for safety report derogations. On receipt of an application for derogation, HSE will arrange for the requisite number of copies of the application to be distributed to relevant parties in the CA.

- i. The procedure for assessing the derogation application and applying the criteria is provided in SRAM and includes:
 - a) derogation application received and checked by CA;
 - b) application passed to CA safety report assessment team;
 - c) safety report assessment team reach conclusion on application.
- ii. The CA will agree a response based on the conclusion of the safety report assessment team and a communication will be sent to the operator by HSE on behalf of the CA.
- iii. HSE, on behalf of the CA, will inform the European Commission of successful applications for derogation.

SCHEDULE 6. COMAH EMERGENCY PLANNING DEROGATIONS

Working Arrangements

- i. HSE will, on behalf of the CA, undertake the administrative functions associated with processing and progress tracking applications for derogation
- ii. HSE will arrange for the distribution of copies of applications for derogation within the CA.

- iii. HSE and the relevant Agency will assess each derogation application jointly and agree whether the derogation criteria apply to the establishment.
- iv. HSE will send a communication to the operator and the local authority on behalf of the CA with the results of the CA's assessment of the derogation application

SCHEDULE 7. COMAH EMERGENCY PLANNING

Working Arrangements

- i. CA staff from the relevant Agency and HSE, through their involvement in the safety report assessment team or inspection activity for top tier establishments, or through inspection of the Safety Management System for lower tier establishments, will assess the mitigation arrangements on which the on-site emergency plan will be based.
- ii. Within the assessment team, HSE will lead on primary advice on health and safety aspects and the relevant Agency will lead on primary advice on environmental aspects to be taken into account in preparation of off-site emergency plans. The assessment team will then consider whether the plan contains the required information and is fit for purpose. A communication from the CA will be sent to the local authority as appropriate via HSE.
- iii. Inspection of establishments may include attendance at the testing of on-site or off-site emergency plans. Attendance will be co-ordinated between HSE and the relevant Agency to prevent duplication of effort and to ensure that the burden on industry is proportionate.
- iv. Any recommendations on the review of emergency plans made as a result of their inspection or attendance at emergency plan tests will be agreed between HSE and the relevant Agency.

SCHEDULE 8. DESIGNATION OF COMAH DOMINO EFFECTS

Working Arrangements

- i. HSE and the relevant Agency will agree the criteria for designation of 'domino effects' establishments.
- ii. HSE will lead in assessing whether establishments fulfil the criteria based on fire and explosion risks and releases to the atmosphere and the relevant Agency will lead where the releases are to water or ground.

SCHEDULE 9. DISCLOSURE OF INFORMATION

Working Arrangements

- i. The requirement on the CA to keep a public register of Safety Reports and notifications will be discharged through Public Registers held at relevant Agency offices, and to this end HSE will make available to the relevant Agency all documentation it holds which is to be placed on the Public Register.
- ii. HSE and the relevant Agency will inform each other as soon as possible where requests from operators to withhold information are received.
- iii. HSE and the relevant Agency will agree whether a request for confidentiality is reasonable and a communication will be sent to the operator by the HSE on behalf of the CA.
- iv. Operators will notify HSE of requests directed to the Secretary of State on cases of national security under Schedule 8 of the Regulations when they submit their safety report or receive the CA conclusions. HSE will inform the relevant Agency of this notification and of the Secretary of State's decision, copying any other relevant correspondence.

SCHEDULE 10. COMAH NOTIFICATION / DE-NOTIFICATION

Working Arrangements

- i. HSE and the relevant Agency will be jointly responsible for publicising the duty on operators of all potential COMAH establishments to notify the CA within the appropriate timescales.
- ii. All COMAH establishments (Top Tier and Lower Tier) will send notifications or de-notifications to HSE in the first instance.
- iii. On receipt, HSE will pass a copy of the notification or de-notification to the relevant Agency.
- iv. HSE and the relevant Agency will co-ordinate their records (manual and electronic) to maintain consistency.

SCHEDULE 11. HANDLING COMPLAINTS TO THE COMAH CA

Working Arrangements

- i. Complaints may initially be made to either HSE or the relevant Agency. Upon receipt of a complaint, the two parts of the CA will exchange information and consult on appropriate action to take.
- ii. Decisions on who within the CA should investigate the complaint will be made locally.
- iii. Any necessary agreed follow up action with operators will normally then be taken by the party(ies) responsible for investigating the complaint.

Agency representative(s) will normally lead on environmental matters and HSE representative(s) will normally lead on health & safety matters. Information about the outcome of any such action will be shared between all relevant parties.

- iv. The CA will develop an administrative system to track the progress of investigations into complaints and ensure that the originator has received a response within agreed deadlines wherever possible.

SCHEDULE 12. APPEALS

Working Arrangements

- i. HSE will undertake administrative functions associated with the receipt of notification of appeal against a CA decision to reject requests for confidentiality.
- ii. On receipt of a notification, HSE will send a copy to the relevant Agency.
- iii. Based on their joint assessment of the basis for the appeal, HSE and the relevant Agency will agree who will take primary lead for supporting any decision to reject a request for confidentiality in any representations to the Secretary of State.



Signed: Date: 17 January 2008.....
Chief Executive
Health and Safety Executive



Signed: Date: 13 February 2008
Chief Executive
Environment Agency



Signed: Date:
Scottish Environment Protection Agency

Membership of the COMAH Competent Authority Strategic Management Group (CASMG)

Membership of the COMAH CASMG shall comprise the following:

Health and Safety Executive

Head of Hazardous Installations Directorate

Head of Chemical Industries Division, Hazardous Installations Directorate

Environment Agency

Director of Operations

Deputy Director of Operations

Head of Industry Regulation

Scottish Environment Protection Agency

Director of Environmental Protection and Improvement

Head of National Environmental Protection and Improvement