

MEMORANDUM OF UNDERSTANDING
between
THE HEALTH AND SAFETY EXECUTIVE
and
THE ENVIRONMENT AGENCY
on
MATTERS OF MUTUAL CONCERN AT NUCLEAR SITES LICENSED BY
HSE IN ENGLAND AND WALES

Introduction

- 1 This Memorandum of Understanding is between the Health and Safety Executive (HSE) and the Environment Agency (EA). It supplements and forms an annex to the memorandum signed in July 2000 between Mr. Gallagher for the EA and Miss Bacon for the HSE, which established an overarching framework for liaison. It supersedes the equivalent Memorandum of Understanding signed in March 1996 by Dr Slater for the EA and Dr Harbison for the HSE. The Memorandum takes into account the Statement of Intent that was signed by Mr. Walker for the HSE and by Baroness Young for the EA in August 2001 concerning the working relationship between HSE and EA on Nuclear Safety and Environmental Regulatory Issues.
- 2 The memorandum relates principally to the regulation of nuclear safety and radioactive waste management on nuclear sites licensed by HSE (hereafter referred to as nuclear licensed sites) in England and Wales and the disposal or discharge of radioactive wastes on or from those sites.
- 3 The working arrangements set out in this Memorandum of Understanding will also be followed in the regulation 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 legislation and where HSE and EA inspect those premises through administrative arrangements with MoD.

Purpose and Objectives

- 4 The goals of both HSE and EA are, together:
 - a) to deliver effective and efficient regulation of the nuclear industry in England and Wales;
 - b) to maintain and improve standards of protection of people and the environment from the potential hazards from ionising radiations; and
 - c) to ensure that radioactive wastes are appropriately managed in both the short and long term, in accordance with legislation, UK Government policy, and international obligations.

- 5 The purpose of this Memorandum of Understanding is to set out how the regulatory activities of HSE and EA on nuclear licensed sites in England and Wales will be coordinated to achieve the above goals.
- 6 Its objectives are to facilitate effective and consistent regulation by ensuring that:
 - i) activities of EA and HSE in relation to nuclear licensed 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 avoided;
 - iii) synergies are exploited and the appropriate balance of precautions is attained;
 - iv) duplication of activity is minimised; and
 - v) public confidence in the regulatory system is maintained.

Roles and Responsibilities

- 7 HSE is responsible for regulating nuclear safety, including the safe management conditioning and storage of radioactive waste on nuclear licensed sites. EA is responsible for regulating the discharges to the environment and disposal of radioactive waste on or from nuclear licensed sites, and the associated organisational management arrangements.
- 8 Day-to-day regulation is conducted by authorised officers of EA and inspectors of Her Majesty's Nuclear Installations Inspectorate (HMNI), which is part of HSE.
- 9 It is the responsibility of all involved, particularly of authorised officers, inspectors and managers at each level within EA and HSE, to ensure that the principles and procedures set out in this Memorandum of Understanding are observed. This may involve discussions particularly between the relevant authorised officers and inspectors at the working level to agree any necessary interpretation.

Operative Legislation

- 10 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 regulation by HSE and EA at nuclear licensed sites. Both EA and HSE place conditions on operators on nuclear licensed sites. In addition to the above there is a range of health and safety and environmental legislation applicable to nuclear licensed sites enforced by HSE and EA respectively. In particular, the requirements of the Ionising Radiations Regulations 1999, Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, Radiation (Emergency

Preparedness and Public Information) Regulations 2001, Environmental Protection Act 1990 and the Pollution Prevention and Control Regulations 2000 are relevant to HSE and EA regulation of nuclear sites.

- 10 Although the following 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.

Working Arrangements

- 11 The working arrangements are set out in the attached schedule. They are based on mutual trust and respect, and are guided by the following principles:
- i) HSE and EA continue to build a structured interaction at all levels, including areas of strategy, work programming, and operational regulation;
 - ii) HSE and EA continue to consult each other at the earliest opportunity, and with the fullest of information, during the process of formal regulatory decision making on matters that may affect the other taking full account of each other's views;
 - iii) HSE and EA do not issue, vary or revoke any regulatory instruments that may affect the other, without prior consultation with the other, taking full and meaningful account of the other's regulatory locus.
 - iv) Either EA or HSE will, whenever possible, be identified as the body having the primary responsibility in relation to each of the regulatory interfaces listed in part 2 of the schedule.
 - v) 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 EA or HSE.
 - vi) Where EA and HSE disagree on any regulatory matter, they will make every effort to resolve their differences before any specific requirements are placed upon the operator.
 - vii) Where such disagreements cannot be resolved at the working level, HM Chief Inspector of Nuclear Installations (for HSE) and the Head of Radioactive Substances (for EA) will attempt to resolve the matter. If the matter cannot be resolved at this level it will be referred to the Director General of HSE and the Chief Executive of EA for resolution.

Joint Liaison Group

- 12 A Joint Liaison Group, chaired by the Head of Radioactive Substances for the Agency and Head of Division level within HSE's Nuclear Safety Directorate for HSE will meet approximately twice a year to consider matters relevant to this Memorandum of Understanding and of mutual interest in the regulation of nuclear

licensed sites. The chair and secretariat will be taken alternately by the EA and by HSE. Members will be drawn from each organisation as appropriate to the topics being discussed.

13 The terms of reference of the Joint Liaison Group are:

- a) to keep under review the workings of the MoU;
- b) To make recommendations for changes to the MoU as necessary;
- c) To consider operational implications of policy decisions;
- d) To discuss other matters of common interest.

Review of the Memorandum of Understanding

14 HSE and EA will review this Memorandum of Understanding not later than three years after it has been signed, or earlier if the Joint Liaison Group so recommends.

Schedule

15 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

Barbara Young
Chief Executive
for Environment Agency

Timothy Walker
Director General
for Health and Safety Executive

Date: [signed 23 April 2002]

SCHEDULE

INTERFACES AND WORKING ARRANGEMENTS

Section 1 – General Working Arrangements

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Definitions

Nuclear Safety

For the purposes of this Memorandum, nuclear safety refers to all activities, other than routine discharges and radioactive waste disposal, associated with the design, construction, commissioning, operation and decommissioning of facilities licensed under the Nuclear Installations Act, including those for the handling, treatment and storage of radioactive waste, which can affect the health and safety of workers and the public under both normal and abnormal operation including accidents and those activities necessary to delicense the site.

Environmental Protection

For the purposes of this memorandum, environmental protection refers to all activities associated with the design, construction, commissioning, operation and decommissioning of facilities on nuclear licensed sites which are relevant to the disposal of radioactive waste, including the authorised discharge of radioactive waste to the environment and the mitigation and remediation of any effects of a nuclear accident.

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

Section 1 – General Working Arrangements

1A Establishing, managing and reviewing liaison

Most contacts between the Agency and HSE will arise in the context of day-to-day operations. It is the responsibility of individuals in both organisations to identify topics needing liaison as they arise, and ensure they are dealt with effectively. As a guideline, the NII site inspector and EA counterpart should meet at least once a year and if practicable, more frequently, to discuss matters of mutual interest, including forward plans and past experience. Management at appropriate levels in HSE and the EA are responsible for establishing and reviewing appropriate liaison and contacts. These could include setting up regular meetings to discuss issues.

1B Coordination of strategic planning

HSE and EA senior management will meet once a year to exchange priorities in the development of their respective strategic plans for regulating nuclear licensed sites.

1C Interactions with the operator

In dealing with operators on matters of concern to both HSE and EA, it should be the practice, wherever practicable, to organize tripartite (operator/EA/HSE) discussions rather than holding separate bilateral (operator/HSE and operator/EA) discussions.

Although the aim should be for tripartite discussions with the operator, either regulator may seek clarification directly from the operator if that seems to be the most expeditious way of moving forward. In such cases they should keep the other regulator informed of such discussions.

1D General procedures for consultation

Where this MoU, or the supporting procedures, indicate that HSE and EA should consult on a regulatory decision, they will aim to consult each other at the earliest opportunity and on the fullest information possible to make the process of coming to such a decision as effective as possible. Inevitably this will involve consultation at more than one stage of the regulatory process. Each case will need to be considered on its merits, but typically consultation between HSE and EA may be appropriate as a minimum:

- i) On notification by an operator of an intention or issue likely to attract regulatory interest ('Initial Regulatory Notification');
- ii) on receipt of an application for a licence, authorisation, consent or other licence instrument, or as soon as possible after an event or decision that initiates regulatory action;
- iii) where this is to be carried out, on the proposed content of any public consultation or public body notification on such an application;
- iv) where this has been carried out, on the responses to a public consultation or public body notification, particularly where issues raised are relevant to the other body;

- v) on the proposed final decision, particularly if this has changed substantially from versions previously consulted on.

In the process of consultation, EA and HSE will make every effort to ensure that all relevant issues are identified at the earliest possible stage so as to avoid unnecessary delays.

1E Licensee's Arrangements

Both the nuclear site licence and disposal authorisations for nuclear licensed sites require the licensee to have arrangements to meet nuclear safety and environmental requirements. HSE and EA will work together to:

- promote integrated arrangements where appropriate that address all relevant health, safety and environmental requirements; and
- ensure that arrangements relating to health, safety and environment do not conflict.

1F Local Liaison Committees (LLC) / Local Community Liaison Committees (LCLC)

Both HSE's Nuclear Site Inspectors and EA regulators present reports to, attend and answer questions at the LLC/LCLC set up by the operator for interacting with the local community. Both HSE inspectors and EA regulators will copy their reports to the other, and if there are matters referred to that affect the other they will consult on their content. On some issues, for example joint investigations, it may be appropriate to issue a separate, joint report. EA and HSE should discuss issues likely to arise at LLC/LCLC meetings before they attend so that, as far as possible, a common regulatory position can be presented.

Section 2 – Specific Regulatory Interactions

Table 1 Granting of Licences under the Nuclear Installations Act

Primary Responsibility	Secondary Responsibility
<p>HSE will be responsible for the: granting, revocation, or variation of a nuclear site licence; or attachment, variation or revocation of the conditions attached to a licence in accordance with the requirements of the Nuclear Installations Act 1965 (as amended).</p>	<p>EA will check that the granting or revocation of a nuclear site licence is consistent with environmental protection responsibilities and will not prejudice any legal process under RSA93 or other environmental legislation.</p> <p>EA 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 environmental protection responsibilities and will not prejudice any legal process under RSA93 or other environmental legislation.</p>
<p>Working Arrangements</p>	
<p><u>HSE will consult EA 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, or affects, 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. EA will advise HSE of those matters that are likely to conflict with environmental protection responsibilities. 2. EA will advise HSE if in its opinion the issue of a licence would prejudice any legal process under RSA93 or other environmental legislation. 3. HSE will not issue, vary or revoke a licence without consultation with EA and taking full and meaningful account of any environmental issues. 4. HSE will not add, vary or revoke a licence condition that relates to, or affects, the creation, accumulation or disposal of radioactive waste without consultation with EA and taking full and meaningful account of any environmental issues. 	

Table 2 Granting of Authorisations to Nuclear Licensed Sites under the Radioactive Substances Act

Primary Responsibility	Secondary Responsibility
EA will be responsible for granting, revoking or varying authorisations for the disposal of radioactive waste from nuclear licensed sites in accordance with the requirements of the Radioactive Substances Act 1993.	HSE will check that any authorisation granted, or any variation or revocation of an authorisation, will be consistent with the licensee's nuclear safety responsibilities and will not prejudice any legal process under NIA65 or any other relevant statutory provision of HSWA.
<u>Working Arrangements</u>	
<p><u>EA will consult HSE</u></p> <p>(i) on any application for an authorisation, before deciding whether to grant an authorisation and, if so, subject to what limitations or conditions: and</p> <p>(ii) on any proposal to vary or revoke an authorisation, before deciding whether to vary or revoke the authorisation and if so whether by attaching, revoking or varying any limitations or conditions or by attaching further limitations or conditions.</p> <p><u>In consequence of that consultation:</u></p> <ol style="list-style-type: none"> 1. HSE will advise EA of those matters that are likely to conflict with the licensee's nuclear safety responsibilities. 2. HSE will advise EA if in its opinion the issue, revocation or variation of an authorisation would prejudice any legal process under NIA65 or other relevant statutory provisions of HSWA. 3. EA will not issue , vary or revoke an authorisation without consultation with HSE and taking full and meaningful account of any nuclear safety issues. 4. Where a Direction under Section 23 of RSA93 is issued, or EA is informed that such a Direction is intended to be issued, in respect of an authorisation under RSA93, EA will advise HSE so that HSE can, if necessary, advise Government on the nuclear safety implications of such a Direction or proposed Direction. 	

Table 3 Assessment and Review 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; the continued operation or modifications to existing licensed facilities; and for decommissioning and delicensing, for the purposes of the relevant statutory provisions of HSWA.</p> <p>EA has responsibility for assessing the effects of radioactive waste disposal on the environment resulting from new nuclear installations to be licensed; the continued operation or modifications to existing licensed facilities and for decommissioning and ‘delicensing’.</p> <p>If a new or revised authorisation under RSA93 is required then the arrangements in Table 2 will apply.</p>	<p>EA has responsibility for checking that the licensee’s safety case, which bears on the creation, accumulation or disposal of radioactive waste is consistent with environmental protection responsibilities.</p>
Working Arrangements	
<p>HSE will negotiate the submission of safety documents and the programme for review, licensing or plant modification.</p> <p>HSE will alert EA and consult EA on any assessment or review that relates to, or affects, the creation, accumulation or disposal of radioactive waste. As a consequence of that consultation:</p> <ol style="list-style-type: none"> 1. EA will advise HSE of those matters that are likely to conflict with environmental protection responsibilities. 2. EA will advise HSE if in its opinion the HSE’s consent or agreement to the licensee’s proposals would prejudice any legal process under RSA93 or other environmental legislation. 3. HSE will not issue a consent or other licence instrument that relates to, or affects, the creation, accumulation or disposal of radioactive waste without consultation with EA and taking full and meaningful account of any environmental issues. 4. HSE will, to the extent that its legal powers allow, take account of any environmental issues raised by EA in seeking improvements of the operator. 	

Table 4 Inspection of Nuclear Licensed Sites

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. EA shall inspect the site as relevant to ensure compliance with authorisations under RSA93 and other environmental legislation.</p>	
Working Arrangements	
<p>HSE and EA will for each site:</p> <p>(a) Draw up a schedule of plant / areas of site and issues on the site indicating HSE and EA primary interests. This should aim to ensure no part of the site is overlooked, avoid unnecessary duplication, 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, EA and HSE shall, individually, be free to plan, organize and deliver their inspection activities as required to deliver their primary responsibilities.</p>	

Table 5 Notification and Investigation of Incidents and Accidents

Primary Responsibility	Secondary Responsibility
<p>HSE will investigate non-compliance with licence conditions, incidents and accidents that occur on nuclear licensed sites and could represent a breach of the relevant statutory provisions of HSWA.</p>	
<p>EA will investigate incidents and accidents that could represent a breach of conditions of authorisation under RSA93 or other environmental legislation.</p>	
Working Arrangements	
<p>HSE will inform EA of any incident or accident with potential consequences for environmental protection and, where this is the case, that it intends to conduct an investigation. This will be done at the earliest opportunity to allow a joint or coordinated investigation to be organized if appropriate.</p> <p>EA will inform HSE of any incident or accident with potential consequences for nuclear safety and, where this is the case, that it intends to conduct an investigation. This will be done at the earliest opportunity to allow a joint or coordinated investigation to be organized if appropriate.</p> <p>In the investigation of incidents and accidents that are of interest to both HSE and EA, there will, where appropriate, be a joint investigation and a single joint report. In all cases where both HSE and EA are investigating, the two regulators will co-ordinate their work to make the most efficient use of regulatory effort.</p> <p>The body with the primary responsibility will co-ordinate the investigation team. Responsibilities will be decided at the operational level.</p>	

Table 6 Enforcement Action at Nuclear Licensed Sites

Primary Responsibility	Secondary Responsibility
<p>HSE will take appropriate enforcement action, including advice, the use of powers under the nuclear site licence, Improvement and Prohibition Notices, and prosecution, in respect of possible breaches of the relevant statutory provisions of HSWA.</p> <p>EA will take appropriate enforcement action, including advice, the issue of Enforcement and Prohibition Notices, and prosecution, in respect of possible breaches of the RSA93 or other environmental legislation.</p>	<p>EA 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>HSE will advise EA if the issue of any Notice might prejudice nuclear safety, and if prosecution would affect any legal action it may have proposed.</p>
Working Arrangements	
<p>HSE will advise EA in advance of its intention to use enforcement action relevant to environmental protection 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>EA 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 both HSE and EA intend to issue notices relating to the same event, they will co-ordinate so that no contradictory requirements are placed on the operator, and, as far as possible, requirements are similarly worded and timed.</p> <p>Where prosecution is being considered for an incident involving both breaches of environmental and health and safety legislation, HSE and EA will consider joint action.</p>	

Table 7 Other Regulatory Action under Nuclear Site Licence or Discharge Authorisations provisions.

Primary Responsibility	Secondary Responsibility
<p>HSE will administer provisions of nuclear site licence conditions. EA will administer provisions of discharge authorisations.</p>	<p>EA will advise HSE if any proposed action might prejudice environmental protection. HSE will advise EA if any proposed action might prejudice nuclear safety.</p>
Working Arrangements	
<p>HSE will, as appropriate, advise or consult EA on any licence instruments that relate to, or may affect, the creation, accumulation or disposal of radioactive waste.</p> <p>EA will, as appropriate, advise or consult HSE on any requirements, specifications, approvals, agreements, notifications or CEARS¹ under the provisions of a discharge authorisation that may affect nuclear safety.</p> <p>HSE and EA management procedures will define the appropriate level of consultation in relation to licence instruments and actions under discharge authorisation provisions.</p> <p>Where there is a possibility that the provisions of nuclear site licence and discharge authorisation conditions may overlap, then HSE and EA will work together to ensure that any action by the licensee meets the requirements of both regulators.</p>	

¹ Compilation of Environment Agency Requirements