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HEALTH AND SAFETY COMMISSION

Proposed Transfer of the Office of Civil Nuclear Security and part of the UK Nuclear Safeguards function from DTI to HSE

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Cleared by Board Member: 23 November 2006
Cleared by the DCEs: 23 November 2006**

Issue

- Proposed transfer of Office of Nuclear Security (OCNS) and the operational part of the UK Nuclear Safeguards function from DTI to HSE Nuclear Safety Directorate (NSD).

Timing

- Routine.

Recommendation

- That the Commission agrees to the proposed transfers, subject to satisfactory resolution of any outstanding financial, legal or other considerations.

Background

- Both OCNS and the UK Nuclear Safeguards Office (UKSO) are currently part of DTI.
- OCNS is the security regulator for the UK's civil nuclear industry. It is responsible for approving security arrangements within the industry and enforcing compliance. OCNS also undertakes vetting of nuclear industry personnel with access to sensitive nuclear material or information. It works in close conjunction with policy officials in DTI's Nuclear Consultation & Liabilities Directorate, with other government departments and agencies, and with overseas counterparts. 96% of its costs are recovered from industry.
- The activities of UKSO fall into two streams of work:
 - operational matters concerned with making sure that the UK meets its international obligations in respect of accounting for the amounts and locations of certain nuclear material.
 - support of UK policy development within the international regimes.

It is the first workstream that is the subject of proposed transfer to HSE.

7. The Hampton study of Government regulatory inspection and enforcement and the Government's Better Regulation drive raised issues about compliance burdens placed on businesses and presented an opportunity to consolidate and streamline regulatory functions in order to reduce these burdens. While OCNS was not included in the original Hampton proposals its transfer, and that of the operational UKSO function, from DTI to HSE is in keeping with the Hampton philosophy and will offer opportunities for practical improvements in the overall regulation of the nuclear industry.
8. Incorporation of OCNS will involve the transfer of 42 posts to HSE. To begin with, it is intended that OCNS will be maintained as a discrete unit under its current management structure but be part of HSE's NSD (which may be renamed), with line management through the Director, NSD (Mike Weightman). OCNS would continue to be based at their offices at Harwell, Oxfordshire. The 5 UKSO posts would transfer to HSE and would be based in Rose Court.
9. A Project Board comprising HSE, DTI, and OCNS/UKSO representatives has been established to manage the proposed transfers. These are machinery of Government changes and Cabinet Office is comfortable with the proposals.
10. Some background information on OCNS is at **Annex A**.
11. Some information about UKSO is at **Annex B**.
12. Policy responsibility for nuclear safety and security lies with DTI (it is the guardian of the Nuclear Installations Act 1965): the DTI Secretary of State is accountable to Parliament. HSC can already make proposals to the Secretary of State on nuclear matters and DTI is obliged to consult HSC on security. It is not proposed that this arrangement should change upon the transfers. In terms of operational policy responsibility for OCNS/UKSO (i.e. how they discharge their functions) that will become HSE's role after the proposed transfer.

Argument

13. The operational activities of UKSO and the regulatory activities of OCNS in relation to security of the UK's civil nuclear industry complement the regulatory nuclear safety role discharged by NSD. The positioning of all three within HSE is consistent with the aims and subsequent recommendations of the Hampton Review.
14. The proposed transfers would bring safety, security and safeguards under HSE, thus reducing the potential for conflict highlighted by the House of Commons Trade and Industry Select Committee¹ and enabling a desired cohesive approach to the new-build programme.
15. There is much to be gained from the transfer in terms of maintaining and strengthening public and industry confidence in this period of change.

¹ House of Commons Trade and Industry Committee, New Nuclear? Examining the Issues, 4th Report 2005-6 session, Volume 1. Published by TSO as HC 1122

16. OCNS approves site-specific security plans and then inspects and enforces against those plans in respect of physical security, personnel security, and information/IT security matters. NSD, after assessment of licensees' safety submissions, licenses sites, grants permission for activities/modifications etc, and inspects and enforces safety arrangements approved under conditions attached to site licences as well as broader HSW Act provisions.
17. There is already some overlap of interests, and close collaboration, post 9/11, particularly on security-informed safety improvements. NSD is assisting OCNS and licensees in identifying those facilities on site, which are vital to safe operation in order that OCNS can consider what extra security measures need to be applied. This builds on long-standing co-operation in ensuring that conflicting demands for security and safety measures are not placed on licensees.
18. OCNS and NSD operate similar cost-recovery charging regimes for most of their operational activities. Bringing the two organisations together would make it possible, in due course, to align fully the charging regimes and simplify the billing arrangements.
19. Whilst UKSO is not strictly a regulator itself, it acts as the interface between Euratom/International Atomic Energy Agency (IAEA) inspectors and the UK civil nuclear sites, and provides advice to UK industry on how best to comply with safeguarding requirements.
20. OCNS, NSD and UKSO work closely with their respective counterparts of IAEA in devising technical best practice standards for security, safety and safeguards respectively.
21. The transfer of OCNS and UKSO functions can be achieved by agreements under section 13(1)(b) of HSWA. These agreements (supported by Memoranda of Understanding) will enable OCNS and UKSO's existing operational work to be carried out by HSE. HSE lawyers advise (subject to confirmation from the Secretary of State – as required by HSWA - that he considers it appropriate for HSC to perform the transferred functions) that the section 13(1)(b) agreements will also allow the current operational work to extend to Northern Ireland and also to shipping, if the need should arise.
22. The proposed transfers raise some transitional, practical and financial issues, but these reflect HSE's previous experience in managing other transfers under Hampton. A checklist of these issues is attached at **Annex C**.
23. It is envisaged that the effective date for the transfers would be 1st April 2007, subject to resolution of any outstanding financial, legal or other considerations.

Consultation

24. Within HSE: Legal Advisors' Office, PEFD, NSD, BEU, Security, Communications Directorate and HR.
25. Externally: DTI (including UK Safeguards Office and OCNS), Cabinet Office, and the nuclear industry. NUSAC (Nuclear Safety Advisory Committee) has been consulted and is supportive. The industry is aware of the proposal and DTI are organising a meeting with Senior Industry Managers.

Presentation

26. A communications plan has been prepared and is being developed as one of the project workstreams.
27. Unions and staff in the organisations involved have been made aware of proposals and will be fully engaged as part of the transfer plan.

Costs and Benefits

28. Putting the activities of UKSO, OCNS and HSE (NSD) together is consistent with the Hampton Review government agenda of reducing the multiplicity of disparate regulators dealing with any one industry.
29. By bringing together safety and security functions the transfer will be addressing the concerns identified by the Select Committee, through a co-coordinated approach aiming at a more effective and efficient inspection regime.
30. There are also benefits to both industry and the regulators through having a single point of access for safety and security responsibilities.
31. Similarly, the transfers will benefit the regulatory organisations through the potential for economic savings through shared overheads and other possible downstream cost efficiencies achieved through streamlining processes.
32. Notably, there is potential for simplifying charging and billing arrangements to industry.

Financial/Resource Implications for HSE

33. HSE will be seeking a resource transfer from DTI in respect of the functions proposed to transfer; the operating costs are in the order of £3m pa most of which is recoverable. An assessment of any financial risks associated with the proposed function will also be carried out e.g. risk to income.
34. A key principle, and a prerequisite of HSE accepting the proposed functions, is that the financial consequences for HSE will be, at worst, neutral.

35. The costs of the work associated with achieving the transfers will be absorbed by DTI and HSE. HSE will meet the costs of the project work from within existing resources, as with other 'Hampton' transfers.
36. During discussions with DTI and OCNS it has emerged that the charges currently made to industry for OCNS work do not include an element for 'overhead costs' (accommodation, IT etc.) In the event of transfer, HSE charges to the industry would include such an element so that full economic costs would be recovered. However, higher charges following transfer may create an unfavourable impression of HSE with the industry – we are working closely with DTI and others to resolve this matter.

Other Implications

37. None.

Action / Next Steps

38. HSC is invited to agree the transfer of OCNS and the operational function of UKSO to HSE, subject to the outstanding considerations set out above being resolved satisfactorily. HSE will brief Lord Hunt of HSC's decision.

Background Information on OCNS

The Office for Civil Nuclear Security (OCNS), is the security regulator for the UK's civil nuclear industry. It is responsible for approving security arrangements within the industry and enforcing compliance. OCNS also undertakes vetting of nuclear industry personnel with access to sensitive nuclear material or information. It works in close conjunction with policy officials in DTI's Nuclear Policy Directorate, with other government departments and agencies, and with overseas counterparts. Through the Standing Committee on Police Establishments (SCOPE), OCNS reviews police numbers and tasking at licensed nuclear sites policed by the Civil Nuclear Constabulary (CNC).

In the UK, civil nuclear operators must have approved site security plans dealing with the security arrangements for the protection of nuclear sites and nuclear material on such sites. The arrangements cover, for example, physical protection features such as fencing, CCTV and turnstile access, the roles of security guards and the Civil Nuclear Constabulary, the protection of proliferation-sensitive data and technologies and the trustworthiness of the individuals with access to them. Transporters of sensitive nuclear material also have to be approved by the Secretary of State.

OCNS regulates security activity in four distinct, yet inter-related areas of competence known collectively as Protective Security and referred to individually as Site Security, Transport Security, Information Security and Personnel Security. OCNS' regulatory responsibilities and the obligations placed upon all those involved in the civil nuclear industry are laid out in Nuclear Industries Security Regulations 2003.

The OCNS budget for April 2005 – March 2006 was £2,400k of which £2,300k was recovered from the civil nuclear industry as a charge for OCNS' regulatory services to the industry. The authority to recover costs from industry was formally established in September 2005 when the Nuclear Industries Security (Fees) Regulations came into effect. OCNS has used the opportunity presented by the adoption of these Regulations to promote greater clarity and accuracy in the charging regime.

The balance in OCNS expenditure of £100k was provided by the DTI to fund OCNS activity in support of Government.

Background information on UKSO

The UK Safeguards Office provides the centre of expertise for UK government and industry in meeting the international obligations for the accounting of civil nuclear material. The Office comprises a staff of 8 safeguards specialists and associated administrative support. 5 posts would transfer to HSE under current proposals. The work of the Office divides into two main areas:

The application of nuclear safeguards in the UK, working with the UK nuclear industry (and others with safeguards reporting requirements) and safeguards inspectors from the European Commission and the International Atomic Energy Agency (IAEA) to ensure that the safeguards measures applied are both effective and efficient, i.e. that the UK complies with its international safeguards obligations, but not at the cost of unreasonable demands on or unnecessary commercial disadvantage to the UK organisations involved.

This includes, for example, helping to negotiate facility specific safeguards reporting and inspection arrangements with the European Commission and/or the IAEA, direct involvement to assist UK operators (especially those unfamiliar with the subject) in meeting safeguards requirements, and implementation of the UK's Additional Protocol;

UK and international policy on nuclear safeguards and related nuclear non-proliferation issues. UKSO's contribution is to help ensure that the IAEA safeguards regime is technically equipped to provide the assurances demanded of it by the international community (e.g. with respect to current work to develop and implement new safeguards strengthening measures) and also to ensure that nuclear non-proliferation policy properly reflects safeguards and verification-related considerations. The Office is responsible for funding a support programme to the IAEA's safeguards activities and has provided support to help improve standards of nuclear material accountancy and control at Russian nuclear facilities. It also maintains an involvement in international safeguards-related organisations such as the European Safeguards Research and Development Association (ESARDA) and the Institute of Nuclear Materials Management (INMM).

Operational activities would transfer to HSE and separation will involve some redefinition of duties and responsibilities.

The regulation of Safeguards is the responsibility of the International Atomic Energy Agency (IAEA) and the European Commission. The former takes its powers from the Nuclear Non-Proliferation Treaty and the associated IAEA Safeguards Agreements with the UK. The latter takes its powers from the Euratom Treaty. The operational role of the UK Safeguards Office is to provide a conduit for the tracking of nuclear material accountancy information to satisfy the IAEA and Euratom obligations and to assist UK industry in dealing with the inspections. In carrying out its functions, the Safeguards Office has some powers to require information to be provided under the Atomic Energy Act, and Safeguards Act

The Office has several specialist IT databases, and IT equipment, but in the main relies on paper files to keep track of past information and check consistency. Because of the need to track nuclear material over long periods of time, some of these files go back for many years.

Checklist of transfer issues

Functional –

Agreement of scope of functions to be incorporated into HSE

HR –

Transfer of 42 OCNS staff posts to HSE

Transfer of 5 UKSO staff posts to HSE

Union engagement

On-going recruitment

Post alignment

Application and implications of TUPE

Financial –

Provision by DTI of full, evidenced statement of all operating costs, overheads and income streams associated with the functions.

Agreement on the resource requirement by HSE.

Development of necessary mechanisms to enable continued recovery of costs from industry.

Legal and legislative –

Drafting of s.13 HSWA agreement to facilitate transfer of functions

Drafting of a supporting MoU

Amendment of fees regulations

Transfer of lease for Harwell

Accommodation –

Agreement and transfer of accommodation, lease etc

Scoping accommodation requirements at Rose Court for Safeguards staff

Archive storage

IT –

Access provision Transfer of databases to HSE systems/support.

Integration of the existing mobile phone arrangements with those of HSE.

Integration of the existing videoconferencing arrangements with those of HSE.

Provision of presentation equipment.

Provision of HSE IT and telecomms equipment.

Possible provision of a secure IT network within Rose Court.

Security – (impacts on other workstreams)

HR (vetting)

Accommodation (building security)

IT (systems accreditation)

Clarification required on how or if it will fully align with HSE security arrangements

Communications –

Management of information

Engagement with internal and external stakeholders,

Interface with other projects