

MEMORANDUM OF UNDERSTANDING BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND THE SECRETARY OF STATE FOR TRADE AND INDUSTRY ON CIVIL NUCLEAR SECURITY

Introduction

1. This Memorandum of Understanding sets out the arrangements agreed between the Health and Safety Executive (HSE) and the Secretary of State for Trade and Industry on civil nuclear security following the transfer of the Office for Civil Nuclear Security (OCNS) from the Department of Trade and Industry (DTI) to HSE. The purpose of the Memorandum is to set out the arrangements under which HSE will perform the functions of the Secretary of State for Trade and Industry (SoS) set out in the Agreement under Section 13(1)(b) of the Health and Safety at Work etc Act 1974 dated 29 March 2007 (hereafter “the Agreement”), together with the non-statutory functions required to support DTI and wider government’s nuclear security policy and international initiatives.

Background

2. HSE’s responsibilities in respect of health and safety at civil nuclear sites arise from its functions under the relevant statutory provisions of the Health and Safety at Work etc Act 1974 (HSWA), including in particular the granting of nuclear site licences under the Nuclear Installations Act 1965, and the enforcement of conditions attached to those licences. The conditions include requirements for licensees to prepare safety cases for the operation of nuclear plant on licensed sites, and to have adequate arrangements to prevent unauthorised persons from entering licensed sites.

3. The SoS, through OCNS, acts as the security regulator for the civil nuclear industry under regulations made under the Anti-terrorism, Crime and Security Act 2001, as well as under the Energy Act 2004, the extant security provisions of the Nuclear Installations Act 1965 and, in respect of nuclear material, the Import of Goods (Control) Order 1954. The security regime’s purposes are to prevent theft of nuclear material (and, on civil licensed nuclear sites only, other radioactive material), to prevent sabotage of nuclear facilities or nuclear material in transit, to safeguard sensitive nuclear technology and information, thereby helping to prevent nuclear proliferation, and to safeguard other protectively marked Government information held by the civil nuclear industry.

4. As a result of the Agreement, the Health and Safety Commission (“the Commission”) has directed HSE to exercise on behalf of the Commission the functions that the Commission has agreed to perform on behalf of the SoS. These functions are those that the SoS previously performed through OCNS when it was part of DTI but which are now to be performed by OCNS as part of HSE. Additionally, DTI and wider Government needs continued support from OCNS (as part of HSE) in order to formulate international and national security policy and pursue other work to satisfy its non-proliferation and international security objectives.

5. HSE and DTI have a common interest in ensuring that security and safety arrangements are adequate and effective in preventing the theft and misuse of nuclear

and other radioactive material, and actions by individuals or groups causing harm or damage. These arrangements contribute to the wider aims of protecting the health and safety of employees, contractors and the general public from the hazards of ionising radiation, promoting the Government's nuclear non-proliferation obligations and the protection of national security. The transfer of OCNS to HSE will facilitate closer co-operation in these areas as well as better enable resolution of conflicts between safety and security requirements.

Objectives

6. One objective of this Memorandum is to facilitate the effective and consistent regulation of health and safety and security at civil nuclear licensed sites by ensuring that:

- (a) co-operative arrangements on safety and security are developed and maintained within HSE;
- (b) the possibility of conflicting requirements being placed on licensees or others working at nuclear sites is avoided; and
- (c) operational and regulatory synergies are exploited as appropriate to optimise effectiveness and minimise duplication.

7. A parallel objective is the continued maintenance of a specialist security regulatory function to advise on the state of security in the civil nuclear industry and the effectiveness of security regulation, and available to provide specialist advice and support directly to DTI (and, where requested, other Government departments and agencies) on non-proliferation and international/national security issues.

Principles

8. The following principles will be employed to assist in meeting the objectives above:

- (a) OCNS will operate as a discreet unit within the Nuclear Directorate (ND) of HSE, reporting to the Director / Chief Inspector of ND;
- (b) DTI will remain responsible for national and international civil nuclear security policy; in particular it will be responsible for initiating new or amended primary and secondary legislation (consulting HSC as necessary) and for international obligations or political commitments to be undertaken by the UK in this area. OCNS (as part of HSE) will operate with full autonomy in regulatory and operational matters; in particular it will be responsible for regulatory policy developed to implement statutory requirements detailed in the Agreement, taking into account the UK's international obligations and commitments, but without imposing unjustifiable burdens on those subject to regulation;
- (c) the Head of OCNS, the majority of its senior management and all of its inspectors appointed under the Nuclear Industries Security Regulations 2003 (NISR) will continue to be suitably qualified individuals;
- (d) OCNS will work closely with others in ND in identifying and addressing the security of high-risk plant and material at particular sites. OCNS will provide security information in its possession to

- others in ND relevant to health and safety considerations at licensed nuclear sites, subject to any statutory or confidentiality restrictions;
- (e) ND and OCNS will work closely together in the consideration of relevant new projects, such as design approval of nuclear power reactor designs, or proposed changes at licensed nuclear sites, or following a significant breach of licence conditions or regulated security arrangements, with a view to identifying the necessary safety and security arrangements or changes before requirements are placed on applicants and licensees;
 - (f) through the Director / Chief Inspector of ND, the Head of OCNS will deal directly with DTI on nuclear security issues.

Working Arrangements

General

9. HSE will develop arrangements to ensure that safety and security specialists work closely within ND to identify and agree appropriate protection of systems, devices and material at existing and proposed civil licensed nuclear sites, the sabotage of which could lead to unacceptable radiological consequences.

10. HSE (OCNS) will provide a vetting service to the civil nuclear industry, maintaining the necessary IT links with other agencies to do so in a speedy and effective manner. HSE (OCNS) alone will be responsible for the approval of persons under Regulations 9, 17 and 22 of the NISR.

11. OCNS will maintain a close working relationship with the intelligence agencies, particularly through its membership of the Joint Terrorism Analysis Centre (JTAC), and maintain secure electronic communications links in order to facilitate the prompt receipt of detailed threat information. It will brief these agencies on nuclear security matters in general and OCNS's requirements in particular.

12. HSE (OCNS) will make an annual report to the Minister with responsibility for Energy matters at DTI, detailing the state of security in the civil nuclear industry and the effectiveness of security regulation for the year ending 31 March. This report will be submitted through DTI officials with the aim of being delivered to the Minister by mid-July each year. HSE will arrange for the report to be published.

13. HSE (OCNS) will inform DTI directly in a timely manner of all nuclear security events which may raise political issues or provoke media enquiries. HSE (OCNS) will respond directly to DTI to its requests for assistance in dealing with enquiries on nuclear security matters. HSE may respond to media enquiries relating to security regulatory matters but will refer enquiries on nuclear security policy to DTI. Parliamentary Questions or Ministers' cases relating to nuclear security will continue to be dealt with by DTI.

Legislative

14. DTI will not seek to exercise any of the functions to be performed by the Commission on behalf of the SoS pursuant to the Agreement without prior consultation with HSE.

15. Any appeals against regulatory decisions made under the NISR, the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004 and Schedule 1 to the Nuclear Industries Act 1965 will be made to HSE.

16. HSE (OCNS) may submit proposals to DTI as considered necessary to amend any of the relevant provisions of the legislation detailed in the Agreement and DTI will give proper and timely consideration to these proposals. In turn, DTI will not seek to repeal/amend/revoke any of these provisions without prior consultation with HSE (OCNS). DTI will also consult HSE (OCNS) on proposed changes to other legislation relevant to nuclear security but not subject to the Agreement, examples of which are detailed in Annex A.

IAEA

17. HSE (OCNS) will participate in Consultants Meetings and Technical Meetings to draft and revise those documents in the IAEA Nuclear Security series considered relevant and important to the protection of nuclear facilities and nuclear material.

18. HSE (OCNS) will provide DTI (or FCO) with briefs on nuclear security matters, as requested, for IAEA Board of Governors meetings and the General Conference, and will respond to requests for advice on other security matters relating to the UK's interaction with the Agency, including contributions to the Nuclear Security Fund.

19. Taking account of available resources, priorities and political considerations, HSE (OCNS) will support the Agency's nuclear security programme through participation in its conferences, training courses, workshops and advisory missions, as well as occasionally hosting technical visits by representatives from other countries.

20. Until an alternative Point of Contact is nominated, HSE (OCNS) will be responsible for the submission and distribution of illicit trafficking database reports and will participate in relevant meetings on this topic.

International/EU Non-proliferation/Counter Terrorist Regime

21. HSE (OCNS) will provide advice and support to DTI and OGDs in negotiations on, and implementation of, the nuclear security provisions of legally binding agreements and other political commitments. (A list of such current agreements and commitments, other than bilateral/EURATOM nuclear cooperation agreements, is attached at Annex B). In particular, it will act as the UK's designated central authority (Point of Contact) under the Convention on the Physical Protection of Nuclear Material.

22. HSE (OCNS) will provide advice to DTI and OGDs on the nuclear security content of EU initiatives and proposals, including those relating to its Weapons of Mass Destruction programme and Critical Infrastructure policy, particularly where

proposals may lead to Directives which the UK will be required to implement domestically. It will act as the designated National Security Agency under the EURATOM Treaty, advising DTI, Defra and others as necessary.

23. HSE (OCNS) will act as the designated National Agency under the Treaty of Almelo and the Treaty of Cardiff, and will provide advice to DTI, in order for it to exercise its functions both under these Treaties and the LES Agreement.

Bilateral and Other Nuclear Security Activities

24. HSE (OCNS) will support, as appropriate, the offers of DTI and FCO to other countries to co-operate bilaterally on nuclear security, including hosting visits to the UK, and will maintain an appropriate level of contact with appropriate overseas regulatory and technical support organisations, in part through its membership of the European Nuclear Security Regulators' Association.

25. HSE (OCNS) will provide advice to DTI on the nuclear security element of the UK programme carried out as part of the G8 Global Partnership against the Spread of Weapons and Materials of Mass Destruction.

26. HSE (OCNS) will provide advice to DTI and OGDs on nuclear security matters arising from G8 activities, IAEA/EURATOM Safeguards Agreements and international maritime transport.

27. DTI will consult HSE (OCNS) on all export licence applications relating to uranium enrichment technology. HSE (OCNS) will consult DTI as appropriate on applications for import licences.

Development of National Policy and OGD Regulations

28. On request, HSE (OCNS) will provide nuclear security advice to DTI and OGDs developing or implementing policy, plans or programmes, including those relating to nuclear material outside regulatory control, participating in working groups formed by these departments as necessary.

29. HSE (OCNS) will participate in central government committees or working groups developing national security policy which HSE (OCNS) will be required to implement or take into account in the course of its regulatory activities.

30. HSE (OCNS) will draw DTI's attention to proposals by OGDs for regulations which may duplicate those detailed in the Agreement and work with it to achieve an outcome in line with Better Regulation policy.

Financial

31. HSE will seek to ensure that, as far as possible, the costs of their activities carried out pursuant to the functions detailed in the Agreement are recovered under fees regulations or under section 63(3) of the Energy Act 2004. DTI will reimburse HSE the costs of other activities carried out pursuant to the Agreement and this Memorandum.

Monitoring and Review of the Memorandum

32. The Memorandum and the arrangements made under it will be kept under review by HSE and DTI. Without prejudice to the co-operative working arrangements described above, the Director / Chief Inspector of ND, the Head of OCNS and appropriate officials in DTI will meet annually, or at such shorter intervals as may be required, to discuss the working of the Memorandum and any outstanding issues or problems that may have arisen under it.

33. This Memorandum supersedes the Memorandum of Understanding between HSE and DTI on Matters of Mutual Interest in the Regulation of Civil Nuclear Licensed Sites dated April 2001.

Signed by:

A LAYTON

(for and on behalf of the Secretary of State for Trade and Industry)

L PHILPOTT

(on behalf of HSE)

Date: 29 MARCH 2007

ANNEX A

OTHER LEGISLATION RELEVANT TO CIVIL NUCLEAR SECURITY

Prohibited Places Orders made under powers granted under s.6(3) of the Atomic Energy Act 1954 and paragraph 3(1) of Schedule 1 to the Nuclear Installations Act 1965 and the related Official Secrets Acts

Official Secrets Act 1989 and, in particular, Prescription Orders made under this Act relating to persons in the civil nuclear industry and its application to the Civil Nuclear Constabulary

The trespassing on nuclear sites provisions of the Serious Organised Crime and Police Act 2005

Part 8 of the Anti-Terrorism, Crime and Security Act 2001

**INTERNATIONAL NON-PROLIFERATION AND COUNTER TERRORIST
REGIME**

Convention on the Physical Protection of Nuclear Material (including the 2005 amendment)

Convention on the Suppression of Acts of Nuclear Terrorism

Nuclear Supplier Group guidelines

Plutonium Management guidelines

Zangger Committee guidelines

UN Security Council Resolutions 1373 and 1540

Global Initiative to Counter Nuclear Terrorism

Non-Proliferation Treaty

Code of Conduct on the Safety and Security of Radioactive Sources