MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN:

- **THE HEALTH AND SAFETY EXECUTIVE**
- **THE OFFICE FOR NUCLEAR REGULATION**
- **THE ENVIRONMENT AGENCY**
- **CORFF ADNODDAU NATURIOL CYMRU / THE NATURAL RESOURCES BODY FOR WALES**
- **THE SCOTTISH ENVIRONMENT PROTECTION AGENCY / BUIDHEANN DÌON ÀRAINNEACHD NA H-ALBA**

ON THE IMPLEMENTATION OF THE CONTROL OF MAJOR ACCIDENT HAZARDS (COMAH) REGULATIONS 2015

Dated: 25 October 2023

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INTRODUCTION

1. This Memorandum of Understanding (MoU) is between:

    a) the Health and Safety Executive (HSE);

    b) the Office for Nuclear Regulation (ONR);

    c) the Environment Agency (EA);

    d) Corff Adnoddau Naturiol Cymru / the Natural Resources Body for Wales (NRW); and

    e) the Scottish Environment Protection Agency (SEPA) / Buidheann Dìon Àrainneachd na h-Alba.

2. Its purpose is to ensure effective coordination and cooperation between these organisations in relation to the regulation of major hazard establishments regulated under the Control of Major Accident Hazards Regulations 2015 (as amended, “the COMAH Regulations”), including agreement of policy matters, approach to operational delivery, and enforcement.

3. The purpose of the COMAH Regulations is to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur. The COMAH Regulations also implement Great Britain’s obligations under international agreements. COMAH relates to the regulation of a major hazards’ establishment; provisions in planning legislation set out the requirements relating to the suitability of a location of a major hazards site, primarily through the Hazardous Substances Consent process.

4. In this MoU:

    a) HSE, ONR, EA, NRW and SEPA are referred to collectively as the “partners to this MoU”;

    b) EA, NRW and SEPA are referred to collectively as “the environment agencies”; and

    c) the “appropriate agency” means:

        i) in England: EA;

        ii) in Wales: NRW; and

        iii) in Scotland: SEPA.

5. The COMAH Regulations are enforced at an establishment by a Competent Authority (CA) (in each case the “relevant regulators”), that comprises:

    a) for a nuclear establishment: ONR and the appropriate agency acting jointly; and

    b) for any other establishment: HSE and the appropriate agency acting jointly.

SCOPE

6. This MoU describes how, at any COMAH establishment, relevant regulators act jointly in order to fulfil their responsibilities as the CA in each nation within Great Britain.

7. This MoU also explains how partners to this MoU collaborate to deliver appropriate consistency of regulation under the COMAH Regulations.

8. In addition to their duties under the COMAH Regulations, HSE and ONR enforce relevant statutory health and safety provisions[1] at COMAH establishments, whilst the environment agencies enforce other relevant environmental legislation, where applicable, at COMAH establishments. Although it is recognised that there will be areas of overlap between the requirements of other legislation and the requirements of the COMAH Regulations, this MoU relates solely to the application of the COMAH Regulations.

OBJECTIVES

9. This MoU aims to promote the prevention of major accidents and limitation of their consequences for human health and the environment by ensuring that:

    a) the activities of relevant regulators, acting jointly as the CA in relation to a specific establishment within the scope of the COMAH Regulations, are consistent, timely, transparent, targeted, and proportionate, and co-ordinated to minimise uncertainties and the impacts from potentially conflicting requirements; and

    b) partners to this MoU collaborate on policies, strategies, and activities of common interest, promote consistent approaches, exploit regulatory synergies, and avoid unnecessary duplication of effort.

GOVERNANCE

10. Senior managers from the partners to this MoU work together through a Competent Authorities' Strategic Management Group (CASMG) to provide governance of operational policy, strategic priorities, performance, and resource availability and allocation to CA activities.

11. CASMG is supported at a practical delivery level by a Competent Authorities' Business Support Group (CABSG) comprising representatives nominated by the partners to this MoU. The CABSG monitors CA performance at an operational level, and maintains operating policy, principles, guidance, templates, and working arrangements for the partners to this MoU.

PRINCIPLES UNDERPINNING WORKING ARRANGEMENTS

12. The working arrangements adopted by the partners to this MoU implement better regulation principles for co-ordinating work, ensuring consistency of approach so far as practicable, and avoiding unnecessary regulatory duplication.

[1] Made under the Health and Safety at Work etc Act 1974

13. To achieve this, partners to this MoU, undertake to:

    a) ensure protection of both people and the environment are fully and properly considered in the CA's regulatory activities;

    b) be aware of each other's respective interests at strategic, tactical, and operational levels, informing and involving partners of the thinking and potential interest in areas of priority or change;

    c) share knowledge and intelligence (including, where appropriate, legal advice on a common interest privilege basis) to avoid duplication of effort and maximise efficiency, minimising the burdens on business;

    d) develop a CA plan of inspections at establishments;

    e) work with UK Government and Devolved Administrations, as appropriate, to ensure that the development of COMAH policy takes account of all relevant considerations;

    f) develop an annual plan setting out the agreed CABSG priority workstreams for developing policy, procedures, guidance, and training;

    g) cooperate to ensure a fully informed and appropriate allocation of resources delivers the outcomes required in the intervention and priority workstreams plans across CA operations; and

    h) train staff to understand and apply these principles in day-to-day regulatory activities.

14. It is the responsibility of all relevant staff within partners to this MoU to ensure that the principles set out in this MoU are observed.

15. The relevant regulators recognise that there are many aspects of an operator's or other duty holder's activities that are relevant to both environmental and health and safety protection. Partners to this MoU share a common interest in accident prevention and mitigation systems, and other measures. Therefore, the working arrangements are based on mutual trust and respect, and are guided by the following principles:

    a) the relevant regulators should be aware of each other's respective interests at an establishment, and they should engage in a dialogue and agree responsibilities in conducting inspections, investigations, and assessments;

    b) the relevant regulators will agree who will take the operational lead at an establishment (the COMAH Intervention Manager, "CIM", for that establishment), the aim being 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;

    c) notwithstanding to which relevant regulator the CIM belongs, at an establishment, HSE or ONR will normally lead in dealing with issues

concerning the health and safety of people, and the appropriate agency will normally lead on issues concerning environmental protection;

d) detailed methods of working and involvement of staff will be provided by CABSG within the framework of this MoU, and partners to this MoU will ensure that appropriate contacts are identified to coordinate regulatory activities at each COMAH establishment; and

e) regulatory activity requiring a response from the CA to the operator or other duty holder will reflect an agreed position between the relevant regulators, and the operator, or other duty holder, will normally receive this communication from the CIM for the establishment.

HANDLING DATA REQUESTS, PERSONAL DATA, AND DISCLOSURE OF INFORMATION

16. Partners to this MoU will adhere to relevant legislation at the time of processing information or personal data, and will:

    a) each provide the identity of its Data Protection Officer(s), including contact details, to the partners, and will update each other of any changes as soon as reasonably practicable;

    b) not transfer any personal data they are processing outside the UK unless appropriate legal safeguards are in place;

    c) transfer all data necessary for carrying out the CA's regulatory functions to CA partners under and in accordance with any data handling agreement between CA partners;

    d) inform all other relevant CA partners as soon as reasonably practicable of any unauthorised or unlawful processing, accidental disclosure, loss, destruction, or damage to any such personal data; and

    e) facilitate the coordination of timely action, support the provision of responses, and consider of the views of CA partners, before releasing any of the requested information when a Freedom of Information Act[2] or the Environmental Information Regulations[3] request is received by a CA partner and may be relevant to other CA partners.

HANDLING ORGANISATIONAL AND REGULATORY DISAGREEMENTS BETWEEN CA PARTNERS

17. For as long as the relevant regulators disagree concerning any matter relating to the regulation under COMAH at an establishment, unless a CA partner considers there is a significant or imminent danger to people or the environment, correlated CA regulatory decisions and action requirements will not be placed on an operator.

[2] The Freedom of information Act 2000, or in relation to SEPA, the Freedom of Information (Scotland) Act 2002
[3] The Environmental Information Regulations 2004, or in relation to SEPA, The Environmental Information (Scotland) Regulations 2004

18. The first step in response to any disagreement, whether relating to COMAH regulation at an establishment, or relating to COMAH policies and strategies for the CAs, will be to attempt to resolve matters locally. If this is not successful, the matter will be referred to the next level of management within the relevant partners to this MoU.

19. If the disagreement remains unresolved following escalation to the next level of management, further attempts to resolve the matter will be facilitated by, in turn, CABSG or CASMG.

REVIEW OF THE MOU

20. This MoU is to be reviewed by the partners to this MoU not later than five years after it has been signed, or earlier at the request of any of the partners. The MoU may be extended by collective written agreement.

21. The previous MoU between HSE, ONR, EA, NRW and SEPA on the implementation of the COMAH Regulations 2015 dated 10 August 2017 is hereby superseded.

MEMORANDUM OF UNDERSTANDING BETWEEN HSE, ONR, EA, NRW, and SEPA ON THE IMPLEMENTATION OF THE CONTROL OF MAJOR ACCIDENT HAZARDS (COMAH) REGULATIONS 2015

Signed 25 October 2023

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(authorised to sign on behalf of the Chief Executive)
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(authorised to sign on behalf of the Chief Executive)
Office for Nuclear Regulation

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(authorised to sign on behalf of the Chief Executive)
Cyfoeth Naturiol Cymru / Natural Resources Wales

Nicole Paterson
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