

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN:**

- **THE HEALTH AND SAFETY EXECUTIVE**
- **THE OFFICE FOR NUCLEAR REGULATION**
- **THE ENVIRONMENT AGENCY**
- **THE NATURAL RESOURCES BODY FOR WALES**
- **THE SCOTTISH ENVIRONMENT PROTECTION AGENCY**

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

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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) the Natural Resources Body for Wales (NRW);
  - e) the Scottish Environment Protection Agency (SEPA).
2. In this MoU, EA, NRW and SEPA are collectively referred to as “the agencies”, and the “appropriate agency” means:
  - a) in England: EA;
  - b) in Wales: NRW; and
  - c) in Scotland: SEPA.
3. This MoU has been tested for clarity of understanding with external stakeholders.
4. European Council Directive 2012/18/EU of 4 July 2012 on the Control of Major Accident Hazards involving Dangerous Substances (the Seveso III Directive) is implemented largely by the Control of Major Accident Hazards Regulations 2015 (the COMAH Regulations); the land use planning requirements of the Seveso III Directive are separately implemented through planning legislation.
5. The COMAH Regulations are enforced at an establishment by a Competent Authority (CA) 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, HSE or ONR and the appropriate agency act jointly in order to fulfil their responsibilities as the CA.
7. This MoU also explains how HSE, ONR and the agencies collaborate to deliver appropriate consistency of regulation under the COMAH Regulations within Great Britain.
8. In addition to their duties under the COMAH Regulations, HSE and ONR enforce relevant statutory health and safety provisions<sup>1</sup> at COMAH establishments, whilst the 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 HSE or ONR and the appropriate agency, 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 avoid conflicting requirements.
  - b) HSE, ONR and the agencies actively collaborate on issues of common interest, promote consistent approaches, and avoid unnecessary duplication of effort.
10. To further the objectives of the MoU, HSE, ONR and the agencies will collectively publish a Purpose Statement setting out the strategic aims and the desired regulatory outcomes for the regulation of major hazards within Great Britain. The Purpose Statement will be reviewed every four years, or as appropriate, in line with the arrangements made for reporting the UK's performance in the

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<sup>1</sup> Made under the Health and Safety at Work etc Act 1974

implementation of the Seveso III Directive to the European Commission (EC). The Purpose Statement will be supported by a Business Plan setting out the agreed priorities for the period covered by the Purpose Statement.

## **PRINCIPLES UNDERPINNING WORKING ARRANGEMENTS**

11. The working arrangements adopted by HSE, ONR and the agencies implement better regulation principles for co-ordinating work and reducing regulatory duplication.
12. It is the responsibility of all relevant staff within HSE, ONR and the agencies to ensure that the principles set out in this MoU are observed.
13. It is recognised 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. HSE, ONR and the agencies share a common interest in prevention and mitigation systems and other measures. The working arrangements therefore need to reflect this based on the following principles:
  - a) HSE or ONR and the appropriate agency 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) HSE or ONR and the appropriate agency will agree who will take the operational lead at an 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) 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 determined at the operational level within the framework of this MoU, and HSE or ONR and the appropriate agency 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 HSE or ONR and the appropriate agency. The operator, or other duty holder, will normally receive this communication from the agreed operational lead for the establishment.
14. In handling a request under relevant FOI or EIR legislation for information regarding a COMAH establishment, HSE, ONR or an agency will advise its partner in the relevant CA of its determination prior to making any information available.

### **HANDLING REGULATORY DISAGREEMENTS**

15. If HSE or ONR and the appropriate agency disagree concerning any matter addressed in this MoU, specific requirements will not be placed on an operator or other duty holder until the disagreement has been resolved.
16. The first step in response to any disagreement 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 HSE or ONR and the appropriate agency.
17. 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 (see paragraph 24) or CASMG (see paragraph 20).

### **COMPETENT AUTHORITIES STRATEGIC MANAGEMENT GROUP (CASMG)**

18. Senior managers from HSE, ONR and the agencies will collaborate within the framework of the Competent Authorities Strategic Management Group (CASMG).
19. In respect of the regulation of major accident hazards within Great Britain, CASMG will:
- a) endorse this MoU;
  - b) provide a single senior management focal point;
  - c) publish a Purpose Statement (see paragraph 10) setting out the strategic aims and the desired regulatory outcomes;

- d) maintain the Business Plan (see paragraph 10);
  - e) ensure that appropriate resources are available across the CAs;
  - f) based on intelligence from inspections and incidents in GB and beyond, set strategic priorities for regulation;
  - g) approve operational policy decisions;
  - h) maintain an overview of performance; and
  - i) approve the content of common documents such as guidance, templates, and information leaflets.
20. CASMG will facilitate the resolution of any disagreement between HSE or ONR and the appropriate agency for which a resolution could not be facilitated by CABSG (see paragraph 24).
21. The chairmanship of CASMG may rotate between representatives of HSE, ONR and each of the agencies.

### **COMPETENT AUTHORITIES BUSINESS SUPPORT GROUP (CABSG)**

22. Representatives nominated by HSE, ONR and the appropriate agencies will collaborate within the framework of the Competent Authorities Business Support Group (CABSG).
23. In respect of the regulation of major accident hazards within Great Britain, CABSG will:
- a) advise on possible amendments to this MoU, and ensure that this MoU is reviewed within two years and thereafter every 4 years, unless terminated sooner or extended by collective written agreement;
  - b) review operating policy and principles;
  - c) review working arrangements, including those processes in each CA partner organisation for recovery of costs;

- d) agree presentational formats;
  - e) monitor performance at the operational level, and investigate the cause of any identified deficiencies in performance, referring any serious issues to CASMG; and
  - f) report to CASMG on an annual basis regarding performance.
24. CABSG will facilitate the resolution of any disagreement between HSE or ONR and the appropriate agency for which a resolution could not be achieved through discussions at the local management level.


Signed 10<sup>th</sup> August 2017:

Paul Logan 

Director of Chemicals, Explosives & Microbiological Hazards Division  
Health and Safety Executive

Anthony Hart .....  .....

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

Harvey Bradshaw.....  .....

Executive Director for Environment and Business  
Environment Agency  
(authorised to sign on behalf of the Chief Executive)



Isobel Moore.....

Pennaeth Rheoleiddio ac Caniatáu/Head of Regulation and Permitting  
Cyfoeth Naturiol Cymru / Natural Resources Wales



Terry A'Hearn.....

Chief Executive/Àrd-oifigear  
Scottish Environment Protection Agency /Buidheann Dìon Àrainneachd na h-Alba