

MEMORANDUM OF ADMINISTRATIVE ARRANGEMENTS BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND THE SECRETARY OF STATE FOR TRADE AND INDUSTRY IN RELATION TO PUBLIC ELECTRICITY SAFETY FUNCTIONS UNDER THE ELECTRICITY ACT 1989, THE ELECTRICITY SAFETY, QUALITY AND CONTINUITY REGULATIONS 2002 (AS AMENDED) (THE “ESQCR”) AND OVERLAPPING AREAS OF WORK

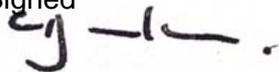
1. This memorandum sets out the arrangements agreed between the Health and Safety Executive (HSE) and the Secretary of State for Trade and Industry (“the SoS”).
2. The agency agreement will allow the public electricity safety functions of the SoS to be transferred to HSE, allowing industry to report to one regulator: HSE, on public and employee safety matters. Other roles performed by electrical engineers at DTI, relating to supply quality and continuity, as well as the conduct of energy infrastructure hearings and inquiries, (along with the majority of policy advice to ministers) will remain at DTI within its Energy Group. This will have the effect of implementing a recommendation of the 2005 Hampton report (Reducing Administrative Burdens: Effective Inspection and Enforcement) to consolidate regulator requirements.
3. HSE, as enforcer of the Health and Safety at Work etc Act 1974 (HSWA) and relevant statutory provisions made under it, including the Electricity at Work Regulations 1989 (save in premises allocated to local authorities by Regulations made under section 18 HSWA), will continue to operate in this way.
4. Where there are areas or specific cases where both HSE and DTI are interested parties, by virtue of any overlapping legislation relating to electricity safety and continuity/quality of supply, any investigations and enforcement that are carried out (especially where fatalities or other major injuries involving members of the public are caused by contact with electrical equipment) should be subject to the following criteria:
  - a) Adequate cover should be provided.
  - b) There should be no unnecessary duplication of effort.
  - c) All reasonable steps should be taken to avoid giving conflicting advice.
  - d) Each organisation will consult the other before it initiates action in the area where the other organisation has the lead.
  - e) Where there is doubt about who should take the lead in any particular investigation, the first organisation contacted will accept a co-ordinating function until agreement is reached.
  - f) Where both organisations need to investigate the same incident, each will identify the matters of evident concern which comes to its attention and which fall within the area where the other takes the lead, advising the other organisation of the expected timescale for completion of any investigation. Where appropriate, the organisations may agree jointly to commission and

fund work by contractors, with the fruits of such work being the joint property and subject to the joint control of both organisations.

- g) where only one organisation is to investigate an incident, it should inform the other of any matters of evident concern which come to its attention and which fall within the area where the other takes the lead, advising the other organisation of the expected timescale for completion of the investigation.
5. HSE will enforce legislation that covers the protection of persons while at work, particularly the organisation, arrangements, procedures and working practices of employers as they may affect the health and safety of employees and of other persons who may be affected by their work and in areas of public safety where members of the public are directly affected by contact with a source of electricity. Indirect effect, namely impacts upon continuity and quality of supply, consequential on failures of generation, transmission, distribution and supply where there is no direct contact with a source of electricity remain the responsibility of DTI and DTI will also continue to deal with the areas of responsibility where these do not impinge upon employee or public safety.
6. The existing Memorandum of Understanding between HSE and DTI dated 15 March 2006 relating to electro-magnetic fields (EMF) will continue to have effect insofar as it makes provision for the management of EMF after the transfer of DTI's public electricity safety function to HSE.
7. Engineering Inspectors transferring from DTI to HSE will continue to be considered competent to carry out the duties they previously did as DTI engineering inspectors. These include the inspection and testing of lines and plant, examining the generation, transmission and supply of electricity, and inspecting supplier's equipment situated on consumers' premises (section 30 (2) of the Electricity Act). They may grant exemptions under regulation 33 ESQCR and have conduct of regulation 34 ESQCR procedures and arbitrations. They will however focus upon safety aspects, matching HSE's agreed responsibilities.
8. Any prosecutions against duty holders, that arise from enforcing the Electricity Act and the ESQCR will be undertaken by DTI Prosecutors during the lifetime of the section 13 HSAWA agreement between DTI and the HSC. The named transferred staff will otherwise ensure compliance by duty holders with those parts of the ESQCR relating to public safety and will liaise with DTI Prosecutors as appropriate where breaches of regulations have occurred.
9. Engineering Inspectors transferred to the HSE will be re-appointed as Electrical Inspectors by HSE, using the section 30(1) Electricity Act 1989 appointment power included in the s13 HSAWA agreement. These Inspectors as HSE employees will continue to perform the duties of an electrical inspector listed in section 30(2) of the Electricity Act insofar as they relate to the public safety role of the former DTI Engineering Inspectorate. HSE will have the power to appoint other HSE inspectors as Electrical inspectors, using the section 30(1) power to perform the section 30(2) duties insofar as they relate to public safety matters.

10. Where elements of public safety within the remit of HSE are inextricably linked with other issues within DTI's operational responsibilities, such as matters relating to the continuity of supply, decisions regarding allocation will need to be taken with regard to where appropriate expertise is held. Accordingly HSE will contact DTI to discuss such matters. Correspondingly, where necessary, DTI will need to request information on public safety aspects of ESQCR from HSE if there is an impact on work relating to continuity and quality of supply or hearings and inquiries.
11. The SoS and HSE shall co-operate in relation to the timely sharing of information required to enable this MOU and the section 13 HASWA agreement to work properly. Any sharing of information is required to comply with the requirements of the Data Protection Act 1998, Freedom of Information Act 2000 and of section 105 of the Utilities Act 2000, as well as of the Civil Procedure Rules (as amended from time to time) and the Prosecutors Convention.
12. The SoS shall ensure that the costs incurred by the Commission and the Executive in performing the functions specified in paragraphs 1(a) and (b) of the agency agreement between HSE and the SoS are funded in an agreed sum deriving from the approved budgetary transfer until 31 March 2008 (i.e. end of current Comprehensive Spending Review period) or any earlier termination of the s13 HASWA agreement.
13. The following arrangements will apply to the three pre-existing MOUs between SoS and HSC/HSE.
  - (1) The MOU relating to administrative requirements between HSE and Engineering Inspectorate of the DTI completed on 2 July 2003 is superseded in its entirety by the arrangements set out in this MOU, and thus has no further effect.
  - (2) The Wind Turbine MOU dated 15 November 2004 will continue to have effect, subject to those responsibilities listed as being "DTI Responsibility" passing in their entirety to HSE.
  - (3) The EMF MOU completed on 15 March 2006 shall continue to have effect NB this makes provision for the situation post transfer of public electricity safety functions from DTI to HSE (see paragraph 6 above)

Signed



CHAIRE DURKIN

For Secretary of State for Trade  
And Industry

Dated

2nd Oct. '06.

Signed



For the Health and Safety  
Executive

Dated

29/9/06