



HSE RESEARCH

INTELLECTUAL PROPERTY POLICY STATEMENT AND EXPLOITATION PLAN

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that risks to people's health
and safety from work activities
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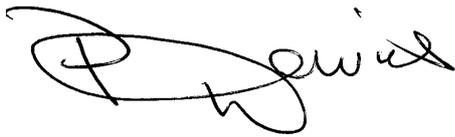
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FOREWORD

I am pleased to present the Health and Safety Executive's Intellectual Property Policy Statement and Exploitation Plan.

This document replaces our previously published Statement¹ and reflects the changes that have come about in the light of The Baker Report², to promote the more effective utilisation, management and exploitation of intellectual property generated in publicly funded research, to the benefit of Government, the UK economy and taxpayers.

In future, except where specific exemptions apply, the ownership of intellectual property and the associated responsibility for commercial exploitation will be vested in the organisations that undertake the research rather than remain with HSE.

A handwritten signature in black ink, appearing to read 'Paul Davies', with a large, stylized initial 'P'.

Dr Paul Davies
Chief Scientist and Director of Corporate Science and Analytical Services Directorate
Health and Safety Executive

¹ HSE Research Intellectual Property Policy Statement and Exploitation Plan (1997).

² 'Creating Knowledge Creating Wealth' - Realising the economic potential of Public Sector Research Establishments. A report by John Baker to the Minister for Science and the Financial Secretary to the Treasury (1999).

1. INTRODUCTION

1.1 The purpose of this document is to:

- set out the Health and Safety Executive's (HSE's) policy on Intellectual Property (IP) arising from its Science and Innovation (S&I) activities;
- outline how the policy is applied; and
- indicate how exploitation of intellectual property rights (IPR) will be promoted and monitored.

1.2 This document is intended as guidance for:

- HSE staff acting as customers for S&I work, purchased from and supplied by an external provider or by the Health and Safety Laboratory (HSL), HSE's in-house agency;
- HSE Project Officers managing S&I work;
- HSE Block Managers and Research Co-ordinators in determining the S&I strategy for Blocks;
- HSL in establishing its role regarding IP; and
- External individuals or organisations contracted to carry out S&I activities on HSE's behalf from which IP may arise.

2. BACKGROUND

2.1 IP arises in pursuance of the aims of the Health and Safety Commission and Executive (HSC/E), whose existence and functions derive from the Health and Safety at Work etc. Act 1974. These are to protect the health, safety and welfare of employees, and to safeguard others, principally the public, who may be exposed to risks from work activities.

HSC/E's MISSION STATEMENT: *to ensure that risks to people's health and safety from work activities are properly controlled.*

The risk creators are responsible for control, but HSE, as the regulator, has the role of better defining the standards and challenging actual practice. In order to pursue its mission, HSE uses Science and Technology to provide a sound independent understanding of what underlies the risks, and the means to assess and control them.

HSC/E's S&T MISSION STATEMENT: *HSC/E develop and apply science and technology to provide a sound, independent knowledge base to evaluate the risks to people's health and safety from work activities and the means to assess and control these risks in order to help achieve HSC/E's objectives.*

2.2 The commercial exploitation of IPR arising from HSE-funded S&I activity must be consistent with HSE's overall mission and be pursued diligently in order to

increase wealth creation and enhance quality of life through improvements to health and safety.

- 2.3 HSE published an initial policy statement on its use of IP in 1997. A fundamental principle of that policy was that HSE would normally retain ownership of IP it funded unless particular circumstances applied. Since then, HM Treasury and DTI Ministers have commissioned a study under the leadership of Sir John Baker of Medeva plc to:
- investigate the commercialisation of research in Public Sector Research Establishments (PSREs);
 - make recommendations for increasing the rate at which research is successfully commercialised consistent with other Government objectives for PSREs.
- 2.4 The Government accepted the recommendations of that report, which included the principle that ownership of IP and the associated responsibility for commercial exploitation should in future, except where specific exemptions apply, be vested in the organisations that do the research rather than remain with the public sector purchaser. This revised HSE policy statement accords fully with the accepted recommendations of the Baker Report and sets out the specific circumstances where HSE will continue to retain ownership of IP.
- 2.5 Further information on IPR issues may be obtained from the Chief Scientist Unit and the appropriate contact name and address is listed in Annex 1 of this document.

3. DEFINITIONS

- 3.1 **'Intellectual property'** (IP) is the term used to describe intangible assets resulting from creative work carried out by an individual or an organisation (**a Provider**). IP can arise from contracts or letters of agreement with the providers of S&I activities for HSE. IP can be traded in the same way as physical assets such as buildings, materials and stock and can be extremely valuable.
- 3.2 **'Intellectual property rights'** (IPR) recognise ownership of IP and provide legal protection against imitation, theft or unauthorised reproduction and allow the proprietor to control what is done with the material they have created. IP and IPR form the basis of **legal rights**, which afford protection to the creator of the original material.
- 3.3 **Legal rights** comprise: **'patents,'** which are concerned with the technical and functional aspects of products and processes; **'designs,'** which are concerned with the appearance of an item; **'trade marks,'** which identify the products or services of a trader; **'copyright,'** which arise from the creation of original literary and artistic work including computer software; **'database right,'** which protects the contents of databases; and **'confidentiality/know-how agreements,'** which provide valuable information on aspects such as how to make a product.

- 3.4 **‘Foreground intellectual property’** is generated by the provider and is covered by the terms and conditions of the contract. **‘Background intellectual property’** is that which already exists and which the provider brings to the work and augments in fulfilling the contract. All references in subsequent paragraphs of this statement relate to foreground intellectual property, as defined above.
- 3.5 The Health and Safety Executive is a legal entity. The Health and Safety Laboratory has no separate legal status.

4. HSE IP POLICY

- 4.1 Ownership of the IP generated from S&I activity funded by HSE will reside with the provider, as the body best placed to secure exploitation, unless one of the situations below applies, in which case the IP will remain with HSE:
- a **standards or regulatory work** – HSE needs to ensure that IP generated from such work does not allow one particular supplier to establish a monopoly in supplying good or services required to meet the standard or regulation;
 - b **improvements to health and safety** - consistent with HSE’s overall mission, the health and safety benefits arising from HSE-funded S&I activity must be promoted and exploited in preference solely to the commercial exploitation of that work;
 - c **dissemination of information** - where the full disclosure of information generated from HSE-funded S&I activity is essential, in order to provide transparency to subsequent decisions or policy produced or implemented;
 - d **aggregation of work** – where HSE S&I activity is part of an aggregation of work undertaken by a number of providers and the IP is best exploited at the aggregate level; and/or where HSE needs to ensure its freedom to use alternative sources of supply for related S&I activity and to make IP from earlier work freely available.
 - e **provider resources** - where the provider does not have the resources to protect and exploit IP that is generated, or may decline to take ownership.
- 4.2 To secure the increased emphasis on commercial exploitation that this new ownership policy requires, where the IP from HSE-funded work resides with the provider it will be necessary for HSE to mandate the provider to make available specific information and undertake certain actions. The provider will be expected to:
- identify exploitable results and report them to HSE;
 - secure IP protection for the results of the work and promote commercial exploitation of the results, as necessary;

- notify HSE of all patent applications made for the results and of patents and any other IP protection secured and of any assignment of these to a third party;
 - inform HSE of the progress with commercial exploitation and of all licences granted; and
 - keep accounts of revenue and make payments as may be agreed to HSE.
- 4.3 When IP generated from HSE-funded S&I activity resides with the provider, licence rights will be established via specific clauses in the S&I contract between HSE and the provider, allowing access to, and use of, the IP for HSE's legitimate business needs.
- 4.4 Licence rights will be perpetual and irrevocable and will preserve the licence entitlement in the circumstances of assignment of rights by the provider and of their reorganisation, merger, take over or dissolution.
- 4.5 The licence rights entitle HSE to make IP available to third parties and to authorise use by them where this is necessary to fulfil HSE requirements or delegated functions. Licence rights should be provided free of charge if the work that gave rise to them has been publicly funded. However, licence payments may be justified in certain circumstances, for instance if the work was only part-funded from the public purse, or if there is a requirement for the licence to provide access to background intellectual property held by the provider.
- 4.6 Where the intended output from an S&I project is to produce generally enabling technology rather than a specific product, the S&I contract may need to make provision for the provider to licence the IP on a non-discriminatory, non-exclusive basis to all companies which request a licence.
- 4.7 In instances where the IP generated from HSE-funded S&I activity resides with the provider, provision will be made in the S&I contract between HSE and the provider for the payment of royalties or a share of revenue in the event of commercial exploitation of the work covered by the contract.
- 4.8 First ownership of IPR normally rests with the author or creator of the work. A notable exception is called employee works, which cover circumstances where a person produces work as part of their official terms of employment. Contractual clauses ensure that '... rights in the work done by or on behalf of the provider or contractor' belong to the employer. Caution needs to be exercised where there is possibility of the work being undertaken by someone who is not employed by the provider contracted to undertake the work, e.g. university undergraduates. Also, contracts and licence rights need to account for situations where work has been undertaken by a sub-contractor.
- 4.9 The treatment of confidentiality in the information generated from an S&I contract will depend on the intended purpose of the outputs. For S&I activity designed to support policy making and regulatory decisions, the presumption must be that the conclusions, underlying data and methodology should all be

published in line with the Chief Scientific Adviser's Guidelines 2000 on Scientific Advice and Policy Making.

- 4.10 Copyright in all works produced by employees of HSE is Crown Copyright. The copyright of works produced by a provider in the private sector will, under the normal terms of contract, rest with the Crown. Crown Copyright in respect of research reports, papers, etc. is not affected by implementation of recommendations from the Baker Report. The Controller of Her Majesty's Stationary Office (HMSO) administers Crown copyright centrally and has overall responsibility for the licensing of Crown copyright material. In issuing copyright licences, HMSO takes fully into account HSE's views on the matter. HSL has delegated authority from the Controller for the licensing and administration of publicly funded scientific research material, which they have produced and commissioned, where the copyright and database rights are owned by the Crown.
- 4.11 HSE's Directorate of Information and Advisory Services (DIAS) takes the lead on all copyright issues except those involving the Crown copyright material produced or commissioned by HSL. DIAS also takes the lead on issues relating to trademarks, designs and database rights within HSE. DIAS runs a publishing operation, which ensures that there is wide dissemination of HSE material.
- 4.12 It is the intention of HSE that details of the S&I work it funds will be published freely. However, the criteria for delayed or non-publication are as follows:

sub judice - where the consideration relates to work carried out to further an ongoing investigation;

joint funded projects - where the work is funded with others there is a delay in publishing the results to allow the partners to realise the benefits of their investment in the research. This normally has a proviso that any safety implications would be published immediately.

IP protection – where it is sensible to avoid prior publication of results that would negate the IP protection process. This will only apply where there are no significant, urgent health and safety issues that would justify earlier publication.

work in progress - it would not normally be the intention to publish interim or progress reports;

internal management issues - some S&I projects are not actively published as the work undertaken is intended primarily for HSE management purposes;

security - where security sensitive issues are contained within a report relating to either personal or site security issues; and

trading results – HSE's Nuclear Safety Directorate use research results for international exchanges of information with other regulators.

- 4.13 Prior written agreement is required before the submission of any paper for publication but such agreements shall not unreasonably be withheld. Where HMSO has issued a generic licence to a scientific publisher, clearance from HSE to publish an individual article or paper will still be required.

5. MANAGEMENT OF IPR FROM INTRAMURAL S&I ACTIVITIES

- 5.1 The Health and Safety Laboratory (HSL) became an Agency of HSE in 1995. Although HSL has no separate legal status from HSE, HSL is treated the same as any provider of S&I work. The Framework Agreement under which HSL operates states that IP generated by HSL as a result of work paid for by HSE will be vested in HSL unless any of the situations set out in section 4.1 of this document apply, in which case the IP will remain with HSE.
- 5.2 A concordat between HSL and HSE sets out the respective roles and responsibilities on ownership, exploitation, costs and income.
- 5.3 Where HSL purchases S&I work from other providers, HSL will apply the policy set out in section 4 of this document in handling any IP generated as a result of that work.

6. IDENTIFICATION OF IP

- 6.1 Early identification of ideas having commercial potential is important because IP cannot be protected after it has entered the public domain. Mechanisms are in place at the project commissioning stage, which identify commercial potential and ensure close monitoring of progress for IP that might require legal protection and/or that might be suitable for commercial exploitation.
- 6.2 When HSE funds work suggested to it by a contractor, the intellectual property in that proposal remains the property of the contractor. However, where such a proposal identifies one solution to an underlying problem, HSE reserves the right to commission research competitively where the specification is expressed in terms of the problem.
- 6.3 A clear understanding of position regarding IP is negotiated and established for each piece of work and is included in the contract for that work.

7. EXPLOITATION AND PROTECTION OF IPR

- 7.1 A large proportion of the S&I work commissioned by HSE has outputs in the form of published information, or outputs which are unsuitable for patent protection. IP retained by HSE that has the potential for commercial exploitation is managed by the Chief Scientist Unit (CSU), in consultation with the HSE customer and Project Officer for that work. CSU draws on a long standing Technology Transfer Agreement with BTG plc, who have professional expertise in patenting, negotiating licences, monitoring licensees, and pursuing infringers; and through other Technology Transfer Agencies when appropriate.

- 7.2 Under the terms of the HSE/HSL concordat, HSL are responsible for the marketing and exploitation of IP that has arisen from HSE-funded work they have undertaken and where the IP resides with them.
- 7.3 Overall policy responsibility for IP, regardless of whether it is generated by HSL or another provider, rests with CSU.

8. INTERNATIONAL ISSUES

- 8.1 HSE undertakes to comply with the provisions of all European Community and other international obligations concerned with IPR. In particular, HSE will comply with the Directive 92/50/EEC relating to the co-ordination of procedures for the award of public sector contracts.

9. HSE CONTACT POINTS

General policy and co-ordination for IPR matters relating to research:

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Legal rights issues (excluding patents & confidentiality/know-how agreements)

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