

# MEMORANDUM OF UNDERSTANDING

BETWEEN

THE MINISTRY OF DEFENCE

AND

THE ENVIRONMENT AGENCY



Issue date: 15.12. 2022

Revision date: 15.12. 2023

## **AIM**

1. The purpose of this Memorandum of Understanding (MOU) is to engender effective co-operation and understanding between the Ministry of Defence (MOD) and the Environment Agency (the EA) (the participants) in dealing with issues of compliance with statutory environmental protection requirements and cooperation relating to flood defences. It is also to engender collaboration on matters of mutual interests that are wider than statutory environmental protection such as sustainability, including net zero, climate change adaptation and emergency preparedness and response.
2. The participants accept that this MOU is not legally binding between them and does not create any form of partnership or legal rights or, obligations. However, it is a statement of their shared intention to work together in a spirit of co-operation in pursuance of all relevant matters.

## **SCOPE**

3. This MOU:
  - applies to all MOD activities, and those of its Arm's Length Bodies, that may have an impact on the environment;<sup>1</sup>
  - does not apply to sites directly regulated by the EA under the appropriate legislation; such as MOD's contractors or government owned contractor operated sites under civilian control; those involved in nuclear weapons programme activities; contractor operated dockyards; construction sites on MOD land that are transferred, for management purposes, to the contractor for the duration of the build.
  - relates to all relevant environmental protection legislation that applies in England and adjacent England coastline and that is applicable to the MOD;
  - applies to the joint responsibilities to promote environmental protection.

## **DEFINITIONS**

4. "Premises" are defined as a house or building(s), together with its land and outbuildings, occupied by a business. In the context of this MOU, it is applied to those premises used by, or under the control of the MOD. It also includes premises occupied by Visiting Forces. The term premises is extended to apply to parked military aircraft and, Royal Naval/MOD ships in UK territorial waters (adjacent to relevant parts of England) if alongside.
5. This definition does not include premises (facilities) under the direct control of contractors, which are required to comply with legislation as per any private

---

<sup>1</sup> Such as Defence Equipment and Support, Defence Electronics and Components Agency, UK Hydrographic Office, Defence Science and Technology Laboratory and the Submarine Delivery Agency.

company, nor does it apply to Royal Naval or MOD shipping or military aircraft in transit.

## **MOD RESPONSIBILITIES AND ARRANGEMENTS**

6. The MOD is the Department of State charged with the management and control of HM forces and civilian personnel engaged in the defence of the UK and its citizens, property and interests at home and overseas. The Directorate of Health Safety and Environmental Protection (HS&EP) has overall MOD policy responsibility for Environmental Protection and is responsible for managing the implementation and management of this MOU. The Directorate of Health Safety and Environmental Protection collaborates with the Directorate of Levelling Up, Climate Change and Sustainability (LUCC&S) and the Directorate of Infrastructure on environmental and CC&S issues. These directorates will lead on relevant work strands and any dispute resolution relating to those strands, as appropriate.
7. The MOD is committed to the protection of the environment, whilst maintaining operational effectiveness. Within the UK, the MOD is required to comply with all applicable environmental protection legislation (including legislation giving effect to the UK's international obligations). The MOD will notify the EA of all environmental incidents where there is the potential for environmental damage to occur.
8. The Secretary of State for Defence (SofS) is responsible for all environmental protection matters within the MOD. Where there are disapplications, exemptions, or derogations<sup>2</sup> from environmental protection legislation, MOD will maintain Departmental arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by all relevant International and UK legislation<sup>3</sup> with the Defence Safety Authority (DSA) providing Defence specific regulation.
9. The MOD will carry out relevant environmental/sustainability appraisals for all new and revised decision-making processes and associated policies, strategies, programmes, plans, projects, training activities (such as equipment acquisition, estate rationalisation and disposal) and related activities including in those instances where exemptions are permitted in accordance with the relevant legislation.

## **EA RESPONSIBILITIES AND APPROACH**

10. The Environment Agency's main aim (as defined in the Environment Act 1995) is to carry out its functions so as to protect or enhance the environment,

---

<sup>2</sup> A disapplication refers to an element of law or regulation that explicitly does not apply to Defence; an exemption from law or regulation is granted on application to the SofS in the interests of national security; and derogation is lessening of the requirements of law or regulation for justifiable practical or operational reasons

<sup>3</sup> SofS Policy Statement on Health, Safety and Environmental Protection in Defence.  
<https://www.gov.uk/government/publications/secretary-of-states-policy-statement-on-safety-health-environmental-protection-and-sustainable-development>

contributing towards the objective of achieving sustainable development through its role as:

- an environmental regulator;
- an environmental operator;
- a monitor of, and advisor on, the state of the environment;
- a landowner and manager;
- a technical advisor on the development of environmental policy;
- a promoter of scientific research in support of these roles;
- a category one responder dealing with incidents and emergencies

11. The legal powers and duties of the EA include, but are not limited to:

- regulating under the Environmental Permitting (England and Wales) Regulations 2016 - the main environmental permitting regime which controls potentially polluting activities (waste, installations, water quality, groundwater, radioactive substances and waste, mining waste) through a system of permits and exemptions Enforcing the Control of Major Accident Hazards (COMAH) Regulations 2015 as part of the Competent Authority (CA) jointly with HSE (or ONR on nuclear establishments);
- controlling the abstraction and impoundment of water including in relation to drought permits under the Water Resources Act 1991;
- reservoirs regulation under the Reservoirs Act 1975;
- carbon mitigation under the UK Emissions Trading Scheme and a range of other carbon mitigation and adaptation measures;
- transfrontier shipment of waste and radioactive waste;
- fisheries legislation;
- responsibility for flood risk management on main rivers and coasts under primary, secondary and local legislation including a general supervisory duty for all flood and coastal erosion risk management and a power to issue flood warnings;
- responding to major incidents as a Category 1 Responder under the Civil Contingencies Act 2004.

12. In exercising its regulatory powers, the EA recognises the role played by the management systems for protecting the environment that are implemented by the MOD. The EA will also observe the principles of:

- proportionality in the application of the law and in securing compliance;
- consistency of approach;
- transparency about its operation and what may be expected from it;
- targeting of enforcement action; and
- accountability for the enforcement action it has taken.

13. Provision of advice is an important element of the EA's role, and it is willing to advise the MOD on how best to meet its environmental protection responsibilities.

## **JOINT RESPONSIBILITIES**

14. The MOD and the EA will cooperate, and, where possible, work in partnership in areas of wider environmental protection responsibilities and aspiration that both participants have, in order to achieve mutual benefits, without compromising the EA's statutory regulatory roles and the MOD's operational and strategic roles where they apply.
15. Wider areas requiring joint responsibilities or aspirations relevant to MOD's activities and/or premises may include:
  - water quality including the quality of the MOD's land and assets;
  - water resources and water resources management including priority locations for management to alleviate water stress;
  - flood and coastal risk management including flood risk to the MOD's assets, habitat compensation through Regional Habitat Creation Programmes, and future climate change adaptation;
  - avoidance, mitigation and compensation for environmental impacts of developments and flood defences including carbon, biodiversity net gain and nutrient offsetting;
  - Natural capital enhancement;
  - Operating sustainably including net zero.
16. Where required, further detail on areas for cooperation and partnership working is set out in supporting annexes.

## **CONTRACTORS' RESPONSIBILITIES**

17. Contractors working for the MOD are required to comply with all relevant environmental legislation. The MOD will ensure that its contractors hold appropriate environmental permits and licences and have in place and implement procedures to comply with environmental legislation and departmental policy.
18. MOD contractors that hold environmental permits will continue to be regulated by the EA and will be subject to periodic inspections to ensure they fulfil their environmental responsibilities under the permits.
19. Contractors working under the direction of MOD do not enjoy Crown Immunity or MOD disapplications, exemptions or derogations and therefore would be liable to enforcement up to and including prosecution. Depending on the level of direction and supervision by the MOD, the MOD may also be culpable.

## **INSPECTIONS AND INVESTIGATIONS**

20. Subject to modification in respect of certain Crown premises, the EA has powers of entry relevant to its environment protection roles, including under the Environment Act 1995<sup>4</sup> and Water Resources Act 1991.
21. Inspections by the EA inspectors/officers on MOD premises and activities are for the purpose of discharging their functions as statutory regulatory authority. The MOD will allow all reasonable access to its premises by EA inspectors/officers. While carrying out their statutory responsibilities, the EA inspectors/officers will comply with the Government's Security Policy Framework<sup>5</sup> as amended from time to time. The EA accept that operational requirements, including training, may sometimes result in access restrictions; the MOD will aim to keep such restrictions to a minimum. Further details are given in Annex A.
22. The EA has powers of investigation under the Environment Act 1995 which may include removal of samples and interviewing under caution.

## **ENFORCEMENT**

23. The EA will consider enforcement action against the MOD, as it would against any public or private sector organisation that they regulate, in accordance with the EA enforcement and sanctions policy. The MOD, however, as part of the Crown, cannot be criminally liable, including for failing to comply with prohibition, enforcement or works notices. Where, but for Crown Immunity, the MOD would have been prosecuted as a corporate body, the EA may apply to the relevant Court for a declaration that MOD's actions were unlawful.
24. The actions of individuals employed by or acting on behalf of the MOD may constitute criminal offences. The EA will only prosecute individuals in circumstances where it would have prosecuted individuals of a public or private sector company.
25. The EA will notify the Commanding Officer (CO)/Head of Establishment (HoE) of the premises, in the event of any interventions or any possible application for a declaration against the MOD or intention to prosecute an individual MOD employee. The MOD cannot be made the subject of a civil penalty under the Regulatory Enforcement and Sanctions Act 2008.
26. Interventions that may be taken include serving:
  - enforcement notices;
  - works notices;
  - prohibition notices;
  - remediation notices;
  - suspension or revocation of environmental permits;
  - authorisations or other licences.

---

<sup>4</sup> Inspection powers - restrictions to powers of entry and on-site investigation exist under Section 108(8) of the Environment Act for premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority where declared as prohibited places.

<sup>5</sup> <https://www.gov.uk/government/publications/security-policy-framework>

27. CO/HoE's should make every effort, within operational restrictions, to comply with any enforcement action placed upon them.

## **CHARGING, COST RECOVERY, AND PREVENTATIVE OR REMEDIAL ACTION**

28. Where they have the statutory authority to do so, EA may seek to recover costs from the MOD where they have intervened to inspect or investigate, and the EA believes there has been a breach of legislation.
29. The MOD accepts that, for regulatory activities, the EA's published charging schemes shall be applied to the MOD, in the same way, with the equivalent scale of charges, as applied to other public or private sector organisations. The EA will ensure that the MOD has the opportunity to comment and make representations on proposed changes to its charging scheme. If the MOD and the EA decide that specific charging arrangements are required, these will be detailed in a separate annex to this MOU.
30. The EA also has powers to carry out preventative or remedial works. In appropriate circumstances, should a regulated facility operated by the MOD under an environmental permit show a serious potential pollution risk, the EA may take steps to carry out preventative or remedial action. The EA will seek to recover costs of those steps from the MOD/responsible parties. In performing their statutory duties in respect of these powers, the EA will act in the same manner as they would towards an organisation in the public or private sector.
31. Government policy requires MOD to charge for goods and services (including the use of the Defence estate) that is provided outside of core Departmental objectives. The participants accept that where a contractual arrangement is entered into between the MOD and the EA charges may apply. Charges will be calculated in line with MOD policy and HM Treasury publication 'Managing Public Money' which applies to both participants.

## **STRATEGIC ENGAGEMENT**

32. The MoD and the EA recognise the importance of engagement at the strategic level and undertake to share information on relevant strategic developments at the earliest opportunity. Early engagement at strategic level will seek to ensure that strategic aspirations lead to appropriate outcomes; it will also help to minimise delays and regulatory risks to delivery.

## **INFORMATION SECURITY AND DISCLOSURE**

33. The MOD and the EA accept that timely and open exchange of information is an important feature of good working arrangements. The MOD will provide all information necessary, subject to security restrictions, for the EA to discharge its statutory functions.

34. In conducting their duties, the EA inspectors/officers may need to receive and understand classified information. The EA will ensure that their inspectors/officers have the appropriate level of security clearance and will make arrangements to handle classified information in accordance with the Government Security Framework. Where appropriate, security arrangements specific to particular activities are detailed in the annexes.
35. Information supplied by the MOD to the EA which is subject to restrictions on grounds of national security or commercial confidentiality, will be withheld from public register(s)<sup>6</sup> in accordance with statutory requirements, unless such a restriction has lapsed. The information will not be communicated to third parties except by permission of the MOD, or in accordance with a legal requirement.
36. The MOD and EA procedures for collection, storage and disclosure of information are subject to the Freedom of Information Act 2000 the Environmental Information Regulations 2004 and the requirements of the Data Protection Act 2018 and the UK General Data Protection Regulation (UKGDPR). If the EA receives a request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, or a subject access request under the UKGDPR then the decision on disclosure is the responsibility of the EA. The EA will seek representations from the MOD (especially in respect of information originating from the MOD) to assist its decision-making and vice versa. Decisions on disclosure will be taken in accordance with the provisions of the relevant legislation, and legal advice may be sought.

## **LIAISON ARRANGEMENTS**

### **Joint Environment Liaison Meeting**

37. A Joint Environment Liaison Meeting will comprise nominated permanent members from the MOD and the EA with other individuals/ specialists invited for specific items as required. The chairmanship will rotate between the MOD (Directorate of Health, Safety and Environmental Protection) and the EA (Executive Director for Environment and Business). The meeting will be held bi annually unless required to meet more frequently by the members. The Liaison Meetings will be used to:
  - seek to resolve environmental issues that cannot be resolved at the local level;
  - resolve problems arising from the implementation of this MOU and annexes and any arrangements made under it;
  - review this MOU from time to time.

### **Resolution of Differences of Opinion**

---

<sup>6</sup> The EA have a duty to place on the public register information relating to environmental permitting except where information is excluded on grounds of national security or commercial confidentiality. Relevant information includes, for example, permit applications, variations and surrenders, inspection reports, and monitoring data.



38. Resolution of any differences of opinion between the MOD and the EA will be managed in the first instance at the working level. Where resolution cannot be reached at this level, the matter will be referred to the lead MOD and EA focal point for this MOU. Director HSEP and EA Environment and Business Director.

## ANNEXES TO THE MOU

39. This MOU is supplemented by annexes jointly decided between the MOD and the EA. These annexes deal more exclusively (but not by way of limitation) with either a specific regulatory function of the EA, or an area which requires more detail to assist in the cooperation, or partnership working. The annexes may be reviewed and updated from time to time, independently of the overarching MOU.

40. The annexes to this MOU are:

- Annex A: General Arrangements for Operational Liaison on Access, Inspection, Investigation and Enforcement by EA Inspectors;
- Annex B: General Arrangements for the Management of Radioactive Substances in England;
- Annex C: Ministry of Defence Premises in England Used by the United States Visiting Forces;
- Annex D: Arrangements for Managing Land Contamination in England;
- Annex E: Water Abstraction and Impounding Licenses.

The signatories on behalf of the participants to this MOU are as follows: -

Signed\_



Signed\_\_\_\_\_



Dated \_\_\_15.12.2022\_\_\_\_\_

Dated \_\_\_15.12.2022\_\_\_\_\_

Director & Ministry of Defence Liaison Lead

Director Health Safety and  
Environmental Protection

Environment Agency

Ministry of Defence

