

CONCORDAT ON THE IMPLEMENTATION OF THE JUSTIFICATION OF PRACTICES INVOLVING IONISING RADIATION REGULATIONS 2004

An agreement between the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, Welsh Ministers, the Scottish Ministers and the UK Government

Introduction

1. This Concordat (“the Concordat”) sets out the agreed framework for cooperation between, for Northern Ireland, the Department of Agriculture, Environment and Rural Affairs, the Secretary of State, the Welsh Ministers, and the Scottish Ministers, on the administration and co-ordination of the regulatory framework established by the *Justification of Practices Involving Ionising Radiation Regulations 2004*.

2. The Concordat is not a legally binding agreement or a contract, and it cannot override the statutory duties and powers of the four parties. Any failure to follow the terms of the Concordat is not to be taken as invalidating decisions taken by any of the four parties. Nor is the Concordat intended to cover every detailed aspect of the relationship between them. Rather, it is a statement of the principles that will guide relations between the four parties. The objective of the Concordat is to ensure that the roles and responsibilities of the four parties under the constitutional structure established by the respective devolution settlements are effectively translated into practical working arrangements between them. The aims are to promote close and harmonious working relationships and good communications at all levels between the four parties, and in particular to foster constructive co-operation, and where possible agreement, while respecting the letter and spirit of the devolution settlements.

3. The Concordat is drawn up in accordance with the principles outlined in the *Memorandum of Understanding and Supplementary Agreements between the UK Government, Scottish Ministers, the Cabinet of the National Assembly for Wales, and the Northern Ireland Executive Committee* (December 2001) (“the MOU”). The MOU sets out the broad understanding of the UK Government and the Devolved Administrations for Scotland, Wales and Northern Ireland of the principles and practices that underlie relations between them. The Concordat is also intended to be consistent with the overarching concordats between those administrations, particularly the *Concordat on Co-ordination of EU Policy Issues* and the *Concordat on International Relations*.

Legislative framework

4. *The Justification of Practices Involving Ionising Radiation Regulations 2004* came into force in August 2004. The Regulations have been amended by the *Justification of Practices Involving Ionising Radiation (Amendment) Regulations 2018*, which come into force in April 2018. References in this Concordat to the “Regulations” are

to the 2004 Regulations as amended. The Regulations transpose the following provisions of Council Directive 2013/59/Euratom of 5 December 2013:

- Articles 5(a) and 19, which are concerned with the principle of justification of classes or types of practice involving exposure to ionising radiation;
- Article 20, which is concerned with practices involving consumer products;
- Article 21, which is concerned with the prohibition of certain practices; and
- Article 22, which is concerned with the deliberate exposure of humans to ionising radiation for non-medical imaging purposes, insofar as that exposure does not use medical radiological equipment.

5. In line with the devolution settlement, the UK has four Justifying Authorities who may exercise functions under the regulations. These are the Secretary of State, the relevant Northern Ireland Department, the Welsh Ministers and the Scottish Ministers. In terms of the practical working arrangements in this document the terms also apply to officials acting on behalf of ministers.

Administration

6. The parties to the Concordat have jointly established a Justification Liaison Group (JLG). The JLG is a body of officials representing the four Justifying Authorities. It serves the Justifying Authorities in administering the regulations by providing for:

- *Communication* – by ensuring that a high level of communication exists between the Justifying Authorities.
- *Coordination* – by being the conduit through which the Justifying Authorities discuss and agree common positions.
- *Consultation* – by facilitating meeting the requirement of Regulation 18(2).

Method of Working

7. The JLG shall meet at the request of one of the Justifying Authorities. Otherwise it will communicate by correspondence.

8. At any meeting, the chair and secretary of the JLG will be provided by the Justifying Authority hosting the meeting.

9. The lead Whitehall Department appropriate at the time shall provide the official representing the Secretary of State.

10. Annex A provides detail on the handling of applications.

11. Annex B provides detail on the handling of enforcement action.

12. Where, following any necessary policy clearance, a Justifying Authority seeks to make a decision or determination under the regulations without having received an application, liaison and co-operation between the Justifying Authorities shall follow this Concordat.

Reaching agreement and arrangements for resolving disagreements

13. While recognising the ability of the four Justifying Authorities to make their own decisions insofar as permitted by the devolution settlements, the JLG will endeavour, wherever possible, to agree between the four parties a common position on issues relating to the justification of practices involving exposure to ionising radiation.

14. Where agreement cannot be achieved, or if there is disagreement as to the extent of the competence of different Justifying Authorities, the parties will endeavour to resolve these disagreements within the letter and spirit of the existing devolution settlements, within the JLG; or as necessary:

- by discussions at ministerial level;
- through the good offices of the relevant territorial Secretary of State; or
- bringing the disagreement to the Joint Ministerial Committee (JMC) for resolution in accordance with the MOU and the Dispute Resolution Protocol;

and where appropriate having regard to legal advice.

Obtaining Information

15. Each Justifying Authority will co-operate with the others as necessary in the serving of notices requiring persons to furnish information.

Inquiries and Hearings

16. The Justifying Authorities will endeavour to reach agreement as to whether or not an inquiry or other hearing should take place. Where an inquiry or other hearing is to take place the Justifying Authorities able to exercise the function will endeavour to reach agreement that a single inquiry or other hearing, on behalf of all, should be held.

17. The Secretary of State will co-operate with the other parties in summoning witnesses.

Sharing information and confidentiality

18. The regulations provide for formal consultation between the Justifying Authorities. In addition, consistent with the parties' obligations under the MOU and other overarching concordats, the parties will continue to communicate and co-operate closely with one another in this as in other areas.

19. The parties wish to ensure that the information each supplies to the other is subject to appropriate safeguards, in accordance with the principles set out in the MOU. These arrangements rely, for their effectiveness, on mutual respect for the confidentiality and sensitivity of information exchanged. The parties will not disclose unpublished information to third parties without the permission of the administration which provided the information, subject to the requirements of the law and other obligations. In particular, consultation and discussion on matters not in the public domain may be:

- limited to the relevant Northern Ireland Minister and officials;
- limited to the relevant Welsh Ministers and Welsh Government officials;
- limited to the Scottish Ministers and Scottish Government officials and will be subject to the establishment of suitable arrangements to safeguard confidentiality. It is for the administration providing the information to state what, if any, restrictions there should be upon its usage.

Duration of the Concordat

20. This agreement takes effect from the date on which it is signed by all of the four parties. It will run until its termination by any of the parties giving six months' notice in writing.

Liaison and review

21. Each of the four parties will appoint at least one member of the JLG who will also act as liaison officer for the general purpose of ensuring the smooth running of the Concordat. The Concordat can be reviewed at any time at the request of one of the parties, and can be amended at any time with the agreement of all parties.

Financial and staffing issues

22. Each Justifying Authority will bear its own costs.

Public Register of Information

23. Regulation 19 requires the Secretary of State to keep a statutory public register (in hard/paper copy) jointly on behalf of all four Justifying Authorities. This will be held at the BEIS offices in London. The Devolved Administrations will be responsible for keeping and maintaining copies of the public register as it relates to their territorial interests. In addition to the maintenance of the statutory public register, the Secretary of State will make available via the internet to the public of Northern Ireland, England, Wales and Scotland, a list of contact points, the latest version of the guidance to the regulations and a list of Departments responsible for existing classes or types of practice.

Scope of Application

24. The UK government departments which have agreed to this Concordat are listed in Annex C.

D. McGillivray.....

Signed on behalf of Scotland

D. Small.....

Signed on behalf of Northern Ireland

T. Thomas.....

Signed on behalf of Wales

U. Nazir.....

Signed on behalf of England

18/04/2018

Annex A - Handling of applications

****Stage 1(a)**

Applications for new classes or types of practice

An application is made to the Justification Application Centre (JAC)* or to a Justifying Authority who passes it to the JAC. The JAC sends a letter of receipt to the applicant, identifies the sponsoring department (which must be functionally separate from all other persons concerned with the promotion and utilisation of that particular practice) and forwards the application to the members of the Justification Liaison Group (JLG). The JAC places details of the application on the register on behalf of the Justifying Authorities. The JLG will normally determine within one month:

- whether the application is in order;
- whether more information is needed;
- which Secretary of State is to lead; and
- which of the Justifying Authorities are able to exercise functions under the regulations for the particular application

All further communication with the applicant including requests for further information and notification of the period within which the justification decisions will be made will be sent to the applicant by the Whitehall lead department on behalf of the Justifying Authorities.

Stage 1(b)

Decision as to whether the class or type of practice is new

The member of the JLG from the lead Whitehall department will consult with:

- the other members of the JLG;
- the statutory consultees; and
- others as appropriate

before advising the Secretary of State. The decision of the Secretary of State will be notified to the other members of the JLG and to the JAC by the Whitehall lead department JLG official. JAC places details of the decision on the register.

Stage 1(c)

Consultation on new class or type of practice

Where a decision that the class or type of practice is new has been made, the JLG shall coordinate the undertaking of consultation and its scope within the four parts of the UK. This may involve separate or joint public consultations.

Stage 1 (d)

Assessment and decision

At the end of the consultation period, the JLG will consider and discuss the application in the light of the comments made by consultees before advice is prepared for the Justifying Authorities. The JLG will endeavour to produce advice that provides for Statutory Instruments that are consistent in effect and timing in each part of the UK.

Stage 1 (e)

Information on decision

The decision, together with any other information to be placed upon the register shall be communicated to the JAC by the Whitehall lead department JLG official on behalf of the Justifying Authorities exercising the function.

Stage 2 (a)

Application for review of an existing practice

As Stage 1 (a)

Stage 2(b)

Decision as to whether the class or type of practice is new

As Stage 1 (b)

Stage 2 (c)

Decision as to whether there is new and important evidence

Where a decision has been made that the class or type of practice is existing, the JLG will consider and discuss the application before advice is prepared for Justifying Authorities. The JLG will endeavour to provide consistent advice as to whether any information is:

- New
- Important
- Concerns the efficacy and consequences of the class or type of practice

Stage 2 (d)

Decision as to whether to review the class or type of practice

The JLG will consider and discuss the application before advice is prepared for Justifying Authorities. The JLG will endeavour to provide consistent advice as to whether the class or type of practice should be reviewed.

Stage 2 (e)

Consultation

Where a decision is made to review a class or type of practice, the JLG shall coordinate the undertaking of consultation and its scope within the four parts of the UK. This may involve separate or joint public consultations.

Stage 2(f)

Assessment and decision

At the end of the consultation period, the JLG will consider and discuss the application in the light of the comments made by consultees before advice is prepared for Justifying Authorities. JLG will endeavour to produce advice that provides for Statutory Instruments that are consistent in effect and timing in each part of the UK.

Stage 2 (g)

Information on decision

The decision, together with any other information to be placed upon the register shall be communicated to the JAC by the lead Whitehall department JLG official on behalf of the Justifying Authorities.

****The Justification Application Centre (JAC) is an administrative office maintained by the Secretary of State at the BEIS offices for the purpose of providing an initial administrative point of contact for applicants and to maintain the statutory register.***

***** Not relevant where a decision is to be made without application.***

Annex B - Handling of enforcement action

Step 1

Detection

A Justifying Authority (JA) becomes aware that an example of an unjustified class or type of practice is taking place, or is about to take place, on its territory. The JA makes an initial assessment of the situation and takes any immediate enforcement action it considers appropriate. This lead JA should immediately inform the other JAs through the Justification Liaison Group (JLG).

Step 2

Coordination

In all dealings on enforcement actions, the lead JA should keep the other JAs fully informed of developments. In cases that affect more than one territory the affected JAs should (via JLG) coordinate action in a way that best protects human health and the environment.

Step 3

Serving of Notice

Before consulting on serving a contravention notice the JA should notify the JLG members of its intent to do so.

Annex C – UK Government Departments which have agreed to

Concordat

Department for Business, Energy and Industrial Strategy

Department of Health

Department for Transport

Home Office

Ministry of Justice