

GENERAL AGREEMENT BETWEEN THE MINISTRY OF DEFENCE AND THE HEALTH AND SAFETY EXECUTIVE FOR NORTHERN IRELAND (HSENI)

INTERFACE BETWEEN ENFORCING AUTHORITIES, THE MOD AND OTHER ORGANISATIONS

INTRODUCTION

- 1 This agreement sets out the principles which apply to the Ministry of Defence (MOD)'s observance of health and safety legislation in respect of members of the military, naval and air forces of the Crown, MOD civilian employees and others affected by MOD activities in Northern Ireland and to the actions of the Health and Safety Executive for Northern Ireland (HSENI) as the regulatory authority. It covers all MOD activities. The arrangements made in this agreement assume conditions not amounting to armed conflict; arrangements at other times will be the subject of agreement in the Health and Safety Executive (HSE)/MOD Joint Liaison Committee (JLC) (see paragraphs 10 and 11 below).
- 2 There are three Annexes:
 - 2.1 Annex A sets out the arrangements for inspection by HSENI;
 - 2.2 Annex B deals with arrangements for inspection of HM Ships and Submarines; and
 - 2.3 Annex C deals with special arrangements for particularly sensitive activities.
- 3 MOD recognises its duties under the Health and Safety at Work (Northern Ireland) Order 1978 (HSW(NI)O) in relation to all units, establishments and activities in Northern Ireland. These responsibilities are reflected in the Health and Safety Policy Statement of the Secretary of State for Defence. The full protection, rights and responsibilities of the Order will apply to all MOD civilian employees and to MOD Service personnel in Northern Ireland. Where MOD has been granted exemptions from specific regulations, it is the policy of the Secretary of State for Defence that health and safety standards and arrangements will be, so far as is reasonably practicable, at least as good as those required by statute.
- 4 HSENI recognises that judgements about the reasonable practicability of action by an employer must take into account the societal benefits from the overall purpose of the organisation. It follows that, in determining what steps are necessary for MOD to ensure the health and safety of employees and others, the requirements of defence as well as cost must

be considered. Therefore, HSENI will continue to monitor MOD's observance of health and safety legislation having due regard to defence imperatives.

SECURITY

5 HSENI inspectors will conduct inspections and handle protectively marked information in

accordance with the Manual of Security in Government Departments. They should be allowed access to protectively marked information as required to carry out their duties, subject to the inspector having the appropriate level of security clearance and the application of the "need to know" principle. Any difficulties should be reported through normal command or management channels for clarification by the relevant security directorate. Arrangements for particularly sensitive activities have been agreed with the HSENI and are the subject of Annex C to this agreement.

DISCLOSURE OF INFORMATION

6 Disclosure of information obtained by inspectors as a result of reports made to them or inspections carried out by them is subject to the provisions of the HSW(NI)O and the Code of Practice on Open Government which regulate such disclosure in respect of its purpose and the intended recipient. Protectively marked information will not be disclosed except after prior discussion and agreement with MOD. In any case of doubt, HSENI will consult MOD as to the grounds for withholding any information.

7 HSENI inspectors are obliged by the HSW(NI)O Article 30(8) to give certain information about matters affecting the safety, health and welfare of those employed to employees and their representatives. In conforming with this requirement, HSENI inspectors will disclose information only to the named safety representative or a trade union official directly associated with the establishment and matter under review and who has the requisite security clearance. In the case of HM Forces, inspectors will give the information to the CO who will receive it on behalf of the Service personnel under his control.

ENFORCEMENT

8 There is no Crown exemption from the HSW(NI)O; MOD is bound by the general duties imposed by the Order and by Regulations made under it except where specific exemptions apply. However, the Crown cannot be prosecuted for breaches of the law, including failure to comply with improvement and prohibition notices. In lieu of this, HSENI have instituted a procedure for issuing Crown Notices. MOD has agreed to comply with

these Notices. HSENI may make arrangements for censuring Crown bodies in respect of offences which would have led to prosecution if they had occurred in the private sector. HSENI inspectors who propose to invoke this procedure for formal censure of MOD will consult HSENI's Chief Executive who will inform the Directorate of Safety and Claims if the procedure is to be followed.

- 9 The HSW(NI)O places statutory duties on individuals both as employers and employees. HSENI has, however, undertaken not to prosecute individual Crown servants in substitution for their department. HSENI also recognises that HM Forces have powers to deal with disciplinary charges against their members. Only in exceptional circumstances would a criminal prosecution be instituted against a member of the Services under the HSW(NI)O.

LIAISON ARRANGEMENTS

- 10 Chief Safety Officer (MOD) and the HSENI's Chief Executive will liaise as necessary concerning the application of this agreement. Disagreements between MOD and HSENI about the application of the agreement which cannot be resolved locally should be referred through the chain of command for discussion at the HSE/MOD JLC if necessary.

- 11 The MOD/HSE JLC will:

11.1 Seek to reconcile conflicts between defence imperatives and health and safety legislation;

11.2 Discuss proposals for new health and safety legislation, with particular reference to their application to MOD activities; and

11.3 Deal with problems arising from the implementation of this agreement and the HSE/MOD General Agreement and any detailed agreements made under them.

12. Chairmanship of the HSE/MOD JLC will rotate between MOD and HSE. The permanent membership will be:

MOD Directorate of Safety and Claims- CESO(MOD)
The Royal Navy - CESO(RN)
The Army - CESO(A)
The Royal Air Force - CESO(RAF)
Procurement Executive - AD ASESG
Defence Logistics Organisation – CESO(DLO)
D Med Pol
Central Staff - CESO(Centre)

HSE The Principal Inspector responsible for Defence, Fire and Police

Unit

Head of Defence, Fire and Police Unit
Head of the HSE Policy Branch with responsibility for MOD
Chief Inspector of Explosives

Others

(as necessary) HSE's Nuclear Safety Division
Chairman Naval Nuclear Technical Safety Panel
HQ US 3rd Air Force
Health and Safety Executive for Northern Ireland

13. The working of this agreement and of the HSE/MOD JLC is subject to the oversight of 2nd PUS and the Director General HSE who will, if necessary, seek to resolve any difficulties that cannot be reconciled in the HSE/MOD JLC. In any event, the agreement will be reviewed jointly by MOD and HSENI after two years. The Annexes to this agreement may be reviewed jointly, at anytime, and alterations agreed at the JLC.

L McBRINN
Chairperson
Health and Safety Executive for
Northern Ireland

R HATFIELD
Personnel Director
on behalf of the Ministry of Defence

ANNEX A

ARRANGEMENTS FOR INSPECTION OF MOD ESTABLISHMENTS BY HSENI INSPECTORS

GENERAL

- 1 This annex details procedures to be followed by HSENI and by MOD in arranging, carrying out and reporting on inspections of MOD units, establishments and activities under the terms of the HSW(NI)O. These procedures are intended to facilitate such inspections, recognising the statutory right of HSENI to carry them out in all areas covered by the HSW(NI)O and their commitment to do so in such a way as not to compromise national security and the operational capability of MOD. Any difficulties should be referred through the normal channels, and will if unresolved be discussed between CESO(MOD) and HSENI's Chief Executive.
- 2 Inspections by HSENI are for the purpose of discharging its functions as the regulatory authority and are additional to those, which MOD undertakes for its own management purposes. HSENI's inspections in practice may be broadly classified as follows:
 - 2.1 Planned inspections as part of HSENI's annual programme; these might vary from a halfday visit by a single inspector to a team inspection over a number of days. Substantial initiatives planned by HSENI will be brought to the attention of CESO(MOD) by HSENI's Chief Executive so that any overlaps with MOD's own inspection programmes can be discussed.
 - 2.2 Reactive inspections responding, for example, to an accident, incident or a complaint. Although the accident and ill health reporting requirements do not apply to members of the armed forces or visiting forces on duty, HSENI inspectors may learn of incidents involving them by other means, and decide to investigate using their powers under the HSW(NI)O.
 - 2.3 Inspections for special purposes, for example, to seek information on a specific health or safety topic.
- 3 In all cases the procedures in this annex should be followed, recognising that reactive inspections may require a more urgent response

INSPECTION ARRANGEMENTS

- 4 Inspection of most MOD units and establishments is undertaken by the Defence and Disciplined Services sector of HSENI. This sector is headed by a Principal Inspector who reports directly to the responsible Deputy Chief Executive.
- 5 HSENI inspectors will liaise with the office of the Chief Environmental, and Safety Advisor (NI) in order to facilitate arrangements prior to undertaking a visit to a MOD unit or establishment. That office will contact the Commanding Officer or Head of Establishment regarding the proposed visit. The Commanding Officer or Head of Establishment may require an inspector to follow up such initial enquiries by submitting a written request to visit the unit or establishment, and should at this stage indicate to the inspector any areas or activities subject to the provisions of Annex C (Special arrangements for particularly sensitive activities). Failure to agree a mutually convenient date for the inspection or any other difficulties that arise should be discussed by the Commanding Officer or Head of Establishment with the inspector's senior officer. Special arrangements, which apply, to the inspection of HM Ships and Submarines and other MOD(N) vessels are detailed in Annex B.

- 6 On receipt of notification of an inspection, the Commanding Officer or Head of Establishment should inform MOD through the chain of command.
- 7 Inspectors carry a warrant. During all inspections of MOD units and establishments, the inspector will be escorted. Commanding Officers have final authority over access to areas under their command. Any decision to refuse access should be based on consideration of the health and safety of those who would be affected, the operational and security needs, the powers of the HSENI inspector and legislative requirements.
- 8 Any difficulties in relation to access will be referred through normal command and management chains for resolution.

MILITARY AND OPERATIONAL TRAINING

- 9 By its very nature, military and operational training does not lend itself to inspection by observation. HSENI inspectors may inspect military training areas, establishments and units where military training and/or operational training is being undertaken. HSENI recognises the requirement to conduct hazardous training. Its principal interest is in the MOD's procedures for controlling and managing hazardous training activities. If exceptionally an inspector feels that such training should be halted or interrupted, the inspector will raise this through the command chain.
- 10 Arrangements for an HSENI inspector's visit will follow the procedures in paragraphs 4 - 8 of this Annex. Where military and operational training is concerned, the Commanding Officer will take into account the requirement for military training, the risks to Service personnel of any interruption caused by the inspection and the risks to the safety of the HSENI inspector in agreeing the timing of an inspection.
- 11 HSENI inspection of certain particularly sensitive training activities is the subject of specific arrangements in Annex C to this agreement.

OTHER DISCIPLINED SERVICES

- 12 Other disciplined services whose activities are subject to inspection by HSENI may make use of MOD facilities for operational or training purposes. In such circumstances, the arrangements for a visit by an HSENI inspector will follow the procedures set out in paragraphs 4 - 8 of this Annex. If representatives of another disciplined service are required to accompany an inspector during a visit, suitable arrangements will be made to facilitate those representatives.

ANNEX B

ARRANGEMENTS FOR INSPECTION OF HM SHIPS, SUBMARINES AND AUXILIARIES BY HSENI INSPECTORS

INTRODUCTION

1. HSENI may wish to visit to inspect relevant aspects of the MOD health and safety organisation, which may include HM Ships, Submarines and Auxiliaries alongside in the United Kingdom or in refit at any time, subject to the provisions of this protocol. Exceptionally HSENI may request to visit a vessel at sea. In carrying out such inspections HSENI will not seek to influence the design or operational capability of MOD ships.

APPLICATION OF THE LAW

2. The Health and Safety at Work (Northern Ireland) Order 1978 (HSW(NI)O) applies to Northern Ireland out to the seaward limits of United Kingdom territorial waters adjacent to Northern Ireland (e.g. within harbours, ports and certain inland waters as well as to the territorial waters themselves). The HSW(NI)O does not apply beyond United Kingdom territorial waters but the safety of those serving at sea in United Kingdom registered merchant vessels is provided for by the Merchant Shipping Acts (MSA).
3. Merchant shipping law is enforced by the Maritime and Coastguard Agency (MCA) of the Department for Transport (DfT). HSE and DfT have established a Memorandum of Understanding (MOU) on the operational demarcation and overlap of their respective legislation in relation to work at the water margin, such as during the loading and unloading of ships. The MOU sets out the primary concerns of the Agency as the safety of ships, their crews, passengers and cargoes on board, and marine pollution matters, whilst HSE is primarily concerned with the safety and activities of shore-based personnel, and facilities on land and offshore installations. HSENI's operational procedures are based on the MOU between NCA and HSE.

OBTAINING ENTRY FOR INSPECTION

4. MOD owned ships, in particular warships, are not normally registered under the MSAs and have generally been exempted from its provisions since the original Act of 1894. Instead, MOD shipping is regulated under the authority of the Secretary of State for Defence by a Ship Safety Board, which in principle and practice mirrors the role of the MCA for merchant ships. Selective classes of MOD owned vessels (RFAs, yachts and commercially managed Fleet Auxiliaries), are or can be registered under the Merchant Shipping Acts using specific Orders in Council (OIC). These OIC specify the degree to which MOD elects to comply with the MSA, supplemented where necessary by Letters of Agreement (LOA) between MOD and DfT, by which MOD may agree to beneficially adopt certain additional MSA requirements. Such agreements are regularly reviewed to reflect changes in the law and/or military requirements.
5. The arrangements between MOD and the HSE with respect to access and the inspection of unregistered MOD vessels are subject to the following principles:
 - 5.1. MOD will continue to regulate all aspects of ship safety on behalf of the Secretary of State for Defence through the mechanism of the Ship Safety Board (SSB). Compliance with the law and justification that equivalent systems of work are in place which are at least as good as those required by statute shall be through a Safety Case regime sponsored by the SSB. The MOD Ship Safety Management System includes the oversight and inspection of all activities carried out by the Commanding Officer or Ships Company of a Warship, Submarine or Auxiliary.

- 5.2 The SSB mandates that ship safety management systems follow best practice throughout the acquisition cycle. Visibility of these systems will be the prime means of satisfying HSENI inspectors of compliance.
- 5.3. MOD registered vessels are also subject to inspection by the MCA and for certain activities by the HSENI (see paragraphs 2 and 4).
- 5.4. HSENI will not as a matter of course wish to carry out planned inspection of individual unregistered MOD vessels in service.
6. Navy Base Safety Groups will appoint a Local Responsible Officer (LRO) to act as the administrative co-ordinator for all HSENI inspections. The LRO will liaise with all local HSENI inspectors, Commanding Officers, Type Commanders, Directors General Naval Base and Supply and other relevant higher-level budget holders. In the case of ships undergoing refit or visiting commercial ports, MOD will similarly appoint a LRO to be the local representative of the Naval Support Command, to support and provide advice on legislation to the Refitting Authority/Commanding Officer.
7. It is unlikely that an HSENI inspector would request access to one of HM Ships or Submarines at sea. However, should such circumstances arise the LRO would co-ordinate all arrangements through CESO(RN). The authority of the Commanding Officer with regard to his vessel is referred to in paragraph 9 below.
8. Before inspection on board a vessel in service, it is essential that the LRO make prior contact with the Commanding Officer who may refer the request to his Type Commander. It should then be possible to make an appointment at a time convenient to both parties. Any difficulty should be referred through the command chain and to CESO(RN). The HSENI inspector will similarly refer the position through the HSENI management chain.
9. When carrying out an inspection on board a MOD vessel, the HSENI inspector should bear in mind that the Commanding Officer has the final authority with regard to the access to his ship. In making his decision the Commanding Officer will take into account the safety of his crew, the safety of others, the operational and security needs, and the powers and requirements of the HSENI inspector.

SENSITIVE ACTIVITIES

10. Arrangements for particularly sensitive activities are covered in Annex C to this agreement.

CONDUCT OF INSPECTIONS

11. All HSENI inspectors carry a warrant. When inspecting HM Ships, Submarines and Auxiliaries inspectors will conform to the security arrangements of the vessel concerned. Inspectors will be subject to visitor control procedures and must be accompanied at all times by an officer nominated by the Commanding Officer or, with the Commanding Officer's agreement, by a person nominated by the Naval Base Safety Group.

12. Operational capability should not be impeded by the process of an inspection. If exceptionally the inspector considers that there is a need to interrupt or stop an activity, the inspector will raise this through the command chain to enable a judgement on the operational implications to be made.

HSE ENFORCEMENT ACTION

13. The following action is to be taken by the Commanding Officer in the event of Enforcement Action by the HSENI inspector as indicated below.

Crown Prohibition or Improvement Notice

13.1 If the inspector serves or makes it clear that it is his intention to serve a Crown Prohibition or Improvement Notice, the Commanding Officer is to request advice from his command authority immediately. Where a Prohibition Notice is served on a piece of equipment or work process that would affect the operational requirements then the Commanding Officer should point this out to the inspector and inform the command authority immediately, and CESO(RN) should be informed.

HSENI Intention to formally censure MOD (Crown Prosecution)

13.2 The command authority should be informed immediately for advice. The command authority will inform CESO(RN) and D DS&C.

ANNEX C

SPECIAL ARRANGEMENTS FOR PARTICULARLY SENSITIVE ACTIVITIES

GENERAL

- 1 Some activities carried out by MOD are particularly sensitive and are protected not only by a high level of security classification but also by a very tightly constrained "need to know". Access to information relating to such activities is highly restricted and available only to nominated persons who have been cleared by the appropriate security directorate.
- 2 This annex details procedures to be followed by MOD and HSENI where access to certain sensitive areas and activities should, for good reason, be subject to control. Specific guidance on areas subject to controlled access is issued to MOD units and establishments by individual Services through the chain of command. Copies of this guidance will be furnished by individual services to CESO(MOD).
- 3 It is not intended that this annex should be used to restrict unnecessarily the access of HSENI inspectors to MOD sites. Where these arrangements are invoked, Commanding Officers and Heads of Establishments must notify details to their chain of command HSW focal point so that details can be furnished to CESO(MOD).

INSPECTION ARRANGEMENTS

- 4 If some time has passed since the last HSENI contact with the establishment or if HSENI proposes a substantial inspection initiative, inspectors will write to the Commanding Officer and Head of Establishment in order to make an appointment for a visit to the establishment and to obtain the name of an individual nominated to deal with the visit. At this stage, the existence of any areas or activities subject to the provisions of this annex should be brought to the attention of the inspector and MOD should be informed through normal command chains.
- 5 In most cases, it is likely that the inspector will be able to proceed without access to the activities in question. Inspection places emphasis on management systems with sampling to verify findings from interviews and the examination of documents. Physical and detailed investigation of every activity is therefore not essential. Commanding Officers and Heads of Establishments should co-operate with the inspector to facilitate the inspection by providing access to documents and to work areas so far as is possible within the bounds of the special security requirements.
- 6 The Commanding Officer or Head of Establishment should ensure that the escort accompanying the inspector is properly briefed and competent to ensure that security requirements are met.
- 7 Any difficulties arising in making arrangements for or carrying out the inspection should be referred through normal management and command chains for resolution.
- 8 CESO(MOD) will maintain records of when these arrangements are invoked and will discuss them as necessary with the HSENI's Chief Executive.

SPECIAL ARRANGEMENTS

- 9 There may be occasions where an inspection cannot proceed without access to particularly sensitive information. This might be the case, for example, when a reactive inspection is required following an accident, particularly where members of the public or civilian staff are involved. There may also be cases where MOD would wish to seek HSENI advice on compliance with specific statutory requirements in such areas. All such cases will be referred through normal channels to CESO(MOD) and HSENI's Chief Executive for discussion. That discussion will also involve the appropriate MOD branches and security directorate.
- 10 The aim of any such discussion will be to seek ways in which HSENI can fulfil their mandate without access to particularly sensitive information. However, should that prove impossible and it is agreed that a need to know exists, a member of HSENI will be briefed and cleared to have access to the necessary information. All procedures required by the appropriate security directorate regarding the collection, storage and dissemination of that information will be followed.
- 11 To facilitate this process, one or more members of HSENI are cleared to DV (Developed Vetting) level and CESO(MOD) is informed of their names.
- 12 2nd PUS and Director General HSE will be asked to seek to resolve any difficulties that cannot be resolved between CESO(MOD) and the HSENI's Chief Executive or, more formally, in the Joint Liaison Committee.