

## **Memorandum of Understanding between the Ministry of Defence and the Environment Agency**

### **Purpose of Memorandum**

1. The purpose of this memorandum is to assist in securing effective co-operation and understanding between the Ministry of Defence ("the Ministry") and the Environment Agency ("the Agency") in dealing with issues of environmental protection and sustainable development; in particular, those issues for which the Agency is the regulator or advisor.

### **Scope**

2. This memorandum applies to the regulation by the Agency of those activities undertaken by the Ministry itself or its directly controlled agencies that arise from its management of property.

3. The terms of this memorandum relate to all relevant environmental legislation in England and Wales and to EU environmental legislation that is directly applicable.

4. This memorandum also applies to the Agency's wider activities to promote environmental protection where the Agency and the Ministry wish to cooperate and work in partnership to achieve mutual benefits.

5. The memorandum does not apply to regulation by the Agency of Ministry contractors or Government owned contractor operated sites under civilian control, for example, sites involved in nuclear weapons programme activities or contractor operated dockyards in England and Wales; these are regulated directly by the Agency under the appropriate legislation.

### **Definitions**

6. The Agency was created by section 1 of the Environment Act 1995 for the purpose of carrying out the functions transferred or assigned to it by or under the Act. The Operations Directorate is responsible for managing the detailed arrangements referred to in this memorandum on behalf of the Agency.

7. The Ministry is the Department of State charged with the management and control of HM forces and civilian personnel engaged in the defence of the United Kingdom and its citizens, property and interests at home and overseas. The Defence Safety and Environment Authority (DSEA) is that part of the Ministry that has lead responsibility for managing the detailed arrangements referred to in this memorandum on behalf of the Ministry.

8. Premises, in the context of this memorandum, means those premises in England and Wales held, or used by, or under the control of the Ministry. It also includes premises occupied by Visiting Forces, UK ships in UK territorial waters adjacent to England and Wales, and UK aircraft bases in England and Wales. It does not include facilities under the direct control of contractors, which are subject to regulation by the Agency in the normal way, nor does it include shipping or aircraft in transit.

### **Environmental Duties and Responsibilities of the Ministry and the Agency**

9. The Secretary of State for Defence is responsible for all safety, environmental protection and other sustainable development matters within The Ministry of Defence (the Ministry). Where there are exemptions, or derogations from either domestic or international law applicable to the Ministry, it will introduce standards and management arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those

required by legislation<sup>1</sup>. The Minister for Defence Personnel, Welfare and Veterans acts as the Ministerial focus for environmental issues.

10. The Ministry's Environmental Policy complies with international conventions to which the UK is a signatory. The Ministry will carry out environmental policy appraisals of all new or revised policies and equipment acquisition programmes as well as environmental impact assessments of all new projects and training activities.

11. The Ministry is committed to the protection of the environment, by avoiding harm or nuisance, whilst maintaining operational effectiveness. It has undertaken to minimise the impact of its activities on the environment, and will pay due regard to such impacts as a feature of its decision-making processes. The Ministry's policy statement on the management of safety and environmental protection, demonstrates its full support for the Government's overall environmental policy.

12. The Agency has various regulatory responsibilities relating to environmental protection functions that are relevant to the Ministry's activities and premises. These include:

- Pollution of controlled waters;
- Disposal and management of wastes including hazardous wastes and advice on the definition of waste;
- Releases to the environment including to air from major industrial processes;
- Activities involving radioactive substances including keeping, use, accumulation and disposal of radioactive substances;
- Land contamination assessment and remediation, including radioactive contaminated land;
- Groundwater protection;
- Protection of specified habitats;
- Water abstraction.

13. Provision of advice is an important element of the Agency's role. The Agency is willing to advise the Ministry on how best to meet its environmental responsibilities.

14. In delivering its environmental responsibilities, the Agency aims to:

- Take a 'yes, if' approach in all it does;
- Do more for people and the environment with every pound;
- Focus on outcomes not processes;
- Seek and embrace opportunities to work with others;
- Develop its people and benefit from diversity.

The Agency is committed to creating a better place and working with others to get the best possible outcomes for people and the environment.

### **Environment Agency's Powers of Entry**

15. The Agency's main environmental protection powers of entry are contained in three pieces of legislation:

- Sections 108 and 109 of the Environment Act 1995. These powers are exercisable for the purposes of determining whether any provision of the pollution

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<sup>1</sup> SoS Defence Policy Statement on Safety, Health Environmental Protection and Sustainable Development in Defence, Parts 1 & 2

control enactments [defined by section 108(15)] is being or has been complied with; exercising one or more of its pollution control functions or; determining whether and if so, how such a function should be exercised or performed. They also enable the Agency to deal with imminent danger of serious pollution to the environment, or serious harm to human health;

- Regulation 35 of the Waste Producer Responsibility Obligations (Packaging Waste) Regulations 2007. (These powers are broadly similar to those contained in the Environment Act 1995); and
- Section 172 of the Water Resources Act 1991. (These powers are also broadly similar to those contained in the Environment Act 1995).
- Sections 31 and 32 of the Salmon and Freshwater Fisheries Act 1975 provide powers of entry to prevent offences under the Act.

16. Certain legislation dis-applies Defence activities on the grounds of national security or where it is essential to maintaining operational capability. In such cases, the Ministry undertakes, in accordance with the Secretary of State for Defence's policy statement on the management of safety and environmental protection in the Ministry, to:

- introduce standards and management arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by legislation;
- subject to the provisions of para 19 and Annex A, enter into administrative arrangements to permit access and inspection by officers of the Agency as if Crown immunity did not apply.

17. In exercising its regulatory powers, the Agency recognises the role played by the Ministry's corporate Environmental Management Systems. It also agrees to 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; and targeting of enforcement action, and accountability for the enforcement action it has taken.

## **Agreed Policies**

### **Cooperation and Partnership Working**

18. The Ministry and the Agency agree to extend cooperation, and, where appropriate, partnership working to include the Agency's wider environmental responsibilities and its statutory aim of promoting sustainable development. Wider responsibilities relevant to the Ministry's activities and/or premises include, for example:

- Flood and coastal risk management including flood risk to the Ministry's assets and future climate change adaptation;
- Water Framework Directive (WFD) including the quality of the Ministry's land and assets in WFD terms;
- Water resources and water management including priority locations for management to alleviate water stress;
- Land management including agricultural land;
- Conservation, ecology and fisheries; and
- Environmental crime.

The Ministry and the Agency agree to cooperate and where possible work in partnership in these areas to achieve mutual benefits, without compromising the Agency's statutory regulatory role and the Ministry's operational and strategic roles where they apply

## **Contractors working for the Ministry**

19. Contractors working for the Ministry will comply with all relevant environmental legislation. The Ministry will monitor that its contractors hold appropriate environmental permits and licences, and have in place and implement procedures to comply with environmental legislation. Contractors covered by paragraph 5 above are subject to specific regulatory arrangements.

## **Access and Inspection**

20. The Ministry agrees to allow all reasonable access to its premises by officers of the Agency while carrying out their responsibilities. The Agency's officers will comply with Government Security Regulations. Planned inspections will be notified to the Ministry in advance. Advance notice may not be possible in the case of unannounced and emergency access. The Agency accepts that operational requirements, including training, may sometimes result in access restrictions, but the Ministry undertakes to keep such restrictions to a minimum. Detailed arrangements for the purposes of access and inspection, etc, are set out in Annex A to the memorandum.

## **Information Access and Disclosure**

21. The Ministry and the Agency agree that timely and open exchange of information is a most important feature of good working arrangements. The Ministry undertakes to provide all information necessary for the Agency to discharge its regulatory functions.

22. The Ministry's procedures for collection, storage and disclosure of information are subject to the Freedom of Information (2000), the Environmental Information Regulations (2004) and the requirements of the Data Protection Act. The Agency is subject to the same requirements. Information supplied to the Agency, which is subject to restrictions on grounds of national security or commercial confidentiality, will be withheld from public register(s) in accordance with statutory requirements, unless such a restriction has lapsed, and will not be communicated to third parties except by prior permission of the Ministry, or in accordance with a legal requirement.

23. The Agency agrees, subject to any statutory or other confidentiality constraints, to provide the Ministry with access to the relevant environmental information it holds so that it can positively inform Ministry decisions that may have an effect on the environment.

## **Enforcement**

24. The Agency will consider enforcement action against the Ministry, as it would against a civil establishment, in accordance with its Enforcement and Sanctions Statement. However, the Ministry, as part of the Crown, cannot be criminally liable, including failure to comply with prohibition, enforcement or works notices. Where, but for Crown immunity, the Ministry would have been prosecuted as a corporate body; the Agency may apply to the High Court for a declaration that its actions were unlawful.

25. Notwithstanding Crown immunity, the actions of individuals employed by or acting on behalf of the Ministry may constitute criminal offences. The Agency will only prosecute individuals in circumstances where they would have prosecuted individuals of a private company. For senior managers only, this will normally be where it can be shown that an offence has been committed with the consent of or connivance of, or has been attributable to any neglect on the part of, any senior manager or a person who was purporting to act in such a capacity.

26. In the event of any of the following interventions by the Agency: enforcement notices, works notices, prohibition notices, suspension or revocation of environmental permits or licences; the Agency will notify DSEA as well as the site. The Agency will further notify DSEA

of any possible application for a declaration against the Ministry or institution of prosecution against an individual Ministry employee by the Agency.

27. As part of the Crown, the Ministry cannot be made the subject of a civil penalty under the Regulatory Enforcement and Sanctions Act 2008.

### **Cost Recovery and Charging**

28. The Ministry agrees that, for regulatory activities, the Agency's published Environmental Permitting Charging Scheme shall be applied to the Ministry, in the same way, with the equivalent scale of charges, as the civil sector.

29. The Agency will ensure that the Ministry has the opportunity to comment and make representations on proposed changes to its scheme of fees and charges.

30. Where separate charging arrangements are required, these will be detailed in a separate Annex to this memorandum.

31. The Agency has certain powers to carry out remedial works itself. In some circumstances, it may seek to recover its costs for performing such works from responsible parties. In performing its statutory duties in respect of these powers, the Agency will act in the same manner as it would towards civil parties.

### **Liaison and Resolution of Disagreements**

#### **Joint Technical Working Groups**

32. Joint technical working groups with appropriate Terms of Reference shall be established where the Ministry and the Agency agree that this is necessary (for instance, to discuss arrangements by which a specific regulatory or technical matter can be addressed).

33. Joint technical working groups may agree detailed arrangements for handling such regulatory or technical matters as well as recommending changes to this memorandum or the detailed Annexes; they may also identify the need for a new Annex.

#### **Resolution of Disputes**

34. The Ministry and the Agency agree to expedite the resolution of any differences of opinion, and to do this where possible at the local level. Where such differences cannot be resolved at local level, the matter will be referred at the earliest opportunity to senior management. In the case of the Ministry, this will be through DSEA and in the case of the Agency, through Operations Directorate. A meeting at senior level will be held as soon as practicable thereafter in order to resolve the differences.

### **Review**

#### **Regular Meetings / Review**

35. To promote effective working the Director of Operations in the Agency and the Director of the DSEA in the Ministry shall each nominate, by exchange of letters, a senior level representative (an Executive Manager, Senior Civil Servant or equivalent) to act as Chairs of the review meetings and as points of contact on matters relating to this memorandum. The Agency and Ministry agree to inform each other, by letter, should either organisation's nominated senior representative change.

36. The nominated senior representatives from the Ministry and the Agency, supported as appropriate by staff from relevant Directorates and Functions, will meet regularly, usually each year to monitor the application of this memorandum. Meeting venues and Chairmanship will

alternate between the Agency and the Ministry. These meetings will review the working of this memorandum and adopt any agreed amendments. To assist this process, proposed amendments will be communicated to the other party with a minimum of four weeks' notice prior to the meeting, where possible. Minutes of the meeting will be finalised within 4 weeks of the meeting taking place.

37. The review meeting will also provide a mechanism to resolve any outstanding issues arising from the arrangements under this memorandum.

### **Special Review**

38. Either party to this memorandum may request an extraordinary meeting to revise or amend the memorandum, in addition to the formal annual review. Proposed amendments must be submitted to the other party at least four weeks prior to the meeting wherever possible. It is recognised, however, that some proposed changes may be urgent in nature. In such cases, both parties undertake to expedite internal consultations such that agreement to urgent changes can be arrived at quickly.

### **Termination**

39. Either party to the memorandum may give six months notice in writing that they wish to terminate the agreement.

### **Annexes and Supplemental Memoranda**

40. This memorandum may be supplemented by annexes or supplemental agreements entered into by the Agency and the Ministry after the signing of this memorandum. Such documents deal more exclusively (but not by way of limitation) with either a specific regulatory function of the Agency, or an area of general concern to both the parties.

41. Existing supplementary documents are:

<b>Title</b>	<b>Number</b>	<b>Date</b>
Operational Liaison on Access and Inspection	Annex A	July 2012
Radioactive Materials Annex	Annex B	May 2011
MOD Sites Used by United States Visiting Forces (USVF)	Annex 3	August 2009
Land Contamination	No number	

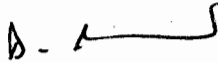
**Signatories**



**Chief Executive  
Environment Agency**

**Paul Leinster**

**Date:** 31 July 2012



**Director  
Defence Safety & Environment Authority**

**Daniel Applegate**

**Date:** 28.8.12

## **ANNEX A**

to the Memorandum of Understanding between the Environment Agency and the Ministry of Defence

### **Operational Liaison on Access and Inspection**

#### **Introduction**

1. This Annex details the procedures to be followed by the Environment Agency (the Agency) and the Ministry of Defence (the Ministry) in arranging, carrying out, and reporting on, inspections of the Ministry's premises and activities. These procedures are intended to facilitate such inspections, recognising the statutory right of the Agency to carry them out in all areas covered by relevant legislation, and their commitment to do so in such a way as not to compromise national security or the operational capability of the armed forces. Any notices served by the Agency within the scope of this Annex will be served in the same way as for civil establishments.
2. The Annex also sets out arrangements where the Agency might need access to Ministry premises for purposes other than regulation and where a statutory right of entry might not apply.

#### **Access for Inspections**

3. There are three categories of regulatory inspection as carried out by the Agency's officers:
  - a. planned;
  - b. unannounced;
  - c. emergency
4. The majority of inspections will be planned and notified in advance. The Agency recognises that relevant personnel need to be aware of the planned visit and be available in order to ensure an effective inspection. The Agency retains the right to carry out unannounced inspections. Emergency inspections may be carried out as part of the Agency's response to incidents with the intended purpose of locating and, if possible, limiting or preventing any harm to the environment. The Ministry agrees to permit immediate access and full co-operation in such circumstances.

#### **Access for Other Environmental Activities**

5. The Agency requires access to the Ministry's premises to undertake activities in discharging its wider environmental role in respect of, for example, inspection and maintenance of flood defence assets, water resources and environmental sampling.
6. Access for these activities will involve planned visits and will not involve unannounced visits. Under some circumstances, emergency access might be required for incidents involving, for example, flooding or damage to coastal and river flood defences. The Ministry agrees to permit immediate access and full co-operation in such circumstances.

#### **Arranging Inspections or Visits**

7. In the event of a planned inspection or visit, an Agency officer will contact the relevant Ministry establishment prior to inspection by telephone, e-mail, facsimile, or letter, in order to make an appointment. The point of contact on the site will be the Commanding Officer or Head of Establishment unless another individual, responsible for compliance with the legislation as delegated by the Commanding Officer or Head of Establishment, has been identified to the Agency. On receipt of notification of an inspection or visit, the Commanding



Officer or Head of Establishment should inform the relevant environmental Focal Point through the chain of command.

8. Failure to agree a mutually convenient date for the inspection or any other difficulties that arise should be discussed by the Commanding Officer or the Head of Establishment with the Agency officer's Environment Manager.

9. For regulatory inspections, Agency officers carry Agency warrants and must produce these to identify themselves to the site authorities. Access to a site should be denied if an Agency officer fails to produce a warrant to support identification.

10. Under some circumstances, Agency staff without warrant cards may need to visit the Ministry's premises. Such Agency staff must produce an Agency photographic identity card to the site authorities and access to a site should be denied if such identification is not provided. All such visits need to be prearranged as set out in paragraph 7 above.

11. During an inspection or visit, Agency officers will also comply with any site security arrangements regarding, for example, temporary passes, vehicle identification and restrictions on use of equipment such as mobile phones, laptop computers, electronic data storage media and cameras.

12. Commanding Officers and Heads of Establishment are responsible for controlling access to all parts of the site and all facilities on the site. During all inspection visits, the Agency officer will be escorted. He or she will be permitted access to any part of the site, and to see any facilities on the site, which are relevant to the inspection, unless national security or operational readiness may be compromised by such access. In such cases, the Commanding Officer or Head of Establishment will provide written reasons for denial of access.

### **Inspection of Contractors**

13. Contractors working on Ministry property will be inspected according to the same arrangements as listed above, except that when such an inspection is to be carried out, the Ministry official, Commanding Officer, or Head of Establishment responsible for contractor management at the site in question, will be informed of the visit.

### **Issue Resolution**

14. In the event of any issue that that can not be resolved locally the Agency's officer may wish to contact the Agency's nominated representative within Operations Directorate to seek resolution through the procedure set out in the main Memorandum of Understanding.

### **Health and Safety**

15. Agency officers will comply with the Agency's health and safety procedures during inspections of, or visits to, the Ministry's premises. In addition, Agency officers will comply with any specific health and safety requirements that might apply on the Ministry premises.

### **Visiting Forces**

16. Arrangements in respect of US Visiting Forces on Ministry property in England and Wales are set out in Annex 3.

### **Ships and aircraft**

17. These arrangements also apply to aircraft at bases in England and Wales, and to shipping in UK territorial waters adjacent to England and Wales. However, the Agency will not inspect any facilities while the aircraft or shipping is in transit.

### **Inspection findings**

18. The Agency officer will discuss the findings of his or her inspection with the Commanding Officer, Head of Establishment, or nominated deputy prior to leaving the site. A remedial action necessary to correct deficiencies will be agreed orally. Such action will also be confirmed by letter within five working days.

### **Points of contact**

19. For national issues relating to environmental matters covered by the MoU, the point of contact at the Agency will be the Executive Manager (or equivalent) nominated by the Director of Operations under paragraph 33 of the MoU. The point of contact within the Ministry will be a Senior Civil Servant (or equivalent) nominated by the Director of the DSEA under paragraph 34.

20. For local or regional issues, the point of contact for the Agency will be the local Area Manager and for the Ministry the Commanding Officer, Head of Establishment or nominated deputy at the relevant Ministry premises.

### **Disagreements and disputes resolution**

21. Any disagreements concerning the details of this procedure will be subject to the arrangement laid out in paragraph 33 of the MoU.

### **Enforcement Action**

22. Action to be taken by the Commanding Officer or Head of Establishment in the event of enforcement action by an Agency Officer:

- a. Enforcement notices, works notices, prohibition notices, suspension or revocation of environmental permits or licences, variation of permits or licences – inform the relevant environmental Focal Point;
- b. Enforcement notices, works notices, prohibition notices, suspension or revocation of environmental permits or licences and possible application for a declaration against the Ministry or institution of prosecution against an individual Ministry employee – inform the relevant environmental Focal Point and DSEA

### **Major sites and account managers**

23. For major sites, both the Agency and the Ministry should consider appointing Account Managers to coordinate liaison effectively and assist in the resolution of issues. Where necessary, consideration should be given to meeting annually to review the environmental performance of the site and to give early warning of matters that may arise over the next 12 months.