

A MEMORANDUM OF AGREEMENT
between
The United States Force in Great
Britain
The Ministry of Defence
and
The Health and Safety Executive
concerning
The Health and Safety at Work etc. Act
1974



MINISTRY OF DEFENCE



July 2011

**A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE UNITED STATES
FORCE IN GREAT BRITAIN, THE MINISTRY OF DEFENCE AND THE HEALTH
AND SAFETY EXECUTIVE CONCERNING THE HEALTH AND SAFETY AT
WORK Etc ACT (HSA) 1974**

INTRODUCTION

1. This Agreement sets out the parameters under which the United States Force (USF) in Great Britain (GB), the Ministry of Defence (MOD) and the Health and Safety Executive (HSE), will operate appropriate application of GB Health and Safety legislation affecting USF activities.

2. This Agreement recognizes that USF activities are governed by the NATO Status of Forces Agreement (NATO SOFA). USF personnel are also defined in paragraph 1 of the NATO SOFA. For the purposes of this Agreement, the categories of USF personnel are generally accepted as follows:

- a. Members of the Force (i.e. US military personnel in GB in connection with their duties),
- b. Members of the Civilian Component (i.e. civilians accompanying the USF, who are employed by an armed service and who are not UK nationals nor ordinarily resident in the UK), and
- c. Dependents of either the Force or civilian component (i.e. the spouse of a member of a force or a civilian component or child of such member depending on him or her for support).

3. The USF is obliged to comply, with respect to its activities and personnel as defined in paragraph 2 above, with at least the minimum standards of occupational health and safety provided for in US legislation as promulgated through US Department of Defense Directives (DoD) and Service Regulations.

**APPLICATION OF THE HEALTH AND SAFETY AT WORK etc. ACT 1974
(HSWA) TO USF**

4. The USF recognise their general duties under sections 2 - 9 of the HSWA in relation to all their units and establishments operating in GB and that the full protection and rights contained under HSWA are applicable to all local civilian employees in accordance with Article IX, paragraph 4 of the NATO SOFA.

5. It is recognised that the USF, MOD and HSE have existing protocols with the UK Police Services for jointly investigating work related deaths and undertaking criminal investigations. In the event provisions in this MOA are inconsistent with those protocols, the provisions of the UK police protocols will take precedence over this MOA.

6. HSE may monitor USF activities and the appropriate application of health and safety legislation. In doing so, HSE will take into account USF's policy of normally applying whichever of the HSWA or US Occupational Safety and Health Act (OSHA) provisions afford the more protective standards to their activities in GB. HSE recognises the operational character of the activities undertaken by USF and their role in UK/NATO defence.

7. It is agreed that application of the following legislation/programme will apply to MOD personnel working with USF:

a. Embedded MOD personnel - where personnel are embedded in the US Chain of Command, their health and safety will be managed under the applicable US Occupational Safety and Health programme (which will be at least equivalent to the substantive standards provided for in HSWA);

b. MOD personnel who work with USF but are not embedded in the US Chain of Command will work to HSWA and the MOD safety management systems applicable to them. (This category of personnel includes MOD Police and

Guarding Agency, Defence Infrastructure Organisation, and those in MOD apprentice training programmes);

c. MOD personnel engaged in significant risk infrastructure maintenance activities¹, will work to MOD publication JSP 375, Volume 3. USF personnel engaged in the same activity will work to relevant USF Instructions to include those developed specifically for USF activities in the UK which will involve consultation with MOD.

8. Where necessary, the application of the appropriate health and safety standards (including any applicable Regulations and Codes of Practice) will be determined on a case-by-case basis between, USF, MOD and HSE.

INSPECTIONS BY HSE

9. Inspections by HSE are for the purpose of discharging its functions as a GB regulatory authority for health and safety and they are additional to those inspections which USF and MOD undertake for their own management purposes. The types of HSE inspections may be broadly described as follows:

a. Planned inspections as part of HSE's annual programme; these might vary from a half day visit by a single Inspector to a team inspection over a number of days.

b. Reactive inspections to investigate an accident, incident or a complaint. This is the most likely reason for HSE to visit a USF site.

c. Inspections for special purposes, e.g. a visit to seek information on a specific health or safety topic or a national health and safety campaign.

¹ Electricity, Hazardous Areas and Aeronautical Lighting, Mechanical Systems, Natural Gas, Medical Gas and LPG, Petroleum, Working at Height, Confined Spaces etc

HSE INSPECTORS ACCESS TO USF SITES

10. When visiting any USF controlled sites, HSE inspectors will aim to visit by appointment to ensure compliance with any security measures which are likely to be in place at the entrance gate. This visit will normally be arranged through the RAF Commander for that site as they will need to ensure that the appropriate arrangements are made. If inspectors do not have contact details for the RAF Commander they can obtain them from CESO(RAF) or via HSE's Public Services Sector (MOD lead).. If exceptionally, a visit is arranged through another person on site (i.e. a contractor or USF); the RAF Commander should be kept informed of the visit to ensure appropriate notifications are made and adequate arrangements are in place.

11. The RAF Commander will notify the USF Chief of Safety for the installation, in advance of the inspection and provide the HSE Inspector's name. It will be for MOD and USF authorities to ensure that appropriate security access has been arranged for the HSE Inspector and that any sensitive areas or activities are identified in advance of the visit. Where immediate access to parts of a site may not be possible or practical or access on the site may be restricted the USF authorities will coordinate that information with both the RAF Commander and the HSE inspector in advance if possible.

12. HSE Inspectors carry a warrant which can be used as identification. All HSE staff, including Inspectors, are cleared to at least the Baseline Personnel Security Standard (BPSS), which covers them for access to CONFIDENTIAL and occasional access to SECRET assets. Where higher security clearance is needed then HSE will arrange for an inspection by an appropriately cleared Inspector.

13. Subject to Annex A and any security considerations, HSE Inspectors will have routine access to local civilian workers and contractors, MOD employees, and the areas in which they work. This will include access to areas where both MOD and Department of Defense (DoD) contractors and contractor employees are working.

14. HSE will not seek to monitor application of health and safety legislation to USF defence operations and military training activity listed in Annex A. However, HSE Inspectors may have an interest and will be allowed right of entry to any USF site, including to activities detailed in Annex A if required to conduct investigations in any of the following circumstances;

- a. In the event of a work related death or serious injury to MOD Personnel (civilian employees or MOD Service personnel) or other local employed civilians not referred to in paragraph 2; or
- b. In the event of a work related death or serious injury to a member of the public caused by USF work related activities; or
- c. As a result of a work related health and safety complaint /notification by local civilian employees or MOD personnel; or
- d. Where USF work related activities have significant health and safety implications for the general public outside the site perimeter fence.

15. The RAF Commander will liaise with USF Chief of Safety and CESO(RAF) to secure appropriate actions to address any health and safety situation that the HSE Inspector raises as a matter of concern. The HSE Inspector will write to the RAF Commander for the USF site, who will copy it to CESO(RAF) and to the USF Chief of Safety, detailing the concerns. Where any of the concerns would normally have resulted in formal enforcement (Crown enforcement does not apply to USF) then the Inspector will make this clear in the letter and where necessary explain the seriousness of the situation.

GOVERNANCE ARRANGEMENTS

16. A joint USF/MOD committee structure exists to resolve health and safety issues at the lowest appropriate level. Issues that cannot be resolved will be referred up through the committee structure for resolution:

- a. In the first instance, issues should be addressed within the relevant chain of command and, if necessary, referred to the USF Base's Health and Safety Committee for resolution. It is expected that most issues will be resolved at this level.
 - b. Any unresolved issue can be raised to the headquarters level Joint USF/MOD Health and Safety Management Group;
 - c. Issues that have not been resolved at the Base Committee level or at the Management Group level can be raised for discussion at the MOD/HSE Joint Liaison Committee (JLC).
17. The JLC is a high level joint strategic health and safety committee between MOD and HSE, at which the USF have a permanent seat. The JLC will:
- a. Seek to reconcile conflicts between USF activities and health and safety legislation;
 - b. Discuss the application of new health and safety legislation to MOD/USF activities;
 - c. Address problems arising from the implementation of this MOA and any detailed arrangements made under it.
18. Should issues addressed within the committee structure remain unresolved, they may be raised to respective higher authorities for resolution as may be necessary.

Signature

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Mark R. Zamzow

Major General
Vice Commander

On behalf of HQ Third Air
Force

Date 29th July 2011

Jon Day

2nd Permanent Under
Secretary of State

on behalf of the Ministry of
Defence

Date 29th July 2011

Kevin Myers

Deputy Chief Executive

on behalf of Health and
Safety Executive

Date 29th July 2011



MINISTRY OF DEFENCE



EXAMPLES OF OPERATIONAL AND MILITARY TRAINING ACTIVITIES**Introduction**

HSE Inspectors will not proactively seek to monitor observance of health and safety legislation in USF defence operations and military training activities such as those listed below – even where UK civilians might be working. However HSE Inspectors may investigate as a result of an accident or incident in accordance with statutory powers:

- A. Forward repair activities and recovery (not including road recovery systems operated by civilians);
- B. All field firing, weapon release, weapon training and training activities on field firing areas, ranges, weapon sheds, and military training areas;
- C. Training activities where simulation of operational conditions is essential;
- D. Flight safety and aircraft accident investigation;
- E. Military Aid to the Civil Community (MACC) e.g. high winds, blizzards, flood relief;
- F. Bomb disposal and Explosive Ordnance Disposal (EOD) and nuclear and explosives operations and training;
- G. Operational construction projects involving only USF Operational personnel;
- H. Aircrew training and associated ground crew training;
- I. Survival training;
- J. Demolition training;
- K. Mine laying training and operations;
- L. Bridging and watermanship training;
- M. Specialised trials of military equipment;
- N. Driver training by military instructors of military personnel in military vehicles;
- O. Intelligence gathering vaults or specific designated cells for such activities.