

GENERAL AGREEMENT

BETWEEN

THE MINISTRY OF DEFENCE

AND

THE HEALTH AND SAFETY EXECUTIVE

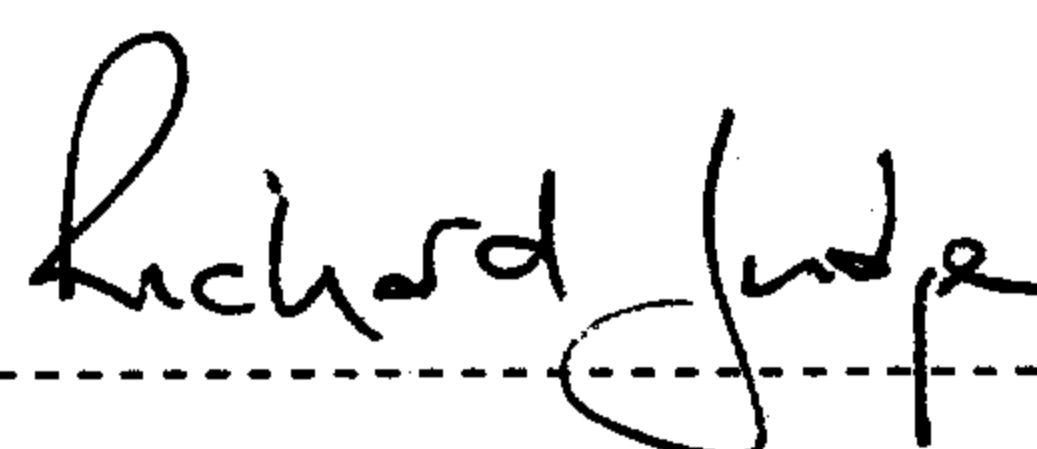


Jon Thompson

Permanent Under Secretary

on behalf of the
Ministry of Defence

Dec 14



Richard Judge

Chief Executive

on behalf of the
Health and Safety Executive

Dec 14

AIM

1. This Agreement defines the relationship between the Ministry of Defence (MOD) and the Health and Safety Executive (HSE) in discharging their respective responsibilities and roles for health and safety (H&S) in respect of defence activities in Great Britain (GB).
2. This agreement:
 - a. sets out the approach of MOD to H&S and the arrangements for compliance with relevant legislation by the MOD, its employees (both Armed Forces and civilian) and, where appropriate, its contractors conducting defence activities;
 - b. sets out the approach of HSE as a statutory regulatory authority for defence activities;
 - c. describes liaison arrangements:
 - i. at a strategic level;
 - ii. for coordination of policy and activity;
 - iii. for regulatory cooperation between HSE and Defence Regulators.

MOD RESPONSIBILITIES AND ARRANGEMENTS

3. MOD is a Crown body accountable to Parliament for Defence, including the activities of the Armed Forces. MOD's arrangements for ensuring H&S risks are managed stem from the Secretary of State for Defence's Policy Statement¹ on Health, Safety and Environmental Protection² (HS&EP) in Defence (the Policy Statement). MOD recognises its duties to comply with the Health and Safety at Work etc. Act 1974 (HSWA) and its relevant statutory provisions (RSP) when conducting defence activities.
4. A body of case law relates to "combat immunity"; in broad terms the duty of care owed by the Secretary of State does not extend to military operations in conflict situations where there is engagement or the potential for engagement with a hostile party. Consequently, this Agreement does not extend to such circumstances.
5. The MOD is organised into Head Office, the commands (eg. Navy Command, Joint Forces Command) and supporting organisations (eg. Defence Equipment & Support, Trading Fund Agencies). The commanders or chief executives of these bodies deliver Defence activities and have the responsibility for managing the health and safety risks associated with their activities.
6. HSWA and RSP feature a number of exemptions, derogations or disapplications that relate to defence activities³. Where there are exemptions etc., the Policy Statement requires "Departmental arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by UK legislation". Such arrangements include the appointment of Defence Regulators (see para 25) to regulate aspects of defence activities predominantly where they are not regulated by statutory bodies.

¹ The Policy Statement responds, inter alia, to the requirement of Section 2(3) of HSAW.

² MOD seeks to manage environmental protection in a similar manner to H&S.

³ It should be noted that some exemptions apply to defence activities conducted by contractors: eg. defence equipment designed, manufactured and tested by contractors may not conform to statutory requirements.

HSE RESPONSIBILITIES AND APPROACH

7. HSE is a national statutory regulator for H&S in GB; its authority, responsibilities and powers of enforcement derive from HSWA. HSE is responsible for enforcement of H&S legislation for work activities undertaken by MOD and by its contractors. HSE is organised into Directorates dealing with a range of specialist and general work related hazards.

8. HSWA requires an employer to do what is reasonably practicable to reduce risk to employees and those affected by their undertaking. In determining whether MOD has done what is reasonably practicable, HSE will take into account the operational context in which defence activities are conducted: eg. HSE recognises the importance of realistic training and its part in ensuring that the Armed Forces are competent and confident to conduct military operations in hostile environments.

Inspection

9. HSE engages with employers on a routine basis by conducting inspections of activities: planned inspections form part of HSE's intervention plans; reactive inspections may be conducted in response to an event (see also investigation); special themed inspections may seek information on a specific topic. More detailed arrangements for inspections and access are given in Annex A.

Investigation

10. HSE Inspectors have powers to investigate events where a breach of H&S legislation is suspected. HSE may also investigate following reports of an injury or ill-health or the receipt of a complaint. More detailed arrangements for investigations are given in Annex A.

11. In the case of a work-related fatality, HSE's investigation will follow the procedure set out in the relevant Work Related Deaths Protocol^{4,5}. There will usually be a joint civil police / HSE investigation, with the police having the initial primacy. In some situations the civil police force may cede primacy to the MOD / Service police force. Further details are given in Annex A.

Enforcement

12. HSE Inspectors take action in accordance with HSE's Enforcement Policy Statement⁶. Such actions range from verbal and written advice, through to formal enforcement action. HSE's enforcement powers include the issuing of Improvement or Prohibition Notices; in the case of Crown bodies these are served as Crown Notices. Crown bodies are immune from prosecution for breaches of H&S legislation, but national administrative arrangements enable HSE to impose a Crown Censure for an offence that would otherwise have led to prosecution and conviction in a criminal court. When considering enforcement, HSE's decisions are informed by public interest factors in accordance with its Enforcement Policy Statement and the Code for Crown Prosecutors.

13. HSE Inspectors who propose to invoke procedures for either a Crown Notice or a Crown Censure will inform HSE Public Services Sector (MOD Lead) (see below) and follow the guidance in Annex A.

⁴ Work-Related Deaths Protocol (England and Wales)

⁵ Work Related Deaths Protocol (Scotland)

⁶ HSE Enforcement Policy Statement

14. HSWA also places duties on individuals as both employees and in any management role discharged on behalf of the employer. Where an offence is considered to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a person in a management role, then that person can be prosecuted under HSWA; individual Crown servants are not immune from such prosecutions. However, in accordance with its Enforcement Policy, HSE will not prosecute an individual Crown servant (in circumstances comparable to those where it would not have prosecuted an employee of a non-Crown organisation) simply because the employer cannot be prosecuted. HSE also recognises that members of the Armed Forces may be prosecuted under Military Law if a disciplinary offence is alleged.

15. HSE is not the enforcing authority for the Corporate Manslaughter and Corporate Homicide Act 2007, but it may provide support and assistance to those that are (eg. police or Crown Prosecution Service). The Act provides a number of specific exemptions, including from the duty of care owed by MOD during defined military activities.

Fees

16. Under the Health and Safety (Fees) Regulations 2012, a Fee for Intervention (FFI) is charged where the HSE intervenes to inspect or investigate, and the Inspector believes there has been a material breach of H&S legislation. The Fee is calculated as a recovery of costs incurred; it applies to Crown bodies and thus MOD. Further detail is in Annex A.

INFORMATION SECURITY AND DISCLOSURE

17. In conducting their duties HSE Inspectors may need to receive and understand classified information; HSE will ensure that its staff have the appropriate level of security clearance and will make arrangements to handle classified information in accordance with the Government Manual of Protective Security. Where appropriate, security arrangements specific to particular activities are detailed in the Annexes.

18. HSE is required by Section 28(8) of HSWA to give certain information about matters affecting the safety, health and welfare of those employed to both employees and their representatives. In discharging this duty, HSE will only provide information to the named safety representative or trades' union official directly associated with the matter and who has the requisite security clearance. In the case of the Armed Forces, HSE will give the information to the Commanding Officer who receives it on behalf of the Service personnel under his control.

19. Information held by HSE about defence activities is subject to the provisions of the Freedom of Information Act 2000 (FOI Act). If HSE receives a request under the FOI Act, then the decision on disclosure is the responsibility of HSE, as the information holder, but HSE undertakes to seek representations from MOD (especially in respect of information originating from MOD) to assist its decision. Decisions on disclosure will be taken in accordance with FOI provisions and legal advice may be sought.

LIAISON ARRANGEMENTS

20. Liaison arrangements described under this section operate in addition to the interaction between HSE Inspectors and those in MOD whom they regulate; they do not constrain the discharge of HSE's responsibilities as a regulator of defence activities. It is

intended that the liaisons described will assist routine regulatory activity; while the broad intent of the liaisons is described below, this will not limit discussions.

Central Liaison

21. The Director, Defence Safety Authority (DSA-Dir) and the HSE Strategic Co-ordinator (HSE Stratco) are the senior representatives of MOD and HSE in respect of this Agreement. They will meet as required (at least annually) to review the intent and operation of the Agreement and to discuss strategic H&S matters relating to defence activities.

22. DSA Corporate Policy & Assurance (CPA) and HSE's Public Services Sector (PSS) (MOD Lead) will liaise and meet as necessary to monitor routine operation of this Agreement and to exchange and discuss ongoing H&S topics relevant to defence activities.

Operational Liaison

23. Under DSA-CPA co-ordination, the Chief Environment and Safety Officers (CESOs) of MOD's component bodies will meet annually (or more frequently if needed) with HSE-PSS to share information, good practice and to learn from experience. Extant operational / regulatory issues may be addressed to aid understanding and ease resolution.

Regulatory Liaison - between HSE and Defence Regulators

24. Defence Regulators and HSE will maintain peer relationships to help ensure seamless regulation of defence activities. The liaison arrangements include elements of joint regulatory activities (eg. inspections; sharing information, cooperation, review of investigation findings etc.) Domain specific arrangements for liaison between the regulators are set out in the Annexes to this agreement.

25. Defence Regulators have been appointed as follows:

- a. Military Aviation Authority: military air safety.
- b. Defence Nuclear Safety Regulator: nuclear and radiological HS&EP⁷ in the Defence Nuclear Programme.
- c. Defence Ordnance, Munitions and Explosives (OME) Safety Regulator: ordnance, munitions and explosives HS&EP and Major Accident Control Regulations.
- d. Defence Maritime Regulator: maritime HS&EP including diving.
- e. Defence Land Safety Regulator comprising:
 - i. The Land Systems Safety Regulator: HS&EP for land systems.
 - ii. The Movements & Transport Safety Regulator: HS&EP across movement & transport activities.
 - iii. The Fuel & Gas Safety Regulator: HS&EP for fuel & gas installations.

⁷ Defence regulators are also empowered in respect of environmental protection issues.

- f. Defence Fire Safety Regulator: under Regulatory Reform (Fire Safety) Order 2005.

26. HSE is organised into directorates to deliver regulation for both general H&S and in specific high consequence domains which typically operate a permissioning regimes:

- a. Field Operations Directorate for construction and general workplace risks.
- b. Hazardous Industries Directorate comprising specialist regulators:
 - i. Explosives Inspectorate.
 - ii. Gas and Pipelines Division.
 - iii. Biological Agents Unit.
 - iv. Mines Inspectorate.
 - v. Offshore Safety Division.

27. Under DSA and HSE PSS co-ordination, representatives of Defence Regulators and HSE will meet approximately annually to share information, good practice and to learn from experience in respect of regulatory regimes.

REVIEW

28. This Agreement will be reviewed jointly by MOD and HSE when both parties agree a review is necessary or, at minimum, every five years.

29. The annexes to this Agreement provide specific additional detail; with the exception of Annex A, they are presented on a domain basis. The annexes may be reviewed independently (at minimum every five years) and the Agreement and annexes may be updated at different times.

Annex A The arrangements for inspection, investigation and enforcement by HSE Inspectors.

Annex B Arrangements for Investigating Military Aircraft Accidents in Great Britain (to be finalised).

Annex C Arrangements for the Inspection of HM Ships, Submarines & Auxiliaries (dated August 2008).

Annex D Special Arrangements for Particularly Sensitive Activities (dated January 2008).

Annex E Inspection of Military Diving (dated August 2008).

Annex F Enforcement of General Fire Safety Legislation (dated August 2008).

LINKED AGREEMENTS

30. A separate Memorandum of Agreement sets out arrangements in respect of United States Forces' observance of health and safety legislation in GB.

31. Under a separate Memorandum of Understanding the HSE provides H&S services and expertise to the Administrator of the Sovereign Base Area, Cyprus