



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED KINGDOM GOVERNMENT
AND
THE BRITISH STANDARDS INSTITUTION
IN RESPECT OF ITS ACTIVITIES AS
THE UNITED KINGDOM'S
NATIONAL STANDARDS BODY**

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Article 1 Introduction and definitions

1.1 The United Kingdom Government (“the Government”) and the British Standards Institution (“BSI”) make the following Memorandum of Understanding which records their joint and several commitments and intentions regarding the “Role of the NSB”. The contents of this Memorandum are to be read subject to the provisions of the consolidated Royal Charter and Bye-laws granted in 1981, as amended in 1989, 1992, 1994 and 1998 (the Royal Charter).

1.2 For the purposes of this Memorandum:

“NSB” means national standards body.

“Role of the NSB” means all the activities of BSI, as the United Kingdom’s NSB, in furtherance of the primary objects set out in paragraphs 3(a) and (b) of the Royal Charter, together with any activities in pursuance of paragraph (c) related to paragraphs (a) and (b) and not to paragraph (d); and also to actions under paragraph (e) related to paragraph (a), (b) or relevant activities under paragraph (c). The Government and BSI agree that this definition should be interpreted to include the management, coordination and undertaking of:

- (i) “British Standards” and “other standardisation products”;
- (ii) participation by BSI in European and international standards bodies, and other international activity undertaken in the interests of BSI as the United Kingdom’s NSB;
- (iii) promotion, marketing, distribution and information activities concerned with British Standards, BSI’s other standardisation products, and standardisation generally;

- (iv) support and corporate infrastructure activities intended, wholly or in part, to enable (i)-(iii) above;

The Director of Standards¹ has the primary responsibility for the activities set out in (i)-(iv) above. He shall discharge this responsibility either with resources under his control or indirectly by means of arrangements governed by written agreements with specified service levels, financial procedures and duration/notice provisions.

A copy of the relevant provisions from the Royal Charter are set out in the Schedule to this Memorandum for ease of reference;

“British Standards” means formal consensus standards as set out in BS 0-1² paragraph 3.2 and based on the principles of standardisation recognised *inter alia* in European standardisation policy³ (see Article 2.3 below); and

“Other standardisation products” means products having broadly the character of standards, or parts of standards, or services offered to others to assist in the development of such products, which do not wholly comply with one or more of the principles for formal standards.

- 1.3 Through this Memorandum BSI is recognised as the United Kingdom’s NSB operating under the Royal Charter. This Memorandum recognises that, in addition to carrying out its primary role as NSB, BSI undertakes certain other activities permitted by the Royal Charter. This Memorandum is concerned with those other activities only to the extent that BSI’s undertaking of them impinges, or may impinge, on the Role of the NSB.
- 1.4 British Standards, including standards formulated in the European and international contexts and adopted into the United Kingdom system, are confirmed as having the status of agreed national criteria developed and used, *inter alia*, to serve the UK public policy interest. This takes account of the status of British Standards under the provisions of competition legislation. This Memorandum also takes into account the United Kingdom’s obligations under European Union legislation, including both competition law and relevant Directives.

¹ See paragraph 8(b) of the Bye-laws.

² BS 0-1 : 1997 A standard for standards, Part 1: Guide to the context, aims and general principles, as amended from time to time

³ The principles of standardisation on which European standardisation policy are based are: Voluntary process and compliance, consensus, impartiality, openness and balanced participation, transparency, independence and recognition of standards body, fitness for purpose, acceptability, accountability, and coherence. See for example EC Council Resolution of October 1999 (OJ C 141, 19.5.2000)

- 1.5 This Memorandum replaces the Memorandum of Understanding between the Government and BSI made on 27 July 1995 which shall cease to have effect from the date on which this Memorandum comes into effect in accordance with Article 10.1.

Article 2 The public policy interest

- 2.1 This Memorandum shall be construed with the statement on the public policy interest in standardisation dated 24 October 2000 agreed jointly between the Government and BSI, as may be revised from time to time by agreement between both parties.
- 2.2 The Government and BSI agree that:
- (i) Standardisation is a key factor in support of a number of government policies, including competitiveness, innovation, reduction of trade barriers, fair trading and protection of consumer interests, environmental protection and public procurement;
 - (ii) Standardisation is increasingly important for the globalisation of commerce and the convergence of technologies and also for international trade, in particular through the World Trade Organisation's Technical Barriers to Trade (WTO TBT) Agreement and through various European legislative acts harmonising laws applied to products sold within the European Community.
 - (iii) Standardisation is able, when used in conjunction with legislation, to promote better regulation.
 - (iv) Market forces are necessary for the development of efficient standards, but standards have some of the characteristics of 'public goods', so market forces alone will not enable the benefits of standardisation to be realised. In particular, there is an incentive for standards users to avoid the development effort and associated costs, and leave those to others. Conversely, innovative companies themselves can have an incentive to avoid standardisation, to promote their own specifications and exclude competition, perhaps by forming cartels. Public policy is required in order to compensate for these market imperfections.
 - (v) There are also potential problems to be avoided in standardisation. Slow, rigid, out of date or inappropriate standards may be a hindrance to innovation rather than helping it. Standards can be used to create trade barriers as well as to remove them. It is as important for the Government to work against these disbenefits as to promote

the very beneficial effects of standardisation.

- 2.3 The Government and BSI are, separately and through co-operation with each other, determined to promote effective standardisation policy in order to realise in full the potential socio-economic benefits of standardisation, including the promotion of the small and medium sized business sector and of worker, consumer and environmental interests.
- 2.4 The Government and BSI agree that the capability to develop and promulgate formal standards is in the public interest, because other standardisation products do not necessarily provide the full benefits of formal standards to all stakeholders including, for example, consumers. A key overall aim of BSI's standards setting activities will therefore be to preserve and strengthen this capability. BSI will not offer other standardisation products in preference to British Standards when the latter are acceptable to the market, and will seek the conversion of other standardisation products into British Standards whenever practicable. BSI will also promote the same relationship between formal standards and other standardisation products in European and international standards bodies.
- 2.5 The Government and BSI underline the importance of international standards policy. BSI will play a full and effective role in ISO, IEC and other relevant fora, aiming to influence the development of standards in the UK's interests, to promote improvements in the efficiency and effectiveness of the standardisation process, and the rationalisation of the organisational infrastructure. The Government will work through intergovernmental fora such as the WTO TBT Committee to promote a coherent international standards organisational infrastructure and effective use of standardisation in support of public policies.
- 2.6 The Government and BSI also underline the importance of European standards policy. They recognise that the UK is expected to maintain a standards infrastructure consistent with European standards policy, and must meet obligations of EC law. They recognise that the UK's interests will be furthered if they inform and co-operate with each other and adopt compatible policies in their respective spheres of activity. They agree that it is beneficial, therefore, to promote the strength and influence of the NSB.
- 2.7 The Government will play an active role in developing European standards policy with European governments and EU institutions, both in support of legislation and for the wider socio-economic benefits achievable through standardisation. It will inform and consult BSI as appropriate. BSI will play a full role in developing European standards policy in European standards fora to ensure that UK standards users' requirements are met as far as practicable, and in furtherance of standardisation policy aims

discussed with the Government. Both BSI and the Government will support European policy on standardisation in the international context aiming to strengthen the European approach to standardisation and its influence world-wide.

Article 3 Recognition by the Government of BSI as the NSB

- 3.1 The Government recognises BSI as the NSB. This includes recognition of BSI as the United Kingdom member of ISO (International Organisation for Standardisation) and CEN (European Committee for Standardisation). In the electrotechnical field, this recognition extends to the British Electrotechnical Committee, which forms an integral part of BSI Standards, as the United Kingdom member of IEC (International Electrotechnical Commission) and CENELEC (European Committee for Electrotechnical Standardisation). This recognition also extends to BSI's functions undertaken in connection with ETSI (the European Telecommunications Standards Institute), including those of public enquiries, adoption and delivery.
- 3.2 The Government will support BSI's efforts to achieve harmonisation of relevant standards through these international and European standards organisations, international agreements and other arrangements in the interests of the UK.
- 3.3 The Government will keep BSI informed of any intergovernmental discussions concerned with standards or associated technical regulations, unless there are reasons of confidentiality for not doing so. It will invite BSI where appropriate to participate in such discussions, especially those which may lead to intergovernmental agreements concerning standards, and will fully take into account BSI's views on the best means of implementing such agreements.

Article 4 Commitments of BSI (as NSB) and the Government

- 4.1 BSI will ensure:
 - (i) that the public policy interest (described in Article 2) is taken into account in defining how the NSB secures its revenue;
 - (ii) that it provides the Government with information about any of its standards or standards activities when required to do so;
 - (iii) that it achieves the requirements of membership of the major European and international standards organisations and, by means of

participation in such organisations, the optimal promotion of UK interests through their policies and standards;

- (iv) that it fulfils the requirements for being cited as the UK NSB for the purposes of Directive 98/34/EC (or any successor Community act to that Directive), carrying out efficiently and effectively the responsibilities of the UK NSB laid down in that Directive, and the requirements of any other EC legal instruments which may refer to national standards bodies.;
- (v) through appropriate facilitation, the production and maintenance of any standard required by the Government for legislation (whether referenced in the legal instrument or otherwise indirectly required) or for public procurement purposes;
- (vi) the provision and maintenance of a portfolio of formal consensus standards and other standardisation products which will meet the requirements of UK business and, as appropriate, other stakeholders including the Government, consumers, and small businesses; and a means of identifying, evaluating, prioritising and acting on proposals for standardisation projects;
- (vii) that, within the portfolio described in Article 4.1(vi), formal consensus standards are provided and maintained whenever there is a requirement that the criteria for such standards be met;
- (viii) that it contributes to strategic planning of the national standardisation infrastructure, including maintaining its own strategic standardisation planning and evaluation facility with the involvement of the Government and business;
- (ix) co-operation with the Government to use standardisation to support policy; and
- (x) the development and operation of a business strategy for BSI as NSB which identifies and exploits commercial opportunities so as to optimise its business prospects; and that it operates the standards system at least as effectively in the UK's national interest as standards bodies in other advanced economies, taking different circumstances and levels of government support into account. This may include formation or acquisition of subsidiaries, joint ventures, alliances etc, both nationally and internationally (insofar as permitted by law and the Royal Charter).

4.2 The means by which the requirements of Article 4.1 above shall be met will

be identified by BSI and agreed with the Government from time to time.

4.3 The Government for its part will:

- (i) respect the independence of BSI, and limit its intervention to public policy matters in relation to BSI as NSB;
- (ii) use all appropriate means to promote and support the pursuit and achievement by BSI of the primary objects for which it has been constituted by the Royal Charter;
- (iii) work to maintain an environment which enables BSI as NSB to respond positively to changing market needs and technology.
- (iv) provide annual financial support by way of contribution towards BSI's NSB activities relating to formal consensus standards and, in so providing, take account of the total costs of the public policy interest benefits accruing from, and income derived from or related to, such activities. The Government will also take into account the benefits which should be gained for the NSB as a result of the other activities permitted by the Royal Charter and carried out by BSI.

Article 5 The "ring fence"

5.1 The Government's annual contributions to funding referred to in Article 4.3(iv) above will be spent within the NSB in connection with formal consensus standards and not elsewhere in BSI. Revenues from the non-NSB businesses of BSI may be applied to the NSB activities, including investments as provided for in Article 6 below. Surpluses generated in the NSB may be used to invest in non-NSB assets, but only in accordance with Article 6.5 below.

5.2 Notwithstanding any restructuring of itself in whatever form, BSI must be able to demonstrate in relation to the NSB activities that:

- (i) the criteria described in paragraph 5.1 above are being met;
- (ii) management decisions concerning the NSB are made in the interests of BSI's NSB customers and stakeholders, and without favour either to other BSI commercial operations or to classes of business in which the non-NSB parts of BSI are represented, to the detriment of BSI's NSB customers and stakeholders;
- (iii) where collaboration between the NSB and non-NSB parts of BSI occurs in the NSB customer and stakeholder interests, opportunities

for similar collaboration are made available to non-BSI businesses to the extent required by competition law.

- 5.3 BSI will ensure that provisions in British Standards do not discriminate between conformity assessment bodies; and will use all reasonable efforts to secure that there is no such discrimination in European and international standards.
- 5.4 BSI will account periodically for the expenditure of any Government funding in accordance with such conditions, including appropriate performance measures, as shall from time to time be agreed. Such accounting may include but not be confined to financial accounts which may be audited.
- 5.5 BSI will ensure that the Government funding provided towards the NSB activities is kept entirely separate from the financing of its other activities.

Article 6 Financial provisions

General

- 6.1 The Government and BSI recognise that, whilst BSI is operating within the terms of the Royal Charter, no limitations can be formulated on the financial obligations of BSI to its functioning as NSB.
- 6.2 In the event that structural changes in the market for standardisation result in a major reduction in the market available to BSI for formal consensus standards and other standardisation products, the Government recognises that the NSB cannot expect large and continuing cross-subsidy from BSI's non-standards businesses. In such circumstances, the scale of continuing BSI's operations as NSB, and the commensurate Government contribution, will be considered jointly at the time. The Government will take account of how, and how successfully, the NSBs of other countries may have responded to those structural changes.
- 6.3 If BSI incurs operating losses in respect of the NSB, then BSI will normally apply profit from any other businesses operated in furtherance of paragraph 3(d) of the Royal Charter to make good the losses. If
 - such losses are either of a degree of severity or of a duration⁴ requiring reconsideration of the NSB's operations or a combination of both;

⁴ Losses in three consecutive years may normally be considered to meet this criterion, though shorter or longer periods may be appropriate depending on the circumstances.

- all other reasonable avenues for stemming the losses have been exhausted; and
- standards setting for public policy interest reasons is a significant contributory factor in the losses,

the Government will discuss with BSI the implications of scaling back the public interest activities performed by BSI as NSB, or of helping to fund them.

Funding for investment

- 6.4 The Government and BSI recognise that the commitment of BSI towards funding for investment in its NSB activities is based on two principles:
- (i) BSI, like any other business, aims to generate surpluses which can be applied to fund investment in the maintenance and growth of the business (and the servicing of any debt where this has been incurred as part of a prudent and balanced financing of the business); and
 - (ii) BSI's furtherance of its primary objects as set out in the Role of the NSB
- 6.5 In the light of Article 6.4, BSI will give priority to investment funding for the maintenance of the facilities, management capability and resources for formal consensus standardisation. Beyond this requirement BSI will prefer investment in other NSB activities over investment in non-standards activities permitted by the Royal Charter, unless the latter are demonstrably more in the NSB's interest.
- 6.6 Subject to Article 7 below, BSI may dispose of non-NSB businesses if to do so is not against the interests of the NSB activities; and should do so in the case of any such non-NSB business the retention of which would put the interests of the NSB activities at risk.

Article 7 *Disposal of non-NSB businesses and assets*

- 7.1 BSI will not, through any such disposal, jeopardise the objects and interests of the NSB activities.
- 7.2 In the event that BSI undertakes a trade sale of a non-NSB business or asset, BSI will ensure that the purchaser pays a price comparable to what would be paid to a conventional shareholder-owned business. None of the price paid shall flow back to the purchaser.

- 7.3 BSI shall determine in accordance with Article 6.5 how the proceeds of such a trade sale shall be applied after making any reasonable payment to its stakeholders including staff as may be appropriate. If such proceeds exceed the funding requirements reasonably foreseeable in accordance with Article 6.5, BSI may request changes to the Royal Charter with the intention of widening the objects and hence the range of investments permissible under it.

Article 8 Standards development

- 8.1 In the preparation of British Standards, BSI will ensure that its committees adhere to the guidance and recommendations of BS 0: 1997 'A Standard for Standards' and any subsequent amendment or revision thereof, and to Rule 5 of BSI's Bye-laws. BSI will ensure that any amendments to this standard do not prejudice the aims and objectives of this Memorandum. BS 0 incorporates practical interpretation of the principles referred to in Article 1.2 as regards British Standards.
- 8.2 BSI will keep its committee structure under review, and revise it as necessary to ensure it is responsive to the needs of industry and other stakeholders, taking the changing business environment into account. BSI will also adapt the procedures so as to be able to meet demand for other standardisation products, taking care to avoid any risk of confusion between them and British Standards.
- 8.3 BSI will seek a fair and acceptable balance of all relevant interests in its work and will encourage their full participation in producing British Standards and in formulating the UK position on proposed European and international standards which not only reflect sound and modern technical practice but also take fully into account the commercial needs of both manufacturers and users. If work on standards or other standardisation products is funded or partly funded by participants, BSI will take care that opportunities for participation are available to other stakeholders as appropriate.
- 8.4 The Government will seek to ensure that its representatives participate appropriately in activities at every level of BSI's standards development and advisory committees. In particular, they will make such contributions to the technical, commercial and legislative aspects of standards work as are necessary and appropriate, drawing upon the resources and expertise within Government to do so. In addition, the Government representatives on BSI Technical Committees will, before a draft British Standard is issued for public consultation and at final approval stage, indicate whether and to what extent it is likely to be acceptable to the Government for regulatory or

purchasing purposes.

- 8.5 The principles governing the participation of Government representatives in BSI standards committees are set out in the "Guidelines for Government Representatives on Standards Committees" issued from time to time by the Department of Trade and Industry. These Guidelines will be reviewed by the Government from time to time in consultation with BSI to ensure that practical participation in BSI's work by Government representatives reflects the aims and objectives of this Memorandum.

Article 9 Promotion of participation in, and benefits of, standardisation

- 9.1 The Government will, with BSI's assistance, aim to spread awareness of how BSI as NSB can be used in public projects and policies, and thereby minimise unnecessary duplication. In return, BSI will aim to ensure that how it operates as NSB is clearly understood, and to avoid confusion with its non-NSB commercial activities. BSI will also promote awareness of the NSB's own standardisation and its effective use including through education and training initiatives.

Article 10 Duration and amendment of this Memorandum

- 10.1 This Memorandum shall come into effect on the date of signing thereof by both parties and, subject to paragraph (2) below, shall continue in effect until it is terminated by either party on reasonable notice, following consultation with the other, taking account of the requirement to maintain the integrity of the NSB arrangements in the UK.
- 10.2 This Memorandum may be amended at any time by the written agreement of both parties and any such amendment shall take effect as set out in such written agreement.

Lord Sainsbury
*Parliamentary Under-Secretary of State for
Science and Innovation*
(on behalf of the United Kingdom Government)

Vivian E Thomas CBE
Chairman of the Board
(on behalf of the British Standards Institution)

Lancaster House
20 June 2002

SCHEDULE

Extract from the BSI Royal Charter 1998 (pursuant to Article 1.2 of this Memorandum):-

3. The objects and purposes for which the Institution is constituted are:
- (a) to co-ordinate the efforts of companies and persons for the improvement, standardization and simplification of materials, products and processes, so as to simplify production and distribution, and for the improvement, standardization and simplification of systems for the management of business, safety, technology, services and the environment and to eliminate the wastage of time and material involved in the production of an unnecessary variety of patterns and sizes of articles for one and the same purpose;
 - (b) to set up, sell and distribute standards of quality for goods, services and management systems and prepare and promote the general adoption of British and international standards and schedules in connection therewith and from time to time revise, alter and amend such standards and schedules as experience and circumstances may require;
 - (c) to register, in the name of the Institution, marks of all descriptions, and to prove and affix or license the affixing of such marks or other proof, letter, name, description or device;
 - (d) to advertise, promote, sell and deliver the services of systems assessment, registration product and materials inspection, testing and certification, training, consultancy and arbitration, provided that this object shall not be pursued in a manner that would prejudice the objects set out in Paragraphs (a) to (c) of this Article;
 - (e) to take such action as may appear desirable or necessary to protect the objects or interests of the Institution.