

**MEMORANDUM OF UNDERSTANDING
BETWEEN
MINISTRY OF DEFENCE
AND
NORTHERN IRELAND ENVIRONMENT
AGENCY
ON MATTERS
RELATING TO
RADIOACTIVE SUBSTANCES**

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MEMORANDUM OF UNDERSTANDING BETWEEN THE MINISTRY OF DEFENCE AND NORTHERN IRELAND ENVIRONMENT AGENCY ON MATTERS RELATING TO RADIOACTIVE SUBSTANCES

1. Purpose

The purpose of this Memorandum of Understanding (MoU) is to assist in securing effective co-operation and understanding between the Ministry of Defence ('MoD') and the Northern Ireland Environment Agency ('NIEA') relating to the management and regulation of radioactive substances at Defence Premises. It sets out the arrangements for the administrative application by mutual agreement of legislative requirements, primarily of the Radioactive Substances Act 1993 (RSA 93) and other related legislation (set out in Section 5. below) at Defence Premises in Northern Ireland.

2. Scope

This MoU is between MoD and NIEA. The MoU applies only to radioactive substances activities carried out at Defence Premises in Northern Ireland which are occupied by or on behalf of the Secretary of State for Defence. This MoU reflects the low risk nature of the radioactive substances activities currently conducted in Northern Ireland. This is limited to the keeping and use of Category 5 sources, as defined by the IAEA¹.

In the event of inconsistencies between this MoU and legislative requirements, the latter take precedence.

This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise from this MoU. The participants enter this MoU intending to honour all their obligations.

Where the nature of Defence and Security activities dictate, this MoU will be followed as is reasonably possible given the circumstances prevailing. Nothing in this

¹ INTERNATIONAL ATOMIC ENERGY AGENCY, Categorization of Radioactive Sources, IAEA Safety Standards Series No. RS-G-1.9, IAEA, Vienna (2005).

paragraph is intended to curtail or restrain NIEA from conducting investigations, reporting on their findings, etc, in accordance with this MoU.

Either participant to this MoU may terminate this MoU on giving at least 6 months prior written notice of their intention to do so to the other participant.

3. MoD Policy Framework

The Secretary of State for Defence is answerable to Parliament for the management of safety and environmental protection in the MoD. The Secretary of State's policy requires that 'where Defence has exemptions, derogations or dis-applications from health, safety and environmental protection legislation we maintain Departmental arrangements that produce outcomes that are, so far as is reasonably practicable, at least as good as those required by UK legislation'. This MoU is intended to assist in fulfilling this policy intent, and to address arrangements to ensure the necessary outcomes in relation to specific legislation applicable to radioactive substances.

4. Environmental Duties and Responsibilities of NIEA

The Northern Ireland Environment Agency (NIEA) is an Executive Agency within the Department of Agriculture, Environment and Rural Affairs. The Agency's primary purpose is to protect and enhance Northern Ireland's environment, and in doing so, deliver health and well-being benefits and support economic growth. Within NIEA, the Industrial Pollution and Radiochemical Inspectorate (IPRI) is responsible for controlling the keeping and use of radioactive material and the disposal of radioactive waste through enforcing RSA 93. IPRI also enforces the legislation covering the transport of radioactive material by road.

5. Application of Legislation

This section describes legislation specific to regulation of radioactive substances in Northern Ireland and how it applies to MoD.

(i) Radioactive Substances Act 1993 (RSA 93)

RSA 93 sets out measures to regulate the use and disposal of radioactive substances including registration, authorisation, enforcement, and offences. These functions rest with the Chief Industrial Pollution & Radiochemical Inspector (the Chief Inspector), supported by a team of inspectors. RSA 93 s.42(2) disapplies RSA 93 in relation to Defence Premises. However, in accordance with the MoD policy framework (Section 3), MoD will achieve an outcome at least as good as would have been required by RSA 93 and related legislation had there been no exemptions or derogations for MoD, as set out in this MoU.

NIEA will seek to ensure through this MoU that MoD are producing outcomes, that are as far as reasonably practicable at least as good as those required by UK legislation.

(ii) The High-activity Sealed Radioactive Sources and Orphan Sources Regulations 2005 (the “HASS Regulations”) / HASS (Northern Ireland) Directions 2005

The HASS Regulations make amendments to RSA 93 in respect of the control of high-activity sealed radioactive sources and orphan sources, supported by Directions made under the power of s.23 of RSA 93. RSA 93 s.42(2) disapplies RSA 93 in relation to Defence Premises and as such, the HASS Regulations do not apply to Defence Premises. However, in accordance with the MoD policy framework (Section 3), MoD will, in respect of high activity sealed radioactive sources, if they are ever held, achieve an outcome at least as good as would have been required had there been no exemptions or derogations for MoD, as set out in this MoU.

(iii) Radioactive Substances Exemption (Northern Ireland) Order 2011

The Radioactive Substances Exemption (Northern Ireland) Order 2011 (the 2011 Order) confers exemptions from the requirements to register and be authorised under RSA 93. As RSA 93 s.42(2) disapplies RSA 93 in relation to Defence Premises, this Order will not apply to MoD premises. However, Defence will comply with any requirements which the 2011 Order specifies as a condition of an exemption.

(iv) Radioactive Substances (Basic Safety Standards) Regulations (Northern Ireland) 2003

The Radioactive Substances (Basic Safety Standards) Regulations (Northern Ireland) 2003 require that the Chief Inspector, in discharging his functions in relation to the disposal of radioactive waste under RSA 93, shall ensure all exposures to ionising radiation are kept as low as reasonably achievable. As RSA 93 s.42(2) disapplies RSA 93 in relation to Defence Premises, these Regulations will not apply to MoD premises. However, in respecting MoD policy to maintain arrangements that produce equivalent outcomes as those required by UK legislation, the Chief Inspector will apply this approach to Defence Premises.

(v) Transfrontier Shipment of Radioactive Substances (EU Exit) Regulations 2019.

The Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2019 (as amended).

The Shipment of Radioactive Substances (EU Exit) Regulations 2019 require imports of sealed radioactive sources to the UK from the EU to obtain prior consent for the movement of sealed sources into the UK by way of a written declaration before shipments can take place.

The Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2019 (as amended by the Transfrontier Shipment of Radioactive Waste and Spent Fuel (Amendment) (EU Exit) Regulations 2020) continues to apply Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel in Northern Ireland. This requires prior authorisation for shipments of radioactive waste and spent fuel from a member State of the EU to or through Northern Ireland. NIEA is the competent authority in Northern Ireland for both sets of regulations. These (EU Exit) Regulations do not bind the Crown and consequently, MoD activities are outside their scope.

(vi) Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2010/160 (as amended)

The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2010 regulates the transport of radioactive material

(Class 7) by road, rail and inland waterway. Regulations 14(a) and 20(3) disappplies the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2010 in relation to transport by or under the responsibility of the Armed Forces. However, in accordance with the MoD policy framework (section 3), MoD will implement parallel administrative arrangements which would have been required by the Regulations had there been no exemptions or derogations for the armed forces, as set out in this MoU.

NIEA will seek to ensure through this MoU that MoD are implementing the same requirements as would be applied to equivalent civil sites in respect of transport by road.

6. MoD Reporting Arrangements

MoD will provide NIEA with an annual declaration of MoD premises in Northern Ireland having radioactive material holdings which would require permitting or registration with NIEA were MoD not exempt from the relevant statutory provisions. The declaration will be provided between January and March each year and will cover the previous calendar year.

This declaration will confirm that holding of sources at a hazard level above Category 5 and the keeping or use of unsealed sources has not occurred (provided that is the case) and is not anticipated to occur during the remainder of the current calendar year; and accumulation and/or disposal of radioactive material, other than in accordance with relevant exemptions, has not occurred (provided that is the case) and is not anticipated to occur during the remainder of the current calendar year.

If the holding of sources at a hazard level above Category 5; the keeping or use of unsealed sources; or accumulation and/or disposal of radioactive material, other than in accordance with relevant exemptions, is anticipated to be required at an MoD premises in Northern Ireland, where reasonably practicable MoD will contact NIEA in advance of this work commencing and will put in place appropriate arrangements before the work starts. Where appropriate this may include review of this MoU.

The annual declaration from MoD to NIEA coordinated by D-LUCC&S with the site holding the source, will include a position statement regarding establishment holdings and provide assurance that materials are held under equivalent standards to those which would apply to a site at which RSA 93 requirements apply.

NIEA can carry out inspections as deemed necessary for the purpose of ensuring that the MoD are operating within the limits and conditions applied to equivalent civilian operators by the legislation outlined in Section 5. NIEA will work with the relevant Commanding Officer to coordinate such inspections and inform them of the outcome of these inspections.

7. Reporting of Incidents

The participants agree that NIEA will be informed by MoD of radioactive substances related incidents for activities covered within the scope of this MoU. NIEA may provide information concerning such incidents to NI Ministers.

NIEA will inform the Head of Establishment/Commanding Officer, via D-LUCC&S for incidents on MoD sites, when information concerning such incidents is to pass outside of NIEA (including to NI Ministers). MoD will provide its comments on any proposed disclosure to NIEA within a reasonable period of time and in writing. All information pertaining to the management of sealed sources will be treated by NIEA as OFFICIAL – SENSITIVE. This is in line with Direction (Northern Ireland) Under s25(1) and (4) of the RSA 93 which applies to similar information required under RSA 93. NIEA will be directed by MoD with regards to the security classification of information relating to the management of other radioactive substances. This classification should be supplied to NIEA by MoD in writing. MOD will input incident data onto DURALs.

8. Disclosure of Information to the Public

NIEA will consult MoD on any request under the Freedom of Information Act 2004 (Fol), or the Environmental Information Regulations 2004 (EIR), for the release of any information (including paper and electronic documents) originating or relating to the MoD. Unless information has been provided by MoD on the specific understanding

from MoD that it will be published, NIEA will first consult MoD to ensure all factors relevant to the assessment of the balance of public interests are understood and fully considered. NIEA and MoD will provide single points of contact for FoI enquiries to ensure prompt and coordinated communication between NIEA and MoD. Both Parties acknowledge that each has an obligation under the FoI and EIR and it is ultimately for the party holding information to determine how it will respond to any request for information.

9. Management of Information

RSA 93 requires NIEA to maintain a publicly available register of information relating to the regulation of radioactive substances. NIEA will hold information like that required by RSA 93 for civilian sites for MoD sites regulated under this MoU subject to its security classification. The information will be held on a register held by D-LUCC&S similar to the civilian equivalent.

MoD material classified Official – Sensitive and above will not routinely be released by NIEA or placed on publicly available register but, where relevant, be held on a register owned by D-LUCC&S, similar to the civilian equivalent and managed in accordance with His Majesty's Government Security Policy Framework and MoD's Defence Manual of Security (Joint Service Publication 440). NIEA will be provided, where practical, with access to security classified information on a MoD site rather than retain the information at NIEA premises.

10. Liaison Arrangements

NIEA recognises the need to consult MoD as a user of radioactive substances and as a Department of State on changes to the way in which NIEA regulate the use of radioactive substances.

Meetings will be held annually (where practicable) between D-LUCC&S and Chief Inspector NIEA to review the working of this MoU in the light of changes in policy and legislation and considering experience gained from the application of the MoU at a working level.

11. Resolution of Differences of Opinion

Any differences of opinion that cannot be resolved at local level should be referred to line management. The D-LUCC&S will liaise with NIEA at an appropriate level to facilitate their resolution.

In the first instance, this would be the Chief Inspector, then as appropriate through the management chain.

This MoU is not legally binding and therefore any differences will be resolved administratively.

12. Signatories

Participants agree from the date of signing, this MoU constitutes the entire MoU between the participants on matters relating to radioactive substances.

No variation of this MoU shall be effective unless it is agreed by both participants and in writing.

The signatories on behalf of the participants to this MoU are as follows:



Signed

Dated 12/01/2024

Director of Resource Efficiency Division
Northern Ireland Environment Agency



Signed

Dated 15/01/2024.

Director Levelling Up, the Union, and
Climate Change and Sustainability
Ministry of Defence

Definitions

Definitions in the Radioactive Substances Act 1993 (RSA 93) will apply to this MoU, unless the context requires otherwise or unless amended by this MoU.

In this MoU reference to NIEA regulation means that NIEA is apply administratively the RSA 93 regulatory framework as agreed in this MoU.

Chief Inspector – appointed under the Radioactive Substances Act 1993 and has responsibility for execution of regulatory functions under radioactive substances legislation for NIEA.

Defence Premises are premises which fall within the description in RSA 93 s.42(2).

D-LUCC&S means the Director of Levelling Up, the Union, Climate Change and Sustainability that is responsible for delivering the Department’s Climate Change and Sustainability Ambitions; ensuring that Defence is adapting and will be resilient to the impact of climate change, working to mitigate its environmental impact; enhanced its sustainability policy and capability; and supporting Union and Levelling Up activity across the Defence.

DSA means Defence Safety Authority, responsible for the regulation, assurance, enforcement and investigation of Defence Health, Safety and Environmental Protection.

DURALS means Defence Unified Reporting and Lessons System, an internal Defence wide system used for reporting, investigation data exploitation and lesson exchange, includes Environmental Protection incident reporting.

HASS means High-Activity Sealed Source as defined in Regulation 2(1) of the High - activity Sealed Radioactive Sources and Orphan Sources Regulations 2005 and Direction 2(1) of the HASS (Northern Ireland) Directions 2005

IPRI means the Industrial Pollution and Radiochemical Inspectorate

MoD means the Ministry of Defence

NIEA means the Northern Ireland Environment Agency.