

ANNEX M (ANNEX A)**GENERAL ARRANGEMENTS FOR HSE INSPECTION / INVESTIGATION AT MOD ESTABLISHMENTS BY HSE INSPECTORS****GENERAL**

1 This annex sets out to clarify the expectations of HSE and MOD during inspection and investigation. It details the arrangements that HSE and MOD will normally follow in arranging, carrying out and reporting on inspections / investigations of MOD units, establishments and activities under the terms of the Health and Safety at Work etc Act 1974 (HSWA) and associated relevant statutory provisions (RSP's). These arrangements are intended to facilitate such inspections or investigations, recognising the statutory right of HSE to carry them out in all areas covered by the HSWA and RSP's and its commitment to do so in such a way as not to compromise national security and the operational capability of MOD. However these arrangements (and those in Annexes B, C, D, E and F) may not apply to joint investigations with the police under the Work Related Death Protocols (WRDPs). Any difficulties in the application of this annex should be referred through the normal channels, and will if unresolved be discussed between the Head of Safety, Sustainable Development and Continuity Division (SSD&CD) and HSE's Public Services Sector (MOD lead).

INSPECTIONS

2. Inspections by HSE are for the purpose of discharging its functions as the regulatory authority and are additional to those which MOD undertakes for its own management purposes. HSE's inspections in practice may be broadly classified 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. Substantial initiatives planned by HSE will be brought to the attention of Hd of SSD&CD by HSE's Public Services Sector (MOD lead) during routine liaison meetings so that any overlaps with MOD's own inspection programmes can be discussed.
- b. Reactive investigations responding, for example, to an accident, incident or a complaint. Although the accident and ill health reporting requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) do not apply to service personnel or visiting forces on duty in Great Britain (GB), HSE inspectors may learn of otherwise reportable incidents and decide to investigate using their statutory powers under the HSWA and other relevant legislation.
- c. Inspections for special purposes, for example, to seek information on a specific health or safety topic.

3. The principles described in this annex should be followed wherever possible, recognising that reactive investigations may require a more urgent response.

INSPECTION ARRANGEMENTS

4. Inspection of most MOD units and establishments is undertaken by the HSE's Field Operations Directorate (FOD). Inspections of explosives, nuclear and diving facilities are undertaken by specialist inspectors from other divisions in HSE.
5. When visiting any MOD establishment Inspectors will generally aim to visit by appointment, as there will normally be security measures in place. If some time has passed since the last HSE contact with the establishment or if HSE proposes a substantial inspection initiative, inspectors will contact the Commanding Officer (CO) or Head of Establishment (HoE) in order to make an appointment for a visit and to obtain the name of an individual nominated to deal with the visit (this will often be done in writing but could also be by telephone if circumstances dictate). The CO/HoE should at this stage indicate to the inspector any areas or activities subject to the provisions of Annex D (Special Arrangements for Particularly Sensitive Activities) if appropriate.
6. If there is a failure to agree a mutually convenient date for the inspection within a reasonable time or if there are any other difficulties they should, in the first instance, be discussed by the CO/HoE (or their appropriate representative, if deemed necessary for legal reasons) with the inspector's manager.
7. Special additional arrangements which apply are contained in:
 - Annex B** - HSE's inspection of certain nuclear sites including cooperation with the Defence Nuclear Safety Regulator. (Other HSE inspectors should seek advice from HSE's Nuclear Directorate (ND) if they intend to inspect such sites);
 - Annex C** - HM Ships and Submarines and other MOD (Navy) vessels;
 - Annex D** – Special Arrangements for Particularly Sensitive Activities;
 - Annex E** – Inspection of Military Diving and;
 - Annex F** - Enforcement of General Fire Safety Legislation
8. On receipt of notification of an inspection, the CO/HoE should inform MOD through the chain of command.
9. Inspectors hold a warrant, which can be used as a means of identification. It also indicates that they are entitled to use the statutory powers as referenced on the warrant (see also paragraph 14) whilst on site carrying out visits or inspections. During inspections of MOD units and establishments, the inspector will normally be escorted. When visiting a construction site located within an MOD establishment the inspector may be escorted to the site by the contractor, but should also try to ensure that the CO/HoE is informed of their visit (which can be done through the contractor if appropriate)
10. Any difficulties in relation to access will be referred through normal command and management chains for resolution.

MILITARY AND OPERATIONAL TRAINING

11. By its very nature, military and operational training does not always lend itself to inspection by observation. HSE inspectors may inspect military training areas, establishments and units where

military training and/or operational training is being undertaken. HSE recognises the operational need for MOD to conduct hazardous training. One principal interest is in the MOD's procedures for controlling and managing hazardous training activities. If an inspector feels that such training should be halted or interrupted, the inspector will raise this through the MOD's command chain at the time, unless the need for safety requires that these activities be halted immediately.

12. Arrangements for an HSE inspector's visit will normally follow the procedures in paragraphs 4 - 10 of this Annex. Where inspection of military and operational training is concerned, the CO will take into account the risks to Service personnel of any interruption caused by the inspection and the risks to the safety of the HSE inspector in agreeing the timing of an inspection.

MILITARY AIRCRAFT

13. HSWA applies to military aircraft in flight within the baseline. (The baseline is the low water line around the coast of the United Kingdom. Certain bays and islands are included within the baseline as defined by the Territorial Waters Order in Council 1964). However, HSE does not generally seek to investigate issues relating to airworthiness or aircraft crashes as other specialist investigators are often better placed to do so, but this may need to be decided on a case by case basis (i.e. where there are indications of serious health and safety management failings). In the event of a work related death, inspectors should liaise with the police in line with the WRDP. Other issues relating to the health and safety of members of aircraft crew or ground staff, or members of the public whose health and safety has been affected, may be of interest to HSE, and such cases will generally be discussed with SSD&CD before approaching the operational unit concerned.

HSE INCIDENT INVESTIGATIONS

14. HSE investigations and the process of gathering and considering of evidence will follow established practice. This practice is described in the legislation and published HSE guidance. It includes:

- The powers of inspectors described in the HSWA including right of entry; to require information; to take measurements, samples and take possession of articles and substances etc. Note: Section 25 of HSWA ('Powers to deal with cause of imminent danger') does not apply to the Crown;
- Criminal Procedures and Investigation Act 1996 (pursuing all reasonable lines of enquiry. Although this Act does not apply in Scotland similar principles should be followed);
- Police and Criminal Evidence Act 1984 (PACE) - England and Wales only - (interview of suspects);
- Criminal Justice Act 1967 (CJA) (England and Wales only - voluntary witness statements);
- HSE Enforcement Policy Statement;
- Code for Crown Prosecutors and the Crown Office and Procurator Fiscal Service Prosecution Code;
- Cabinet Office PIN 45 Procedures for enforcing health and safety requirements in Crown bodies (censure and Crown enforcement notices);
- HSE's published selection criteria for the investigation of injuries;
- HSE's Enforcement Management Model;

- Work Related Deaths Protocols (WRDP and WRDP Scotland) and investigators' guide, and the agreement between ACPO and the MOD / service police forces and the Co-ordinated Policing Protocol between the MOD Police and Scottish Police Forces (Circular 13/2002) ; and
- HSE's guidance on dealing with the bereaved.

15. Investigations of particular incidents or complaints are carried out by local HSE staff. The purpose of HSE's investigations is to determine:

- the cause or causes of the incident or complaint;
- whether there has been a breach of the law;
- whether action has been taken by those outside HSE or needs to be taken to prevent a recurrence and to secure compliance with the law;
- what response is appropriate to the relevant breach; and
- the lessons to be learnt from the incident and how these can influence the law and guidance.

HSE's response and use of resources will be proportionate to the seriousness of the relevant circumstances.

16. HSE's primary focus is to determine whether there have been organisational or systemic failures, although the duties of individuals will also be considered where appropriate.

INCIDENT REPORTING BY MOD

17. Under RIDDOR non-Service personnel, 'off duty' Service personnel and RIDDOR defined dangerous occurrences and injuries are reportable to the HSE Incident Contact Centre (ICC). Although injuries and diseases to Service personnel on duty in Great Britain (GB) are not reportable under RIDDOR; it is MOD policy that all work related deaths and major injuries, resulting from serious health and safety management failings will be reported voluntarily to the HSE ICC as if it was RIDDOR reportable. The relevant TLB CESO will aim to update HSE's Public Services Sector (MOD lead) as appropriate. .

INITIAL INVESTIGATION ACTION

18. On receipt of information concerning an incident that meets HSE's incident selection criteria, the relevant HSE operational manager will, in all but exceptional circumstances, arrange for an inspector(s) to commence an investigation. The inspector will contact the CO/HoE to make the arrangements (referred to in paragraphs 4 – 10 above) and where the incident is a fatal or could result in significant publicity and / or where the investigation could lead to either a prosecution, a crown censure or notice (including crown notice), the inspector will also inform HSE's Public Services Sector (MOD lead).

19. The CO/HoE will inform the relevant TLB CESO of the HSE investigation, who will in turn inform SSD&CD. In the case of a fatal injury, the CO/HoE will provide details of the relevant contact in civil or MOD police.

20. The inspector will also attempt to make early contact with the relevant TLB CESO who will advise who is conducting the service's own investigation and where relevant will provide the contact details for the appropriate Service Police force if not already obtained.

21. Inspectors should contact the relevant TLB CESO for internal MOD investigation reports or other information relevant to their investigation.

PRESERVING THE SCENE

22. Where there is early attendance at the scene, the inspector may require the scene to be left undisturbed to preserve evidence for further in situ examination, sometimes by specialist inspectors. Inspectors may also consider prohibiting activities with a Crown prohibition notice. If the MOD is of the opinion that such action will compromise the defence imperative/mission and provide justifiable reasons, the proposed action will be reviewed. Any issues that cannot be resolved should wherever possible be referred to HSE Public Services Sector (MOD lead) who will notify the service TLB CESO and SSD&CD to seek resolution at national level.

ASSISTANCE FROM MOD

23. The inspector(s) may need to examine the incident scene for relevant evidence and identify witnesses. The CO/HoE will, if requested, facilitate this process, making witnesses available for interview and accommodation for doing so if required. Witnesses are likely to include those directly involved with the work activity under investigation and also those in managerial / command roles.

24. HSE will initially seek to obtain voluntary witness statements without recourse to the use of powers under HSWA, although this may vary in Scotland. (Note - there is no specific entitlement under military law to have any other person present when being interviewed as a witness). If evidence emerges of an individual suspect, that individual will be invited to an interview under caution in accordance with the normal procedure. HSE recognises that where military law applies suspects have the right to legal advice.

25. The CO/HoE will assist the inspector with questions about the chain of command/line management responsibilities relating to the circumstances of the incident. If the line of enquiry leads to another chain of command within MOD the inspector may need to liaise with the other TLB CESO(s) in the first instance, who will facilitate access to that chain of command. However, it is the inspector who is responsible for deciding what a reasonable line of enquiry is.

26. Although the rules concerning admissibility of evidence are not relevant in cases of Crown Immunity as no HSE criminal prosecution will take place in a court, in practice the evidential stage must still be passed as normal.

27. Where a Service Enquiry is set up, the relevant TLB CESO will ensure that, in the first instance, if necessary, a copy of Part 1 of the report and a copy of the Schedule of Proceedings is provided to the investigating inspector to allow targeted requests for further information. A full copy of the report with operational and security sensitive information redacted as appropriate may be provided if requested, on the understanding that it is disclosed in confidence and not to be quoted from or admitted into evidence without further reference to the MOD. Any such disclosure should be regarded as 'normal business' rather than as a precedent for the information that would be released in reply to a Freedom of Information (FOI) request. HSE will consult MOD if they receive a FOI request for the information. Evidence provided by individuals at the Enquiry cannot be used against them by HSE in any subsequent prosecution, but may be used to identify further lines of enquiry. Inspectors may subsequently obtain further witness statements or interview individuals under caution as appropriate, in order to seek additional evidence.

IDENTIFYING THE DUTY HOLDER

28. During the course of the investigation inspectors will pursue all reasonable lines of enquiry and with the assistance of the relevant TLB CESO(s) will identify the command / management units involved from MOD, as well as the relevant policies and arrangements. Civilian contractors may also be identified. The investigation will identify which legal requirements are relevant and the extent to which they have or have not been complied with.

29. Any difficulty or dispute within MOD about which chain of command (and ultimately, Top Level Budgets Holders) are responsible will be referred to SSD&CD via HSE Public Services Sector (MOD lead).

LIAISON WITH OTHER INVESTIGATORS

Work Related Deaths Protocol (WRDP)

30. In the case of a work related fatality, HSE will follow the procedure set out in the relevant WRDP in support of the civil or MOD police service in their investigation of suspected serious criminal offences. In these circumstances there will usually be a joint police / HSE investigation with the police having the initial primacy. In England the ACPO/MOD Police agreement gives primacy to the local police force unless they choose to cede it to the MOD police force. Where the police (CPS / Procurator Fiscal etc) decide not to pursue a corporate manslaughter and homicide investigation, then HSE will continue its investigation in the normal way.

31. The same principles for liaison with other investigators as described in WRDP or other related MOU's / Agency Agreements may be applied in cases where information suggests that death is likely to occur as a result of a work related incident.

Corporate Manslaughter or Homicide

32. The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6th April 2008. Although the new offence is not part of health and safety law it allows a corporate body to be prosecuted where serious management failures result in a fatality. The ability to prosecute that body, directors or other individuals under health and safety law or the general criminal law, in appropriate cases, is unaffected.

33. The Act also largely removes the Crown Immunity that applied to the existing common law corporate manslaughter/homicide offence. The Act provides a number of specific exemptions, including from the duty of care owed by MOD during defined 'Military activities'.

34. HSE is not the enforcing authority for this legislation but, where appropriate, may provide support and assistance to the police, the coroner or Procurator Fiscal and other prosecuting authorities where possible or in line with the liaison arrangements set down in the WRDP/other agreements.

Non Fatal Incidents

35. Inspectors may need to liaise with other investigators as described in other related MOUs and Agency Agreements, as appropriate.

36. Inspectors will maintain contact with the relevant TLB CESO(s) and discuss the sharing of internal investigation findings when appropriate.

37. Investigation by the Services Military Police Forces (SMPF) will have a different focus to HSE, examining offences under military law. In cases where the HSE investigation identifies that health and safety offences have been committed by individuals, the inspector(s) will liaise with the relevant contact to exchange information. SMPF(s) or equivalent will cooperate with inspectors in providing access to detained service personnel for interview where necessary.

38. Where a serious health and safety offence against an individual has been identified, the investigating inspector will liaise with the TLB CESO who will identify the relevant service legal authority. The inspector will then refer to HSE Public Services Sector (MOD lead) and HSE Legal Advisors Office to agree the lead prosecution authority.

Disclosure of Information and Learning of Lessons

39. One of the objectives of HSE inspections and investigations is to help duty holders learn lessons from the underlying causes of incidents and to make sure ongoing risks are properly controlled to prevent similar circumstances occurring in the future. Inspectors will seek to ensure that, subject to any legal constraints, safety critical information is communicated to MOD locally and centrally whenever necessary during the course of the investigation. In circumstances where a Crown notice is served, there will be specific information on both failure to comply with legal requirements and the action required to remedy the matter.

40. In accordance with HSE's normal procedures, inspectors will not release copies of evidential material, including witness statements, during the course of an investigation because this can prejudice enquiries and / or future proceedings (if relevant).

Disclosure of Information / Lessons Learned to Employees

41. HSE inspectors are obliged by HSWA Section 28(8) to give certain information about matters affecting the safety, health and welfare of those employed to employees or their representatives. In meeting this duty, where appropriate, HSE inspectors will only disclose information to the named representative, who has the requisite security clearance. In the case of HM Forces, inspectors will give the information to the HoE/CO who will receive it on behalf of the Service personnel under his control and ensure it is disseminated to the appropriate people.

Information for the Bereaved

42. In accordance with HSE's policy statement on working with victims, HSE is committed to keeping victims informed of the progress of its investigations. This will take place in addition to any contact from MOD-appointed liaison officers or police Family Liaison Officers. For Service and civilian personnel, inspectors should liaise through the appropriate TLB CESO.

Sensitive Information

43. Where security considerations are relevant, the CO/HoE will advise so that nominated officers in HSE with the relevant security clearance can attend. Where access to highly restricted information is required, the arrangements in Annex B or D of the General Agreement may be put into place. Arrangements exist in HSE for secure storage of material.

SUPPLEMENTARY INFORMATION TO ANNEX A

THE FOLLOWING SUPPLEMENTARY INFORMATION OUTLINES THE ANTICIPATED ENFORCEMENT PROCESS BUT, IN SO FAR AS THE SPECIFIC HSE PROCEDURES ARE CONCERNED, THEY ARE PROVIDED FOR INFORMATION AND ILLUSTRATIVE PURPOSES ONLY, ARE NOT BINDING TO HSE AND MAY NOT BE SUBJECT TO THE 'GENERAL AGREEMENT'.

Enforcement

44. The HSE Public Services Sector (MOD lead) should be informed of any fatal investigation, proposed prosecution, crown censure or notice (including crown notice). In addition to the information contained in this annex, inspectors will also need to take account of Cabinet Office Personnel Information Note 45 (PIN 45) - 'Procedures for enforcing health and safety requirements in crown bodies'. Copies of PIN 45 can be found at http://www.hse.gov.uk/foi/internalops/sectors/public/7_01_34.pdf or attached to HSE's Sector Information Minute SIM 07/2001/34. **See illustrative flow diagram at Figure 1**

Crown Enforcement Notices

45. Crown notices (prohibition or improvement) should be served in accordance with PIN 45.

46. Crown notices will be served on the CO or HoE. Inspectors may find it useful to discuss the contents of the crown notice with HSE's public services sector (MOD lead) prior to serving it, if appropriate. In any event, after serving inspectors will inform the relevant TLB CESO and HSE's public services sector (MOD lead) and provide copies for their information. The TLB CESO will inform SSD&CD.

Decision to Prosecute

47. Non MOD duty holders and crown servants as individuals do not have Crown Immunity and are liable to prosecution under HSWA.

48. Duty holders that are individuals, whether MOD or civilian, will be invited to attend an interview to answer questions about their involvement in possible offences, under caution, in accordance with HSE's investigation procedures, if they have not already done so during the investigation.

MOD Censure

49. In the case of proposed MOD censures, at the conclusion of the investigation, any breaches identified (and by which MOD duty holder) will be discussed in a meeting with the relevant TLB CESO. This discussion will be facilitated by the investigating inspector providing a summary of the facts of the case and the alleged breaches of legislation for the MOD to consider prior to the discussion.

50. The TLB CESO will in turn inform SSD&CD and the relevant TLB Holder (TLBH) and respond on their behalf with representations. Unlike civilian organisations these representations will generally be made in writing and not during an interview under caution because there will be no criminal prosecution and the protection provided is redundant, due to crown immunity.

51. If MOD subsequently disputes some or all of the HSE's allegations or the facts then the TLB CESO(s) and the investigating inspector should attempt to resolve them – which may require a further meeting. HSE Public Services Sector (MOD lead), and via them SSD&CD, will be kept informed by the investigating inspector. This procedure is slightly different to that in PIN 45 but both HSE and MOD agree that it is desirable to agree and resolve any censure evidence or censure process prior to any actual censure proceedings commencing as this is an efficient and effective way of working.

Prosecution / Censure Report

52. An internal report will be prepared by the HSE investigating inspector in which a recommendation will be made about Crown censure (and/or prosecution of a civilian organisation and/or individual MOD or civilian duty holder). This report and recommendation will take account of the representations made by MOD and whether there would have been a realistic prospect of conviction (in line with the Code for Crown Prosecutors), in the circumstances of the case, had the matter been the subject of criminal proceedings. For MOD duty holders, it will still follow the normal format and content of a prosecution report, including evidence, evidence matrix and draft charges.

53. The report will be passed to the relevant approval officer in HSE. Independent Legal Oversight is appropriate in cases involving censure or for incidents that are likely to lead to significant publicity.

The Censure Procedure

54. Once the censure has been agreed with MOD and formally approved within HSE, the investigating inspector will send a version of the letter appended as annex D to PIN 45 along with a copy of the Information(s) and a summary of the evidence to the relevant MOD TLBH. The inspector's written presentation on the facts of the case, photographs etc. will also be provided at this stage.

55. Copies of the above papers will additionally be provided to the relevant TLB CESO by the investigating inspector who will in turn inform Hd SSD&CD. The TLB CESO will be asked to confirm availability and attempts will be made to secure a mutually convenient time for the censure from dates suggested by HSE along with the relevant safety representatives. The relevant TLB CESO will ensure that the relevant TLBH will attend to receive the censure and will provide the inspector with the text of the mitigating remarks to be made by the TLBH for agreement. The aim is that there should be no material disagreements at the censure itself.

56. MOD will advise their minister of the forthcoming censure.

57. Censures will normally be held at the HSE office closest to the location of the incident.

58. The censure will generally be chaired by the relevant HSE Divisional Director or someone nominated by them. Other HSE attendees will include an official to minute the censure, the investigating inspector(s) who will present the agreed facts, and a representative of the HSE Public Services Sector. MOD will be represented by the TLBH(s) and SSD&CD. Attendance of other persons (e.g.

relevant safety representatives or the injured person) or relatives will be agreed between MOD and HSE as necessary.

59. The HSE Divisional Director (or their nominated representative) will introduce the background and purpose, read the information(s) and invite the investigating inspector to present the facts. This presentation will include appropriate reference to any victim personal statement. The HSE Divisional Director (or their nominated representative) might want to outline why crown censure was warranted in the particular case.

60. On completion of this presentation, the chair will invite the MOD representative to make mitigating remarks. These will include action that has been taken to remedy the circumstances that led to the offence and an acknowledgement that were it not for Crown immunity the matter would provide a realistic prospect of conviction in the courts.

61. The chair will then conclude the censure by formally recording that were it not for Crown immunity the matter would provide a realistic prospect of conviction in the courts.

62. HSE will release a press notice outlining the circumstances of the case and that a formal censure has been recorded.

63. HSE will provide an agreed note of the censure. MOD will advise their Minister, having consulted HSE on the submission. A record of the censure will then be entered onto the enforcement database on HSE's web site.

64. SSD&CD will ensure that any lessons learnt from the investigation will be appropriately communicated throughout MOD and referred to in their annual report.

Figure 1 Illustrative Flow Chart

Illustrative Flowchart. Follow procedure in Annex A.

