

ANNEX M**GENERAL AGREEMENT BETWEEN THE MINISTRY OF DEFENCE AND
THE HEALTH AND SAFETY EXECUTIVE**

Para

- 1 Aim
- 8 Security
- 9 Disclosure of Information
- 10 Enforcement
- 11 Liaison Arrangements

AIM

1. The aim of this agreement is to clarify the relationship between the Health and Safety Executive (HSE) and the Ministry of Defence (MOD) in order to enable a high standard of health, safety and welfare for MOD Service and civilian personnel. It is also the aim of HSE to ensure consistency in the application of health and safety requirements across the country.
2. The arrangements made in this agreement assume conditions not amounting to armed conflict.
3. This agreement:
 - sets out the principles which apply to the observance of health and safety legislation by MOD in respect of members of the military, naval and air forces of the Crown, MOD civilian employees and others affected by MOD activities;
 - applies to HSE actions as the regulatory authority;
 - covers all MOD activities.
4. There are six Annexes to this Agreement:

Annex A	sets out the arrangements for inspection, investigation and enforcement by HSE;
Annex B	deals with arrangements for specified MOD and MOD related nuclear sites;
Annex C	deals with arrangements for inspection of HM Ships and Submarines;
Annex D	deals with special arrangements for particularly sensitive activities.
Annex E	deals with arrangements for military diving.
Annex F	deals with arrangements for allocation of fire safety legislation.
5. A separate agreement sets out arrangements for monitoring of United States Visiting Forces' observance of health and safety legislation.

6. MOD recognises its duties under the Health and Safety at Work, etc., Act 1974 (HSWA) in relation to all units, establishments and activities. The responsibilities imposed by those duties are reflected in the Health and Safety Policy Statement of the Secretary of State for Defence. The full range of protection, rights and responsibilities under the Act apply to all MOD civilian employees and to MOD Service Personnel. Where MOD has been granted exemptions from specific regulations, it is the policy of the Secretary of State for Defence that health and safety standards and arrangements will be, so far as is reasonably practicable, as least as good as those required by statute.

7. The HSWA only requires employers to do what is reasonably practicable in the context of their own undertaking. This applies equally to MOD. In determining whether MOD has taken all necessary steps to ensure the health and safety of its own employees and others, HSE will take into account the context in which MOD has to operate (i.e. its undertaking). When deciding on enforcement action wider questions of what is in the public interest may also need to be considered.

SECURITY

8. HSE inspectors will conduct inspections and handle classified information in accordance with the Government Manual of Protective Security. They should be allowed access to classified information as required to carry out their duties, subject to the inspector having the appropriate level of security clearance and the application of the need to know principle. Any difficulties should be reported through normal command or management channels for clarification by the relevant security directorate. Specific security arrangements for dealing with disclosure of information on nuclear matters and arrangements for particularly sensitive activities have been agreed with the HSE and are the subject of Annexes B and D to this Agreement.

DISCLOSURE OF INFORMATION

9. The disclosure of information obtained by inspectors as a result of inspections / investigations carried out by them, or from reports made to them, is subject to the provisions of the Freedom of Information Act 2000 (FOI Act). If HSE receives an FOI request, then the decision as to whether or not it would be appropriate to disclose that information is the statutory responsibility of HSE, as the information holders. Decisions on disclosure will be taken after careful consideration and in most cases will also be informed by legal advice. In these circumstances, HSE undertakes to seek representations from MOD prior to release of information provided by them, under FOI.

10. 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 and their representatives. In meeting this duty, HSE inspectors will only disclose information to the named safety representative or a trades union official directly associated with the establishment and matter under review, who has the requisite security clearance. In the case of HM Forces, inspectors will give the information to the Commanding Officer (CO) who will receive it on behalf of the Service personnel under his control.

ENFORCEMENT

11. There is no Crown exemption from the HSWA; MOD is bound by the general duties imposed by the Act and by Regulations made under it except where specific exemptions apply. However, MOD as a Crown body cannot be prosecuted for breaches of HSWA, including a failure to comply with improvement and prohibition notices. There are procedures in place to allow for Crown bodies (including MOD) to be censured (Crown Censure) in respect of offences that would otherwise have led to prosecution. There is also a procedure for issuing Crown Notices in circumstances where a notice would be appropriate. MOD has agreed to comply with these arrangements. HSE inspectors who propose to invoke these procedures (either Crown notice or Crown censure) will consult the HSE Public Services Sector and follow the guidance in Annex A to this agreement.

12. However HSWA also places statutory duties on individuals both as employers and employees. Individuals can be prosecuted under HSWA for their own actions. Any enforcement decision will be taken in accordance with the HSC Enforcement Policy Statement. In line with Government policy, HSE will not seek to prosecute individual Crown servants in lieu of their Department where, other than for Crown Immunity, their employers would have faced prosecution. HSE recognizes that HM Forces have powers to deal with disciplinary charges against their members.

LIAISON ARRANGEMENTS

13. The Chief Executive (CE) HSE and the 2nd Permanent Under Secretary (2PUS) will aim to meet annually to provide strategic direction and to monitor the application of the agreement.

14. Current liaison arrangements also provide a structure for the various specialist elements of MOD and HSE to liaise effectively. Detailed arrangements may be found in Annexes to this Agreement.

15. HSE may be invited by the Chairmen to attend MOD policy setting Functional Safety Boards (in a non-executive role) dealing with matters appropriate to their area of concern.

16. The Director/Deputy Director of the Directorate of Safety and Claims (DS&C), MOD, and the Head of the Public Services Sector, HSE, will meet regularly to monitor the application of this agreement and will report on this annually to the CE HSE and 2PUS.

17. Disagreements between MOD and HSE about the application of this agreement that cannot be resolved locally should be referred through the chain of command/line management for resolution. If agreement still cannot be reached, thereafter the matter should be referred to the HSE/MOD Joint Liaison Committee (JLC).

18. The JLC will:

- seek to reconcile conflicts between defence imperatives and health and safety legislation;
- discuss proposals for new health and safety legislation, with particular reference to their application to MOD activities; and
- deal with problems arising from the implementation of this General Agreement and any detailed agreements made under it.

19. Chairmanship of the JLC will rotate between MOD and HSE. The JLC will comprise permanent members from MOD and HSE. Other members may be invited for specific items.

20. The agreement will be reviewed jointly by MOD and HSE every five years or when both parties agree a review.

[signed on original]

[signed on original]

GEOFFREY PODGER CB

Chief Executive

on behalf of the
Health and Safety Executive

March 2008

SIR IAN ANDREWS CBE TD

Second Permanent Under Secretary

on behalf of the
Ministry of Defence

March 2008