

ANNEX N**MEMORANDUM OF UNDERSTANDING BETWEEN THE MINISTRY OF DEFENCE AND THE ENVIRONMENT AGENCY****1. INTRODUCTION****1.1 Purpose of Memorandum**

The purpose of this memorandum is to assist in securing effective co-operation and understanding between the Ministry of Defence ('the Ministry') and the Environment Agency ('the Agency') in dealing with issues of environmental protection; and in particular, those issues of environmental protection for which the Agency is the regulator. The arrangements referred to in this memorandum cease to apply in conditions amounting to a national emergency.

1.2 Scope

This memorandum only applies to the regulation by the Agency of those activities undertaken by the Ministry itself or its Agencies that arise from its ownership of property. It does not apply to the regulation by the Agency of Ministry contractors or Government owned contractor operated sites under civilian management.

The terms of this memorandum relate to all relevant UK legislation in England and Wales and to EU legislation that is directly applicable. The Environmental Protection regulatory responsibilities of the Agency are discharged by the Environmental Protection Directorate (EPD). EPD will be responsible, on behalf of the Agency, for administration of the detailed working arrangements covered by this memorandum.

1.3 Definitions

The Environment Agency (the Agency) was created by section 1 of the Environment Act 1995 for the purpose of carrying out the functions transferred or assigned to it by or under that Act. The Environmental Protection Directorate (EPD) of the Agency is that part of the Agency, which has responsibility for discharging the Agency's powers and duties relating to environmental protection; especially in relation to waste, land quality, water quality, process industries regulation, and radioactive substances regulation. EPD is also responsible for managing the detailed arrangements referred to in this memorandum on behalf of the Agency.

The Ministry of Defence (the Ministry) is the Department of State charged with the management and control of HM forces and civilian personnel engaged in the defence of the United Kingdom and its citizens, property and interests at home and overseas. The Directorate of Safety and claims (DS&C), is that function of the Ministry that has lead responsibility for managing the detailed arrangements referred to in this memorandum on behalf of the Ministry.

Premises, in the context of this memorandum, means those premises held, or used by, or under the control of the Ministry. It also includes premises occupied by Visiting Forces, UK ships in UK territorial waters, and UK aircraft at bases in England and Wales. It does not include facilities under the direct control of contractors, which are subject to regulation by the Agency in the normal way, nor does it include shipping or aircraft in transit.

1.4 Environmental Duties and Responsibilities of the Ministry and the Agency

The Ministry is committed to the protection of the natural environment, by avoiding harm or nuisance, whilst maintaining operational effectiveness. It has undertaken to minimise the impact of its activities on the environment, and will pay due regard to such impacts as a feature of its decision-making processes. The Ministry's policy statement on the management of safety and environmental protection, (*JSP 815 Annex A*) indicates its full support for the Government's overall environmental policy.

The Agency is responsible for carrying out various environmental protection functions transferred to it, and which are relevant to the Ministry's activities and premises, including, but not exclusively, regulation of:

- i. Pollution of controlled waters;
- ii. Disposal and management of wastes;
- iii. Releases to the environment including to air from major industrial processes;
- iv. Keeping, use, accumulation and disposal of radioactive substances;
- v. Contaminated land remediation;
- vi. Ground water protection;
- vii. Protection of specified habitats.

2. AGREED POLICIES

2.1 Agency Powers

The Agency's main environmental protection powers of entry are contained in two pieces of legislation.

A. Sections 108 and 109 of the Environment Act 1995. These powers are exercisable for the purposes of determining whether any provision of the pollution control enactments [defined by section 108(15)] is being or has been complied with; exercising one or more of its pollution control functions or; determining whether and if so, how such a function should be exercised or performed. They also enable the Agency to deal with imminent danger of serious pollution to the environment, or serious harm to human health.

B. Regulation 28 of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997. (These powers are broadly similar to those contained in the Environment Act 1995).

Under some legislation, the Ministry has absolute or implicit powers to refuse access to its premises (a form of Crown immunity). In such cases, the Ministry undertakes, in accordance with the Secretary of State for Defence's policy statement on the management of safety and environmental protection in the Ministry of Defence, to:

- i. Rely on qualified, absolute, or implied exemptions from legislation only where essential to maintain operational effectiveness or for reasons of national security;
- ii. As a matter of policy, ensure that environmental protection standards and arrangements are so far-as is reasonably practicable, at least as good as those required by statute;
- iii. Enter into administrative arrangements to permit access and inspection by officers of the Agency as if Crown immunity did not apply.

In exercising its regulatory powers, the Agency recognises the role played by MOD's corporate Environmental Management System (EMS). It also agrees to observe the principles of: proportionality in the application of the law and in securing compliance; consistency of approach; transparency about its operation and what may be expected from it; and targeting of enforcement action.

2.2 Access and Inspection

The Ministry agrees to allow all reasonable access to its premises by officers of the Agency while carrying out their responsibilities. Agency inspectors will comply with Government Security Regulations. Routine inspections will be notified to the Ministry in advance. Advance notice may not be possible in the case of non-routine and emergency access. The Agency accepts that operational requirements, including training, may sometimes result in access restrictions, but the Ministry undertakes to keep such restrictions to a minimum. Detailed arrangements for the purposes of access and inspection etc. are set out in a separate Annex to this memorandum.

2.3 Information Access and Disclosure

The Ministry and the Agency agree that timely and open exchange of information is a most important feature of good working arrangements. The Ministry undertakes to provide all information necessary for the Agency to discharge its regulatory functions. The Agency undertakes to deal with any information, which is properly restricted by a Security Direction in accordance with the law, having due regard to legitimate concerns.

The Ministry is also committed to the Government's policy on Open Government. Its procedures for the collection, storage and disclosure of information are subject to the Environmental Information Regulations and the requirements of the Data Protection Act. The Agency is subject to the same requirements of the Data Protection Act and Environmental Information Regulations. Information supplied to the Agency, which is subject to restrictions on grounds of national security or commercial confidentiality, will be withheld from public register(s) in accordance with statutory requirements, unless such a restriction has lapsed, and will not be communicated to third parties except by prior permission of the Ministry, or in accordance with a legal requirement.

The Agency agrees, subject to statutory constraints, to provide the Ministry with access to the relevant environmental information it holds, so that it can positively inform Ministry decisions, which may have an effect on the environment.

2.4 Enforcement

The Agency will take enforcement action against the Ministry, as it would against a civil establishment, in accordance with its Enforcement and Prosecution policy. However, the Ministry, as part of the Crown, cannot be prosecuted for criminal offences, including failure to comply with prohibition, enforcement or works notices. Where, but for Crown immunity, the Ministry would have been prosecuted as a corporate body; the Agency may apply to the High Court for a declaration that its actions were unlawful.

Notwithstanding Crown immunity, the actions of individuals employed by or acting on behalf of the Ministry may constitute criminal offences. The Agency will only prosecute individuals in circumstances where they would have prosecuted individuals of a private company. For senior managers only, this will normally be where it can be shown that an offence has been committed with the consent or connivance of, or has been attributable to any neglect on the part of, any senior manager or a person who was purporting to act in such a capacity. The Agency will not prosecute an individual solely because it cannot prosecute the Ministry. In the case of service Personnel, the Agency recognises that HM Forces have the power to bring disciplinary charges. The Agency will take account of any such action in deciding whether to prosecute such an individual.

2.5 Cost Recovering Charging

In dealing with issues of environmental protection, the published Agency charging schemes shall be applied by the Agency to the Ministry, in the same way, with the equivalent scale of charges, as for the civil sector.

The Ministry agrees to pay for regulatory activity on the same basis as civil concerns, regardless of whether or not Crown immunity applies.

The Agency will ensure that the Ministry has the opportunity to comment and make representations on proposed changes to its scheme of fees and charges.

Charging arrangements are detailed in a separate Annex to this memorandum.

The Agency has certain powers to carry out remedial works itself. In some circumstances, it may then seek to recover its costs for performing such works from responsible parties. In performing its statutory duties in respect of these powers, the Agency will act in the same manner as it would towards civil parties.

3. LIAISON AND RESOLUTION OF DISAGREEMENTS

3.1 Technical Working Groups

Joint technical working groups with appropriate Terms of Reference shall be established where the Ministry and the Agency agree that this is necessary (for instance, to discuss arrangements by which a specific regulatory or technical matter can be addressed).

Working groups may agree detailed arrangements for handling such regulatory or technical matters as well as recommending changes to this memorandum or the detailed Annexes; they may also identify the need for a new Annex.

3.2 Resolution of Disputes

The Ministry and the Agency agree to expedite the resolution of any differences of opinion, and to do this where possible at the local level. Where such differences cannot be resolved at local level, the matter will be referred at the earliest opportunity to senior management. In the case of MOD, this will be through D SEF Pol and in the case of the Agency, through EPD. A meeting at senior level will be held as soon as practicable thereafter in order to resolve the differences.

4. REVIEW

4.1 Regular Meetings / Review

The Chief Environment and Safety Officer (CESO) of the Ministry and the Director of Environmental Protection in the Agency, supported as appropriate by staff from relevant Directorates and Functions, will meet regularly, usually each year, to monitor the application of this memorandum. Meeting venues and Chairmanship will alternate between the Agency and the Ministry. These meetings will review the working of this memorandum and adopt any agreed amendments. To assist this process, proposed amendments will be communicated to the other-party with a minimum of four weeks' notice prior to the meeting wherever possible.

4.2 Special Review

Either party to this memorandum may request an extraordinary meeting to revise or amend the memorandum, in addition to the formal annual review. Proposed amendments must be submitted to the other party at least four weeks prior to the meeting wherever possible. It is recognised, however, that some proposed changes may be urgent in nature. In such cases, both parties undertake to expedite internal consultations such that agreement to urgent changes can be arrived at quickly.

4.3 Termination

Either party to this memorandum may give six months notice that they wish to terminate the agreement.

4.4 Annexes and Supplemental Memoranda

This memorandum may be varied or supplemented by annexes or supplemental agreements entered into by the Agency and the Ministry after the signing of this memorandum. Such documents could in particular deal more exclusively (but not by way of limitation) with either a specific regulatory function of the Agency, or an area of general concern to both the parties.

Signatories:

Chief Executive Environment Agency

<Signed>
Barbara Young

Baroness Young of Old Scone

[5th July 2001]

2nd PUS Ministry of Defence

<Signed>
Roger Jackling

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[5th July 2001]

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