

**ANNEX N (APPENDIX 1)****RADIOACTIVE MATERIALS ANNEX****(TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENT AGENCY AND THE MINISTRY OF DEFENCE)****INTRODUCTION**

1 The Secretary of State for Defence is responsible for all safety, environmental protection and other sustainable development matters within Defence (the Ministry). Where there are exemptions, or derogations from either domestic or international law applicable to Defence, we introduce standards and management arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by legislation<sup>1</sup>. It is further identified that the Minister for Defence Personnel, Welfare and Veterans is to act as the Ministerial focus for environmental issues.

2 The Ministry's Environmental Policy is to comply with international conventions to which the UK is a signatory. The Ministry will carry out environmental policy appraisals of all new or revised policies and equipment acquisition programmes as well as environmental impact assessments of all new projects and training activities.

**Scope**

3 The Environmental Permitting (England and Wales) Regulations 2010 (EPR 10) do not apply to the Ministry's defence related radioactive substances activities. Additionally, other nuclear safety legislation e.g. Nuclear Installations Act 1965 (NIA 65) does not apply or disapplications or exemptions have been provided. Therefore, the Ministry has appointed an internal regulator<sup>2</sup> for the Naval Nuclear Propulsion Programme (NNPP).

4 This Annex provides additional detail to that in the MoU between the Ministry and the Environment Agency<sup>3</sup> (the Agency). It covers the Agency's role specific to the keeping and use of radioactive material and the accumulation and disposal of radioactive waste against the requirements of the EPR 10. This role also includes inspection, assessment and audit (hereafter "assess compliance") in accordance with the Environment Act 1995.

5 This Annex addresses two areas involving radioactive substances activities under the EPR 10 that are not subject to formal regulation. These are "**programme**" and "**non-programme**". **Programme** refers to radioactive substances activities in the NNPP under the Ministry's direct control. The NNPP encompasses all phases of the acquisition, operation, support and disposal of the nuclear reactors that power the Royal Navy's submarines. In this Annex, the **programme** area covers defence related nuclear operations at HMNB Devonport<sup>4</sup> and at operational berths<sup>5</sup>. **Non-programme** refers to all other radioactive substances activities that are not included in the **programme** area.

6 The MoU, and consequently this Annex, applies only to the oversight by the Agency of those radioactive substances activities undertaken by the Ministry itself or its directly controlled agencies that arise from occupation of property that could be regarded as a regulated facility under the EPR 10.

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<sup>1</sup> SoS Defence Policy Statement on Safety, Health Environmental Protection and Sustainable Development in Defence, Parts 1 & 2

<sup>2</sup> Defence Nuclear Safety Regulator (DNSR). This regulator is empowered by the Secretary of State for Defence through the Chairman of the Defence Nuclear Safety Board.

<sup>3</sup> Memorandum of understanding between the Ministry of Defence and the Environment Agency.

<sup>4</sup> Nuclear activities at HMNB Devonport covers both **programme** and **non-programme** work. For **non-programme** work, a "notification" is issued by the Agency under Para 13.

<sup>5</sup> HMNB Devonport and other [Ministry Operated] submarine berths in England and Wales.

7 The MoU, and consequently this Annex, does not apply to regulation by the Agency of Ministry contractors or Government owned contractor operated sites under civilian control, for example, sites involved in nuclear weapons programme activities or contractor operated dockyards in England and Wales; these are regulated directly by the Agency under the EPR 10. This Annex should be read in conjunction with the MoU between the Ministry and the Agency.

### **Euratom Directives**

8 It has been established in the European Court that the Euratom treaty does not apply to military activities. In the event of any approaches by the European Commission relating to activities carried out by the Ministry or its contractors the Agency agrees to consult with Safety, Sustainable Development and Continuity Division at the Ministry and DECC's Nuclear Directorate before responding to the Commission.

### **APPLICATION TO MOD OF THE REQUIREMENTS UNDER THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2010 FOR RADIOACTIVE SUBSTANCES ACTIVITIES**

9 The EPR 10 do not apply in relation to a radioactive substances activity carried on at premises (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence; or (b) occupied by or for the purposes of visiting forces. However, the Secretary of State for Defence has made a policy commitment to introduce standards that produce outcomes at least as good as those required by the EPR 10. This Annex sets out the administrative arrangements agreed between the Ministry and the Agency.

10 All applications to the Agency for programme radioactive substances activities carried out by the Ministry itself or its directly controlled agencies will be managed locally through the relevant sites. The sites will ensure that all information that the Agency needs to determine an application and to assess compliance is provided, unless there are overriding national security issues. In the unlikely event of any difficulties in this regard, in the first instance, attempts should be made to resolve these locally. Where such differences cannot be resolved at local level, the matter will be referred at the earliest opportunity to senior management (See MoU).

11 All applications to the Agency for non-programme radioactive substances activities carried out by the Ministry itself or its directly controlled agencies are co-ordinated through the Defence Science and Technology Laboratory (DSTL). DSTL will ensure that all information that the Agency needs to determine an application and assess compliance<sup>6</sup> is provided, unless there are national security issues. In the unlikely event of any difficulties in this regard, in the first instance, attempts should be made to resolve these locally. Where such differences cannot be resolved at local level, the matter will be referred at the earliest opportunity to senior management (See MoU).

### **Keeping and Use of Sealed Source Radioactive Material – Notifications (Equivalent to grant of an Environmental Permit under EPR10)**

12 For programme sites within the scope of the MoU and this Annex, notification for the keeping and use of sealed source radioactive material is not required. The keeping and use of sealed source radioactive material on such sites is regulated by DNSR in accordance with the appropriate MoD Authorisation Conditions. These MoD Authorisation Conditions mirror the Nuclear Installations Inspectorate's Licence Conditions.

13 For non-programme sites, instead of an Environmental Permit to keep and use sealed source radioactive material, a "Notification" is issued by the Agency. This uses similar conditions to those in the Agency's Environmental Permit template.

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<sup>6</sup> For radioactive substances activities covered by this Annex, the Agency has no legal powers to enforce compliance.

14 Ministry applications for “Notifications” will be made on the Agency’s Environmental Permit applications forms in the same way as for the civil sector. Security-sensitive information relating to Notification applications will be provided to the Agency and will be appropriately protectively marked. The Ministry will supply National Grid Reference information in applications, as well as full details of the maximum number of sources for each radionuclide included in the notification. Unless advised that a higher level of protective marking is required the Agency will treat all applications for notification and issued notifications as RESTRICTED. This information will not be included on Public Registers, on the grounds of national security.

15 The Agency accepts that it is not always practicable for Ministry sites to be bound by the requirement for prior-notification; however, Ministry establishments will apply to the Agency within one month of acquiring radioactive materials.

#### **Keeping and Use of Open Source Radioactive Material, and Disposal and Accumulation of Radioactive Wastes - Approvals (Equivalent to grant of an Environmental Permit under EPR10)**

16 For programme sites, DNSR regulates the keeping and use of open source radioactive material, and the accumulation of radioactive wastes, while the Agency issues an “Approval” for the disposal of radioactive wastes. This uses similar conditions to those in the Agency’s Environmental Permit template. Ministry applications for “Approvals” will be made on the Agency’s Environmental Permit applications forms in the same way as for the civil sector. Where there are no security or other restrictions on this information, it may go on the Public Register in its entirety.

17 For non-programme sites, instead of an Environmental Permit for the keeping and use of open source radioactive material and for the accumulation and disposal of radioactive wastes from Ministry premises, the Agency issues an “Approval”. This uses similar conditions to those in the Agency’s Environmental Permit template. Ministry applications for “Approvals” will be made on the Agency’s Environmental Permit applications forms in the same way as for the civil sector. Where there are no security or other restrictions on this information, it may go on the Public Register in its entirety.

#### **Submarine Reactors**

18 The Ministry is committed to the requirements of the EPR 10 with respect to disposal of radioactive waste from submarines, to the extent that,

18.1 The present arrangement for solid and liquid wastes arising from berthed submarines is to transfer them to an appropriate adjacent site. Subsequent disposals, from the adjacent site, are formally permitted by the Agency under the EPR 10 (see Para 16). Disposal of gaseous wastes from berthed operational submarines is regulated by DNSR.

18.2 Discharge of liquid and gaseous radioactive wastes from submarines at sea is regulated by DNSR.

#### **GENERAL**

##### **Access to Sites**

19 The Ministry and the Agency recognise that there is no statutory right of access to the Ministry’s defence related radioactive substances activities. Under this Annex, the Ministry will provide access for persons authorised by the Agency to enter sites and board ships and submarines, in pursuit of their responsibilities under the Environment Act 95, and will aim to provide and facilitate such access. Agency regulatory staff carry warrants, and will identify themselves to site authorities.

20 General access to Ministry controlled and operated sites shall follow the procedures in the Operational Annex to the MoU. If access is required to a submarine, the Head of the Establishment shall arrange any necessary agreement from the Commanding Officer of the submarine.

21 The Ministry undertakes to ensure that Agency staff are provided with personal safety information, particularly with respect to radiation doses incurred by Agency staff while on a Ministry controlled site, in a form and at a time that does not impede their access to, or egress- from, the site.

22 If there are any difficulties in relation to access, in the first instance, attempts should be made to resolve these locally. Where such differences cannot be resolved at local level, the matter will be referred at the earliest opportunity to senior management (See MoU).

### **Access to Information**

23 The Ministry recognises that information is required by the Agency for determination of applications and to confirm compliance with conditions and limits:

23.1 From the Ministry, associated with its duties mirroring the arrangements under the EPR 10.

23.2 From other undertakings that may be keeping or using radioactive materials on the Ministry's sites.

24 The Agency may seek to obtain clarification of the information provided (the Ministry itself may be constrained in providing US-sourced information under the terms of the 1958 Agreement<sup>7</sup>). Where this relates to information on reactor design or operation or other matters out with the control of the site operator, then clarification will be obtained from the operator of the reactor plant, facilitated where necessary by the Ministry.

25 The Agency accepts that the Ministry is constrained by certain international obligations such as those which flow from the 1958 Agreement, which need to be taken into account in the design of submarine propulsion plant. While respecting those agreements and obligations, the Ministry will ensure that, where practicable and operational constraints permit, the UK's environmental protection principles, strategies and regulatory standards to minimise the creation of radioactive wastes, are rigorously applied to submarine reactor design<sup>8</sup>. The Ministry agrees to consult with the Agency on such matters to the maximum extent it can within the constraints mentioned above. However, the Agency recognises that it has no right of veto on the design of nuclear submarine propulsion plant. The Agency will not seek to influence the operational deployment of such items nor activities associated with their operational deployment.

26 Where urgent and vital defence operations are concerned, the above requirements will be followed as far as is reasonable given the circumstances prevailing. This is not intended to curtail or restrain Agency regulators from carrying out investigations, reporting on their findings, etc in accordance with their powers should the EPR 10 have applied.

27 The Agency will consult the Ministry on any request under the Freedom of Information Act 2000 (FOIA), or the Environmental Information Regulations 2004 (EIR), for the release of any classified (see MoU) or sensitive<sup>9</sup> information (including paper and electronic documents) originating from the Ministry. Unless information has been provided by the Ministry on the specific understanding that it will be published, the Agency will first consult the Ministry to ensure that all factors relevant to an assessment of the balance of public interest are understood and taken fully into account.

28 Classified or sensitive information shall be managed in accordance with the Agency's Security Management Procedure and the Official Secrets Act. In order to minimise the requirement for the Agency to reply directly to FOIA/EIR requests involving classified or sensitive nuclear programme information, the Agency will be provided, where practical, with access to classified and sensitive information on a Ministry site rather than retain the information itself.

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<sup>7</sup> The "1958 Agreement" is the "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for co-operation on uses of atomic energy for mutual defence purposes".

<sup>8</sup> This does not imply a requirement for defined periodic review or formal communication with the Agency that such measures have been applied. This is intended to be a declaration by the Ministry that such measures will be applied to any design changes or new designs.

<sup>9</sup> Sensitive in this context refers to US sourced information derived from the 1958 agreement (see Para 24 above)

## **EPR 10 - Charging**

29 The Ministry has agreed that the published Agency charging schemes for radioactive substances activities under the EPR 10 will be applied by the Agency to the Ministry in the same way, and with the equivalent scale of charges, as for the civil sector. The Ministry will pay for regulatory activity on the same basis as for the civil sector, regardless of whether or not Crown immunity applies.

30 The Agency will invoice the Ministry for subsistence charges associated with Approvals and Notifications for radioactive substances activities. The Agency will aim to consolidate subsistence charges as far as practicable such that a minimum number of invoices is presented to the Ministry for payment. Ministry payments for notifications and approvals for radioactive substances activities that require an application form will normally be made using a Government Procurement Card (GPC) or equivalent payment method.

## **Reporting of Incidents**

31 The Agency will be informed without delay by both **programme** and **non-programme** sites of environment related incidents, in accordance with the requirements of the Approvals and Notifications it has issued. For **programme** sites, incidents are also reported to DNSR in accordance with their requirements. The Agency will consult with the Ministry before passing any information concerning such incidents outside of the Agency and, subject to any requirements under the FOI/EIR (see para. 27), will only provide detailed information on the circumstances surrounding an incident with the Ministry's agreement. The Ministry will advise the Agency of any national security restrictions on information relating to incidents.

## **LIAISON AND RESOLUTION OF ISSUES**

### **High Level Liaison**

32 The MoU establishes an annual MoU Liaison Meeting (See MoU), which is co-chaired at the appropriate level by the Agency and by the Ministry, to consider matters relating to the MoU including operational issues and the workings of this Annex. It also provides a mechanism to resolve any outstanding issues.

### **Regulatory Liaison**

33 The working level relationship between the Agency and the Ministry regulators may be further clarified by letters of understanding; these will be lodged with the Ministry's Safety, Sustainable Development and Continuity Division and the Agency's Head of Radioactive Substances Regulation.

34 At least annually, a meeting will be held between the relevant Agency representative of the Nuclear Regulatory Group and the Ministry's nuclear regulators (or by agreement their nominees). These meetings will consider regulatory liaison, and where appropriate the detailed working of this Annex and any relevant Letters of Understanding. The meeting will consider issues that cannot be resolved by normal regulatory liaison means.

## **Signatories**

[signed on Original]

Chief Executive Environment Agency  
Paul Leinster

Date 5 April 2011

[signed on Original]

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Jon Day

Date: 31 May 2011

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