#### **ANNEX O**

# GENERAL AGREEMENT BETWEEN THE MINISTRY OF DEFENCE AND THE HEALTH AND SAFETY EXECUTIVE FOR NORTHERN IRELAND (HSENI)

### INTRODUCTION

- This agreement sets out the principles which apply to the Ministry of Defence (MOD)'s observance of health and safety legislation in respect of members of the military, naval and air forces of the Crown, MOD civilian employees and others affected by MOD activities in Northern Ireland and to the actions of the Health and Safety Executive for Northern Ireland (HSENI) as the regulatory authority. It covers all MOD activities. The arrangements made in this agreement assume conditions not amounting to armed conflict; arrangements at other times will be the subject of agreement in the Health and Safety Executive (HSE)/MOD Joint Liaison Committee (JLC) (see Paras 10 and 11 below).
- 2 There are three Annexes:
  - 2.1 Annex A Sets out the arrangements for inspection by HSENI:
  - 2.2 Annex B Deals with arrangements for inspection of HM Ships and Submarines; and
  - 2.3 Annex C Deals with special arrangements for particularly sensitive activities.
- 3 MOD recognises its duties under the Health and Safety at Work (Northern Ireland) Order 1978 (HSW(NI)O) in relation to all units, establishments and activities in Northern Ireland. These responsibilities are reflected in the Health and Safety Policy Statement of the Secretary of State for Defence. The full protection, rights and responsibilities of the Order will apply to all MOD civilian employees and to MOD Service personnel in Northern Ireland. 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, at least as good as those required by statute.
- 4 HSENI recognises that judgements about the reasonable practicability of action by an employer must take into account the societal benefits from the overall purpose of the organisation. It follows that, in determining what steps are necessary for MOD to ensure the health and safety of employees and others, the requirements of defence as well as cost must be considered. Therefore, HSENI will continue to monitor MOD's observance of health and safety legislation having due regard to defence imperatives.

#### **SECURITY**

5 HSENI inspectors will conduct inspections and handle protectively marked information in accordance with the Manual of Security in Government Departments. They should be allowed access to protectively marked 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. Arrangements for particularly sensitive activities have been agreed with the HSENI and are the subject of Annex C to this agreement.

## **DISCLOSURE OF INFORMATION**

Disclosure of information obtained by inspectors as a result of reports made to them or inspections carried out by them is subject to the provisions of the HSW(NI)O and the Code of Practice on Open Government which regulate such disclosure in respect of its purpose and the intended recipient. Protectively marked information will not be disclosed except after prior discussion and agreement with MOD. In any case of doubt, HSENI will consult MOD as to the grounds for withholding any information.

February 2009 Annex O

7 HSENI inspectors are obliged by the HSW(NI)O Article 30(8) to give certain information about matters affecting the safety, health and welfare of those employed to employees and their representatives. In conforming with this requirement, HSENI inspectors will disclose information only to the named safety representative or a trade union official directly associated with the establishment and matter under review and who has the requisite security clearance. In the case of HM Forces, inspectors will give the information to the CO who will receive it on behalf of the Service personnel under his control.

### **ENFORCEMENT**

- 8 There is no Crown exemption from the HSW(NI)O; MOD is bound by the general duties imposed by the Order and by Regulations made under it except where specific exemptions apply. However, the Crown cannot be prosecuted for breaches of the law, including failure to comply with improvement and prohibition notices. In lieu of this, HSENI have instituted a procedure for issuing Crown Notices. MOD has agreed to comply with these Notices. HSENI may make arrangements for censuring Crown bodies in respect of offences which would have led to prosecution if they had occurred in the private sector. HSENI inspectors who propose to invoke this procedure for formal censure of MOD will consult HSENI's Chief Executive who will inform the Directorate of Defence Health and Safety if the procedure is to be followed.
- 9 The HSW(NI)O places statutory duties on individuals both as employers and employees. HSENI has, however, undertaken not to prosecute individual Crown servants in substitution for their department. HSENI also recognises that HM Forces have powers to deal with disciplinary charges against their members. Only in exceptional circumstances would a criminal prosecution be instituted against a member of the Services under the HSW(NI)O.

#### **LIAISON ARRANGEMENTS**

- 10 Chief Safety Officer (MOD) and the HSENI's Chief Executive will liaise as necessary concerning the application of this agreement. Disagreements between MOD and HSENI about the application of the agreement which cannot be resolved locally should be referred through the chain of command for discussion at the HSE/MOD JLC if necessary.
- 11 The MOD/HSE JLC will:
  - 11.1 Seek to reconcile conflicts between defence imperatives and health and safety legislation;
  - 11.2 Discuss proposals for new health and safety legislation, with particular reference to their application to MOD activities; and
  - 11.3 Deal with problems arising from the implementation of this agreement and the HSE/MOD General Agreement and any detailed agreements made under them.
- 12 Chairmanship of the HSE/MOD JLC will rotate between MOD and HSE. The permanent membership will be:

MOD Directorate of Defence Health and Safety - CSO(MOD)

The Royal Navy - CESO(N)
The Army - CESO(A)
The Royal Air Force - CESO(RAF)
Procurement Executive - AD Safety Pol

D Med Pol

Central Staff - CSO(HQ)

HSE The Superintending Inspector responsible for CFP NIG

Head of CFP NIG

Head of the HSE Policy Branch with responsibility for MOD

Chief Inspector of Explosives

Others **HSE's Nuclear Safety Division** 

Chairman Naval Nuclear Technical Safety Panel (As necessary)

HQ US 3rd Air Force

Health and Safety Executive for Northern Island

13 The working of this agreement and of the HSE/MOD JLC is subject to the oversight of 2nd PUS and the Director General HSE who will, if necessary, seek to resolve any difficulties that cannot be reconciled in the HSE/MOD JLC. In any event, the agreement will be reviewed jointly by MOD and HSENI after two years.

L M<sup>c</sup>BRINN Chairperson Health and Safety Executive for Northern Ireland

R HATFIELD Personnnel Director on behalf of the Ministry of Defence

February 2009 Annex O Intentionally Blank