

MEMORANDUM OF UNDERSTANDING BETWEEN THE HEALTH AND SAFETY EXECUTIVE AND THE SECRETARY OF STATE FOR TRADE AND INDUSTRY ON NUCLEAR SAFEGUARDS

Introduction

1. This Memorandum of Understanding sets out the arrangements agreed between the Health and Safety Executive (HSE) and the Secretary of State for Trade and Industry on nuclear safeguards following the transfer of the operational aspects of the implementation of safeguards in the UK through the transfer of the UK Safeguards Office (UKSO) from the Department of Trade and Industry (DTI) to HSE. The purpose of the Memorandum is to set out the arrangements under which HSE will: (a) perform the statutory functions of the Secretary of State for Trade and Industry (SoS) set out in the Agreement under Section 13(1)(b) of the Health and Safety at Work etc Act 1974 dated 29 March 2007 (hereafter "the Agreement"); (b) perform the non-statutory functions required to support the operational aspects of the implementation of safeguards in the UK; and (c) provide assistance to DTI and wider government's nuclear safeguards and non-proliferation policy and international initiatives.

Background

2. HSE's responsibilities in respect of health and safety at civil nuclear sites arise from its functions under the relevant statutory provisions of the Health and Safety at Work etc Act 1974 (HSWA), including in particular the granting of nuclear site licences under the Nuclear Installations Act 1965 (as amended), and the enforcement of conditions attached to those licences. Section 1(1)(c) of the HSWA provides for "*controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances*". Nuclear material falls into this category of substances. Nuclear safeguards in the UK are measures implemented by the European Commission and the IAEA aimed at verifying that nuclear material is not diverted from its intended use. The HSE will therefore carry out, on behalf of the Health and Safety Commission (HSC), functions related to the operational aspects of the implementation of safeguards by those authorities. Functions related to policy aspects of the implementation of safeguards will remain with the DTI.

3. The SoS, through the UKSO, has responsibility for the UK's international safeguards obligations. These obligations derive from the Euratom Treaty and the UK/IAEA/Euratom safeguards agreement (INFCIRC/263) and include requirements for the accounting and control of nuclear material by operators. The main safeguards regulators are the international Safeguards inspectorates (of the European Commission and IAEA). The UKSO provides an interface between those in the UK subject to

safeguards requirements and the inspectorates to ensure that obligations are met without undue burdens being placed on UK industry.

4. As a result of the Agreement, the HSC has directed HSE to exercise on its behalf the functions that it has agreed to perform on behalf of the SoS. These functions are those that the SoS previously performed through UKSO when it was part of DTI but which are now to be performed by UKSO as part of HSE. Additionally, DTI and wider Government needs continued support from the UKSO (as part of HSE) in order to formulate safeguards-related policy and pursue other work to satisfy its non-proliferation and international safeguards objectives.

5. HSE and DTI have a common interest in ensuring that safeguards and supporting nuclear material accounting (NMA) activities are effective, efficient and take account of safety-related activities. The transfer of the UKSO to HSE will facilitate co-operation in these areas and thus aim to ensure that safety and safeguards requirements are met while minimising the burden on industry.

Objectives

6. One objective of this Memorandum is to facilitate the application of Euratom and IAEA safeguards in the UK such that obligations are met by ensuring that:

- (a) co-operative arrangements on safety and safeguards are developed and maintained within HSE;
- (b) the possibility of conflicting requirements being placed on licensees or others working at nuclear sites or elsewhere where nuclear material is held is avoided; this includes ensuring that safeguards regulators take due account of safety requirements, and vice versa;
- (c) operational and regulatory synergies are exploited as appropriate to optimise effectiveness and minimise duplication, including in respect of nuclear site licence conditions, which relate to ensuring that nuclear material is properly accounted for.

7. A parallel objective is the maintenance of the UKSO, within HSE, as a specialist safeguards unit which remains capable of advising DTI on safeguards implementation in the UK and the effectiveness of regulation, and is available to provide specialist advice and support directly to DTI (and, where requested, other Government departments and agencies) on international/national safeguards issues.

8. A third objective is to maintain a suitable core of safeguards expertise within both HSE and the DTI to ensure that policy formulation is based on a sound knowledge of international safeguards and the practical implications of such policy for the nuclear industry.

Principles

9. The following principles will be employed to assist in meeting the objectives above:

- (a) The UKSO will operate as a discrete unit within the Nuclear Directorate (ND) of the HSE;
- (b) DTI will remain responsible for national and international safeguards policy; including policy issues arising from the implementation of functions delegated under this MoU. In particular it will be responsible for initiating new or amending primary and secondary legislation (consulting HSC as necessary) and for international obligations or political commitments to be undertaken by the UK in this area. DTI will also be responsible for regulatory policy developed to implement statutory requirements detailed in the Agreement, taking into account the UK's international obligations and commitments, but without imposing unjustifiable burdens on those subject to regulation. The DTI must retain sufficient suitably qualified safeguards professionals to be able to deliver these responsibilities;
- (c) HSE must retain sufficient suitably qualified safeguards professionals to be able to deliver the responsibilities described in this document;
- (d) HSE (UKSO) will provide information to others in ND on the application of nuclear safeguards in the UK relevant to health and safety considerations at licensed nuclear sites, subject to any statutory or confidentiality restrictions. Similarly, ND will provide colleagues in HSE (UKSO) with information that may impact on effective nuclear materials accountancy by site licensees and the implementation of safeguards measures at those sites; subject to any statutory or confidentiality restrictions;
- (e) UKSO will work within HSE in the consideration of relevant new projects, such as pre-licensing of nuclear power reactor designs, or proposed changes at licensed nuclear sites, or following a significant breach of licence conditions with a view to identifying the necessary safeguards related arrangements or changes before requirements are placed on applicants and licensees;
- (f) HSE (UKSO) will deal directly with DTI on nuclear safeguards issues, keeping the Director / Chief Inspector of ND informed of the advice and support it is providing directly to DTI and other government departments (OGDs) and;
- (g) HSE (UKSO) will deal directly with OGD's as necessary to perform the functions delegated to it under this MoU.

Working Arrangements with DTI (SOS)

General

10. HSE (UKSO) will inform DTI directly in a timely manner of all NMA and related issues which may raise political issues or provoke media enquiries. HSE (UKSO) will respond directly to DTI to its requests for assistance in dealing with enquiries on safeguards matters. HSE may respond to media enquiries relating to safeguards regulatory matters but will refer enquiries on nuclear safeguards policy to DTI. Should HSE be asked to respond to any Parliamentary Questions or Ministers' cases relating to nuclear safeguards implementation in the UK, it will refer these to DTI.

11. To ensure maintenance of expertise, HSE (UKSO) and DTI safeguards staff will maintain close links, including possibilities for secondments, and consult on key vacancies.

Legislative

12. DTI will not seek to exercise any of the functions to be performed by the HSC on behalf of the SoS pursuant to the Agreement without prior consultation with HSE.

13. HSE (UKSO), in consultation with others in ND, may submit proposals to DTI as considered necessary to amend any of the relevant provisions of the legislation detailed in the Agreement and DTI will give proper and timely consideration to these proposals. In turn, DTI will not seek to repeal/ amend/ revoke any of these provisions without prior consultation with HSE (UKSO). DTI will also consult HSE (UKSO) on proposed changes to other legislation relevant to nuclear safeguards but not subject to the Agreement.

Non-statutory Functions

14. HSE (UKSO) will carry out a range of non-statutory functions as agreed between HSE and DTI. The current functions are set out in Annex A.

International/EU Non-proliferation and Safeguards Regime

15. Upon request, HSE (UKSO) will provide advice and support to DTI and OGDs: (a) in negotiations on, and implementation of, the nuclear safeguards-related provisions of legally binding agreements and other political commitments; and (b) for participation in activities such as the IAEA Board of Governor's meetings and General Conference, the NPT Preparatory Committee and Review Conference, the URENCO Joint Committee, G8 discussions and EU initiatives.

16. Taking account of available resources, priorities and political considerations, HSE (UKSO) will, at the request of DTI support the IAEA's nuclear safeguards programme through participation in its conferences,

training courses, workshops and advisory missions, as well as occasionally hosting technical visits by representatives from other countries.

Monitoring and Review of the Memorandum

17. The Memorandum and the arrangements made under it will be kept under review by HSE and DTI. As part of the co-operative working arrangements described above, the Director / Chief Inspector of ND or one of his deputies, the Head of HSE (UKSO) and appropriate officials in DTI will meet annually, or at such shorter intervals as may be required, to discuss the working of the Memorandum and any outstanding issues or problems that may have arisen under it.

Signed by:

M DRAPER

(for and on behalf of the Secretary of State for Trade and Industry)

L PHILPOTT

(on behalf of HSE)

Date:

Annex A

Non-statutory Functions to be performed by HSE (UKSO):

- a) act as UK government point of contact for the implementation of IAEA and Euratom safeguards within the UK, including leading the UK side in negotiations with the European Commission and the IAEA on facility specific safeguards approaches and any other safeguards-implementation-related issues in the UK;
- b) act as UK government point of contact and source of advice for all holders of nuclear material on safeguards and nuclear materials accountancy (NMA) issues and for all persons covered by the requirements of the additional protocol. This will include working with Nuclear Decommissioning Authority (NDA) and other site owners to ensure safeguards and NMA issues are properly addressed at their sites and in their contracts;
- c) monitor provision to the European Commission by UK operators of safeguards reports as required by the Euratom Treaty (including Basic Technical Characteristics, Inventory Change Reports, Material Balance Reports, Physical Inventory Listings and Advance Notifications);
- d) prepare and provide to the IAEA Additional Protocol (AP) returns to the required format and timescales. DTI will provide HSE (UKSO) with information relevant to the AP, e.g. on export licences related to Annexes I and II of the AP;
- e) lead on the implementation of any directives concerned with UK breaches of Euratom Safeguards;
- f) provide reporting direct to the IAEA as required by the UK/IAEA/Euratom Safeguards Agreement (INFCIRC/263) and the UK/IAEA Safeguards Agreement (INFCIRC/175) and the UK's commitments in respect of the monitoring of separated neptunium and americium;
- g) provide annual safeguards-related reporting as required by the Agreement of 25 February 1998 between the United Kingdom of Great Britain and Northern Ireland and the Government of Japan for Co-operation in the Peaceful Use of Nuclear Energy;
- h) provide twice-yearly safeguards-related reports as required by the Agreement of 24 July 1979 between the United Kingdom of Great Britain and Northern Ireland and the Government of Australia concerning Nuclear Transfers between the United Kingdom and Australia;
- i) oversee withdrawals of nuclear material from safeguards, ensuring such withdrawals are consistent with UK commitments under the Strategic Defence Review (SDR), compile and publish an annual report on such

withdrawals and respond to any queries from the European Commission or the IAEA;

- j) co-ordinate with the Office for Civil Nuclear Security (OCNS) and the Foreign and Commonwealth Office (FCO) to obtain clearance on behalf of the UK Government for safeguards inspector designation requests from the IAEA and the European Commission;
- k) ensure notification of safeguards inspections as provided to HSE (UKSO) is forwarded to the sites concerned;
- l) chair the Special Materials Accounts Committee (SMAC) in its role of collating and approving the information made public in the form of the annual Nuclear Materials Balance figures. Agree publication date with relevant Press Offices and publish the figures on the HSE (UKSO) website;
- m) reconcile operators' accountancy reports and European Commission records in compiling the annual publication of figures for inventories of civil plutonium and high enriched uranium, working with DTI Safeguards officials to obtain DTI Ministerial approval for their release and publication on the HSE (UKSO) website;
- n) maintain consolidated information on European Commission and IAEA safeguards inspections and their outcomes for the UK as a whole, and provide DTI with quarterly summary reports from that information.