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MEMORANDUM OF UNDERSTANDING

between

THE OFFICE FOR NUCLEAR REGULATION

and

THE HEALTH AND SAFETY EXECUTIVE

on

**EFFECTIVE REGULATION OF THE IONISING RADIATIONS
REGULATIONS 2017 (IRR17)**

in relation to the transport of radioactive material

Introduction

- 1 This Memorandum of Understanding (MoU) is between the Office for Nuclear Regulation (ONR) and the Health and Safety Executive (HSE).
- 2 The purpose of this MoU is to ensure that following the transfer of regulatory responsibility for enforcement of some transport related elements of IRR17 from HSE to ONR, there is appropriate awareness and shared understanding of respective regulatory remits, consistency in relation to interpretation of IRR17 requirements and associated enforcement, and effective cooperation and collaboration as appropriate in relation to transport of radioactive material.
- 3 This MoU complements the existing over-arching MoU between the two organisations ("Cooperation between HSE and ONR").
- 4 Both regulators commit to working together in line with the provisions of the Regulators' Code, to ensure that regulatory activities are consistent, coordinated and comprehensive, applying the principles of their respective Enforcement Policy Statements (EPS) and Enforcement Management Models (EMM).

Purpose and Objectives

- 5 Transport of radioactive material takes place routinely in Great Britain to support the industrial, medical, research, nuclear and other sectors including defence operations.
- 6 As well as being the UK regulator for nuclear safety, security and conventional health and safety on nuclear sites, ONR also regulates radioactive materials transport by road, rail and inland waterway and ensures that safeguards obligations for the UK are met.
- 7 HSE is responsible for the regulation of a wide range of risks to health and safety that affect both workers and the public, arising from work activity. Its remit is to protect people's health and safety by ensuring risks in the workplace are properly controlled.
- 8 It is recognised that ONR and HSE, along with other regulatory bodies¹, have enforcement responsibilities in relation to transport aspects of IRR17.
- 9 ONR and HSE have worked together to produce general guiding principles in relation to IRR17 enforcement as detailed below. This approach seeks to inform respective parties of legal obligations and explains in principle how ONR and HSE have agreed to work together. However, the principles cannot be exhaustive and detail of individual cases may need to be discussed with the relevant HSE or ONR operational leads, or legal advice sourced, to determine an appropriate way forward.

¹ MCA, CAA and Local Authorities also have enforcing remits in relation to IRR17.

10 In general,

i) ONR has enforcement responsibility for:

- the civil transport of radioactive material by road, railway or inland waterway, including in-transit storage, from the point of preparation for transport (such as packaging), until the material has been unloaded at its destination.
- internal movements of radioactive material on nuclear premises.

ii) HSE has enforcement responsibility for:

- transport of radioactive material for defence purposes by road, rail or inland waterway, including in-transit storage, from the point of preparation for transport (such as packaging), until the material has been unloaded at its destination.
- internal movements of radioactive material on the dutyholder's premises (except nuclear premises)
- transport of radioactive material by a pedestrian through a public place (with or without the use of any associated conveyance)
- temporary storage of radioactive material where this is not considered in-transit storage e.g. where a gauge is transported to a site for use at that site then stored at that site temporarily until next use, return or transport to another site.

11 In addition:

i) Where the intended journey involves, at any stage, civil transport of radioactive material on roads to which the public has access, HSE and ONR agree that ONR will take overall enforcement responsibility for the entirety of transport, irrespective of whether aspects also involve transport by pedestrian or on access-restricted roads. This is a pragmatic approach to avoid any uncertainty surrounding the status of particular roads, and the associated burden that enforcement 'switching' may introduce.

ii) It is the purpose of the transport that is relevant in considering what constitutes transport for defence purposes, not what is being transported. If an item can have both a civil or military use, the enforcing authority for any particular journey will depend on the purposes of that transport.

12 ONR and HSE recognise each other's status as independent health and safety regulators and this MoU provides the high level framework for how regulatory activities will be coordinated.

Legislative Environment

13 This MoU supports delivery of ONR's transport purpose under Part 3 of the Energy Act 2013, which relates to protecting against risks relating to the civil transport of radioactive material in Great Britain by road, rail and inland waterway, and ensuring the security of radioactive material during civil transport of the same. ONR enforces The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG09) where radioactive material is being transported as well as the Nuclear Industries Security Regulations 2003 (NISR.) A change in enforcement responsibilities introduced by IRR17, via amendment to the Health and Safety (Enforcing Authority) Regulations 1998 and the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006 transferred enforcement responsibility of IRR17 from HSE and ORR to ONR in relation to the civil transport of radioactive material by road, rail and inland waterway. In addition to the new enforcement responsibilities that are the subject of this MoU, ONR is also responsible for enforcement of IRR17 on nuclear premises.

14 HSE enforces a vast array of health and safety legislation, including CDG09 where other (non-radioactive) dangerous goods are being transported. HSE has enforcement responsibility for IRR17 for the majority of dutyholders outside the nuclear industry.

- 15 This MoU confirms the commitment of ONR and HSE to meet the requirements of Section 96(1) of the Energy Act 2013 by entering into arrangements with each other for securing co-operation and the exchange of information in connection with the carrying out of any of their functions.

Working Arrangements

- 16 ONR and the HSE will produce, as necessary, joint guidance to assist dutyholders to understand relevant legal requirements.
- 17 Working arrangements, conducted on the basis of mutual trust and respect, are guided by the following principles:
- i) ONR and the HSE will continue to develop and maintain our positive and co-operative working relationship and nominated operational leads will exchange pertinent operational information routinely and meet periodically for the purposes of building on collective experience and understanding, and discussing and agreeing aspects of operational regulation;
 - ii) ONR and HSE will ensure reliable and secure information handling and exchange between our organisations within agreed and appropriate timescales,
 - iii) ONR and HSE will liaise at the earliest opportunity, and with the fullest of information, to determine the appropriate regulatory oversight of IRR17 transport enforcement for a particular operational situation encountered, working jointly where this is appropriate;
 - iv) ONR and HSE recognise the need to work with other regulators as appropriate,
 - v) ONR and HSE continue to consult each other during the process of regulatory decision making on matters that may affect the other taking account of each other's views;
 - vi) ONR and HSE will do nothing which inhibits ONR or HSE in the exercise of their respective statutory powers, functions and duties, (including taking enforcement action);

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- vii) ONR and HSE act in accordance with, and over time review and improve the operation of this MoU as a basis for the regulation of relevant IRR17 transport dutyholders;

Provision of Services and Advice

- 18 ONR and HSE will provide advice to each other for the purpose of this MoU. Unless agreement is made to the contrary, ONR and the HSE will provide this advice at no cost.
- 19 Where allowed by relevant legislation, ONR and HSE may, by mutual agreement, enter into arrangements to pay for advice or services from the other.

Disclosure of information

- 20 ONR and HSE will follow the requirements of the Energy Act 2013 and other relevant legislation with respect to the disclosure of information shared under this agreement. ONR and HSE are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. To encourage a consistent approach to disclosure, if either ONR or HSE is intending to disclose information relevant to the other, it shall make the other aware of its intention prior to disclosure.

Resolution of Disputes

- 21 ONR and HSE will, in the first instance, resolve any disputes at a working level, escalating them to relevant managers as appropriate. In the rare event that agreement is not possible at this level, the ONR Chief Nuclear Inspector and the HSE Head of Regulation will meet to resolve the issue.

Review of the Memorandum of Understanding

- 22 Delegated representatives of ONR and HSE will review this MoU not later than three years after it has been signed.

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Termination

23 Either ONR or HSE may terminate this MoU on two months' notice in writing to the other party.

Signed



Adrienne Kelbie
Chief Executive
on behalf of the
Office for Nuclear Regulation

Date: 3/12/18



David Snowball
Acting Chief Executive
on behalf of the
Health and Safety Executive

Date: 4.12.18

