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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”) and is supported by a Joint Data Controller Declaration (Annex A) and detail around the information sharing (Annex B).
- 4 Both regulators commit to working together in line with the provisions of the Regulators’ Code, to ensure that regulatory activities are consistent, with 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 ONR regulates radioactive materials transport by road, rail and inland waterway in Great Britain in accordance with CDG09.
- 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-related 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 the 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.
- 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

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

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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 additional 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.

16. As personal information is subject to Data Protection legislation there is a requirement for the parties to enter into a Joint Data Controller Declaration (Annex A) to allow for the two-way transmission of this information

Working Arrangements

17. ONR and the HSE will produce, as necessary, joint guidance to assist dutyholders to understand relevant legal requirements.
18. 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; 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, 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

- 19 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.

- 20 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

- 21 Information disclosure legislation and requests for information are covered in Annex A, paras 17-20.

Resolution of Disputes

- 22 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.

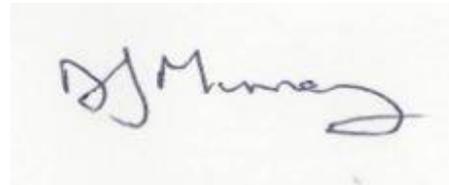
Review of the Memorandum of Understanding

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

Termination

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

Signed



Adrienne Kelbie

David Murray

Chief Executive
on behalf of the
Office for Nuclear Regulation

Director of Planning, Finance and
Procurement
On behalf of the Health and Safety

Executive

24 February 2021

24 February 2021

Annex A: GDPR Article 26, Joint Data Controller Declaration

Purpose

1. The purpose of this annex is to explain the respective roles that ONR and HSE will play in managing the processing of personal data associated with effective regulation of the Ionising Radiations Regulations 2017 in relation to transport of radioactive material. ONR and HSE are considered joint-controllers of the data collected, as both parties (independently) determine the means and purpose of processing personal data as part of the functions defined in this broader MoU.

Data Protection

2. ONR and HSE will comply with all relevant provisions of the Data Protection Act 2018 (and the General Data Protection Regulation). ONR and HSE will act as joint data controllers, in respect of any personal data pursuant to this MoU; they will only process such personal data to the extent defined in the relevant regulatory framework.
3. Neither ONR nor HSE will transfer any personal data they are processing outside of the UK, unless appropriate legal safeguards are in place, such as Privacy Shield or Model Contract Clauses.
4. ONR and HSE will ensure that they have appropriate technical and organisational procedures in place to protect any personal data they are processing. This includes any unauthorised or unlawful processing, and against any accidental disclosure, loss, destruction or damage. ONR will promptly inform HSE, and vice versa, of any unauthorised or unlawful processing, accidental disclosure, loss, destruction or damage to any such personal data. Both parties will also take reasonable steps to ensure the suitability of their staff who have access to such personal data.

Specific Responsibilities

5. ONR has the following specific responsibilities:
 - i. Carrying out any required Data Protection Impact Assessment for any element of business or process change.
 - ii. Following ONR Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
 - iii. Ensuring ONR staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
 - iv. Ensuring ONR staff have appropriate security clearance to handle personal information collected as part of these processes.
 - v. The secure transfer of personal data to HSE where necessary for the fulfilment of HSE's regulatory functions.
 - vi. Responding to Subject Rights Requests, in accordance with approved processes, when and where required.
 - vii. Reporting any data breaches within ONR to the Data Protection Officer and the Information Commissioner's Office (where appropriate).
 - viii. Maintaining any Article 30 processing records for data held on ONR systems.

6. HSE has the following specific responsibilities:
 - i. Carrying out any required Data Protection Impact Assessment for any element of business or process change.
 - ii. Following HSE Data Security Guidance to ensure that the necessary measures are taken to protect personal data.
 - iii. Ensuring HSE staff are appropriately trained in how to use and look after personal data and follow approved processes for data handling.
 - iv. Ensuring HSE staff have appropriate security clearance to handle personal information collected as part of these processes.
 - v. The secure transfer of personal data to ONR where necessary for the fulfilment of ONR's regulatory functions.
 - vi. Responding to Subject Rights Requests, in accordance with approved processes, when and where required.

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- vii. Reporting any data breaches to the Data Protection Officer and the Information Commissioner's Office (where appropriate).
- viii. Maintaining any Article 30 processing records for data held on HSE systems.

Individual Rights

- 7. GDPR specifies rights for individuals in regard to the processing of their data. These rights, and the process an individual should follow when making a request, are listed in both ONR and HSE's privacy notices. Both parties should ensure they consult and comply fully with their respective data protection policies in the event of a Data Subject seeking to exercise any of their rights under data protection legislation.
- 8. In response to any Subject Rights Request, ONR and/or HSE will undertake a proportionate and reasonable search and respond within one month of the original request.

Data Breach

- 9. ONR is responsible for reporting any breach occurring within its authority to its Data Protection Officer and the ICO (where appropriate). ONR will also inform HSE of the breach if there is any direct impact on their staff or wider interest.
- 10. HSE is responsible for reporting any data breaches within its authority to its Data Protection Officer and the ICO (where appropriate), as well as to ONR if there is any direct impact on their staff or wider interests.
- 11. Any personal data breach, as defined by GDPR Article 4(12), that meets the relevant threshold criteria, as defined by GDPR Article 33(1), will be reported to the Information Commissioners' Office (ICO) within 72 hours of notification. If necessary, the affected data subject(s) will be informed of the personal data breach, as defined by GDPR Article 34(1). The

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appropriate Data Protection Officer (see below) will be responsible for making the report, following consultation with their Chief Executive Officer (CEO).

12. If financial penalties are imposed by the Information Commissioner on a party in relation to any data processed under this agreement and if in the view of the Information Commissioner, one party is responsible for the imposition of those penalties, the party deemed responsible shall be responsible for the payment of the penalties imposed.
13. If the Information Commissioner expresses no view as to responsibility, then each party shall bear responsibility for half of the penalty imposed.
14. If either HSE or ONR are the defendant in a legal claim before a court of competent jurisdiction by a third party in respect of data processed under this agreement, then the party determined by the final decision of the court to be responsible for the damage shall be liable for the losses arising from such damage. Where both parties are liable, the liability will be apportioned between the parties in accordance with the decision of the court. If the court does not apportion liability between the parties then each party shall bear responsibility for half of the penalty imposed, unless it can prove to the other party that it is not in any way responsible for the event giving rise to the damage.
15. The provisions of this clause do not prevent the parties coming to a mutual agreement as to the apportionment of financial responsibility for any losses, cost claims or expenses arising from the processing of data under this agreement.

Data retention

16. ONR and HSE will retain only adequate, relevant and necessary personal data. Each party is responsible for ensuring appropriate technical and

procedural functions are in place to ensure the secure and timely destruction of personal data in line with their respective organisational policies.

Information Disclosure

17. Either party to this MoU may receive a request for information from a member of the public or any other person under the various pieces of information disclosure legislation (UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA)), Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) etc.).

18. *For EIRs and FOIA requests only*

The party receiving any request for information is ultimately responsible for making the final decision on disclosure. All requests for information will be considered on a case-by-case basis, and all resulting disclosures must be lawful. The default position for both parties is to disclose unless one or more absolute exemptions (as defined by the appropriate legislation) apply to a specific request. Where the party receiving the request wishes to apply a qualified exemption (as defined by the appropriate legislation) to all or part of the request, they must ensure this is validated by a documented public interest test.

19. If a party receives a request for information that has been supplied by the other party ("the information supplier"), the party that has received the request for information will consult the information supplier as early as possible and before any information is disclosed in response to the request to enable sufficient time for the views of the information supplier, including any objections to disclosure, to be taken into account when determining whether the information is to be disclosed or withheld.

20. If a party receives a request for information that it holds and knows or believes the information is held by the other party, the party that received

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the request will consult the other party as early as possible and before any information is disclosed in response to the request. The purpose of this consultation is to ensure that the party that received the request is able to share any concerns about information that might be disclosed to the requester, that the party holding the information is able to take those concerns fully into account in its decision-making, and that the parties can co-ordinate their handling of requests.

Data Protection Officers

The contact details of the Joint Controller Data Protection Officers are:

ONR	HSE
Charlotte Cooper Data Protection Officer Office for Nuclear Regulation Redgrave Court Merton Road, Bootle L20 7HS Email: Dataprotection@onr.gov.uk	Sean Egan Data Protection Officer Health and Safety Executive 1.3 Redgrave Court Merton Road, Bootle Liverpool L20 7HS Email: Data.Protection@hse.gov.uk

Annex B – Information Sharing

Purpose

1. This annex details the type of transport-related information which will be shared between ONR and HSE. HSE gathers data on companies that transport radioactive materials. ONR as part of its regulatory obligations is required to regulate dutyholders effectively that transport radioactive material.
2. Information sharing will allow both HSE and ONR to fulfil their obligations in line with the Regulators' Code, in particular the obligation to collectively follow the principle of “collect once, use many times” when requesting information from those they regulate.

Type of information that may be shared

3. HSE and ONR agree to share details of relevant dutyholders (including the company name, address, telephone number, email and relevant named contact), their work activities and any information relevant to the enforcing remit of the other regulator.

How the information will be shared

4. Given HSE is the “appropriate authority” in relation to IRR17 and transport in most instances and HSE is an enforcing authority for IRR17, ONR will email rad.admin@hse.gov.uk to:
 - i. ensure relevant information received via proactive or reactive inspections, concerns raised etc is reviewed in relation to the Ionising Radiations Regulations 2017 (IRR17). The review will be undertaken by a competent person, and forwarded in a timely manner as appropriate to HSE,

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- ii. ensure that information notified in relation to ONR's INF1 process which relates to the obligations transport dutyholders have in relation to the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (CDG) is reviewed in relation to IRR17. The review will be undertaken by a competent person and shared in a timely manner with HSE as appropriate,
5. Given ONR is an enforcing authority in relation to IRR17, HSE will email class7@onr.gov.uk to:
 - i. ensure that relevant graded approach data (as specified by ONR) that has been collected from relevant IRR17 dutyholders is shared with ONR periodically as agreed – initially every quarter;
 - ii. ensure all relevant information is reviewed by a competent person in relation to IRR17 and forwarded in a timely manner as appropriate to ONR.
6. All other information to be shared, typically relating to individual dutyholders, will be exchanged securely via email or by phone directly between regulatory staff.

How the information may be used

7. HSE and ONR may use this shared information to instigate, revisit or support any inspection, investigation and/or enforcement action within the remit of their regulatory vires.