



Ministry  
of Defence



Office for  
Nuclear Regulation

# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE MINISTRY OF DEFENCE**

**AND**

**THE OFFICE FOR NUCLEAR REGULATION**

Issue Date: March 2024

## AIM

1. This Memorandum of Understanding (MOU) establishes the strategic intent of the Ministry of Defence (MOD) and the Office for Nuclear Regulation (ONR) to work together to secure and maintain safe and assured delivery of the UK's defence nuclear capability to deter the threat and protect our nation.
2. The purpose of this MOU is to engender effective co-operation, understanding, seamless regulation and the provision of mutual assurance between the MOD and ONR (the participants) in discharging their respective roles in pursuit of the strategic intent. It sets out the responsibilities for nuclear, radiological and conventional health and safety in ensuring the safety of the Defence Nuclear Enterprise (DNE) in delivering both the Naval Nuclear Propulsion Programme (NNPP) and the Nuclear Weapon Programme (NWP).
3. The MoU meets this purpose by setting out:
  - the legislative environment,
  - each participant's role and responsibilities,
  - the high-level arrangements in place to coordinate regulatory activities for the DNE.
4. The MoU is supported by a separate Letter of Understanding (LOU) between ONR and the Defence Nuclear Safety Regulator (DNSR) which gives the detailed practical, working arrangements between the regulators to deliver the strategic intent by ensuring coherent, consistent and comprehensive regulation of the DNE.
5. The participants accept that this MOU is not legally binding and does not create any form of partnership or legal rights or obligations. It is a statement of their shared intention to work together in a spirit of cooperation in pursuance of all relevant matters.

## SCOPE

6. This MOU applies to:
  - Activities to deliver the NNPP and NWP undertaken by MOD, its Arm's Length Bodies and contractors.
  - Nuclear sites which are used by the DNE.

## MOD RESPONSIBILITIES

7. The Secretary of State (SofS) for Defence is responsible to Parliament for the safety and security of the DNE. The SofS for Defence's responsibilities flow down through the Permanent Under-Secretary (PUS) into the MOD's Top-Level Budget Structure.
  - The Chief of Defence Nuclear (CDN) has overall responsibility for all Health, Safety and Environmental Protection matters in DNO, and as lead of the Enterprise, has a strategic interest to ensure there is a common approach and that safety performance is aligned with the delivery of the deterrent.

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- The Defence Nuclear Organisation (DNO) is accountable for providing a 'safe to operate' capability to the Royal Navy, and the decommissioning and disposal of UK nuclear submarines at the end of their lifecycle.
  - First Sea Lord is responsible for ensuring the safety of activity, personnel, equipment and platforms in generating the submarine operating capability, including the submarines and HM Naval Bases (HMNBs) Clyde and Devonport. This responsibility is discharged via Director Submarines for operational submarines.
  - The Submarine Delivery Agency (SDA) Chief Executive Officer receives their delegation from CDN; the SDA, on behalf of the DNO and Navy Command (NC), is responsible for the procurement, in-service support, decommissioning, and disposal of UK nuclear submarines.
8. MOD is subject to applicable legislation relating to health, safety and environmental protection. In accordance with SofS for Defence's Policy Statement<sup>1</sup>, where Defence has disapplications, exemptions, or derogations (DEDs) from health, safety and environmental legislation, or where other circumstances indicate the need for Defence regulation of activities, MOD will maintain departmental arrangements that produce outcomes that are, so far as reasonably practicable, at least as good as those required by UK legislation. To that end, the Defence Safety Authority (DSA) provides Defence-specific regulation.
9. DSA comprises eight defence safety regulators but the main interfaces with ONR are the Defence Nuclear Safety Regulator (DNSR) and the Defence Fire Safety Regulator (DFSR), responsible for regulating fire safety across Defence activities. There is also an interface with the Defence Nuclear Security Regulator (DefNucSyR) which sits in the Directorate of Security and Resilience and is responsible for the independent regulation of security across the Defence Nuclear Enterprise (DNE).
10. DG DSA has appointed a Defence Nuclear Safety Regulator (DNSR) to regulate nuclear and radiological safety, environmental protection and the transport of defence radioactive materials in the DNE. DNSR is also responsible for regulating the through-life safety of Nuclear Weapons and of the Naval Reactor Plant (NRP) irrespective of location.
11. In carrying out its role, DNSR sets and regulates against Authorisation Conditions that are closely aligned with ONR Licence Conditions (LC). There are also a series of Further Authorisation Conditions (FACs) which address issues unique to the delivery of military capability and include requirements relating to the design and approval of nuclear weapon or NRP activities. DNSR and ONR work closely to ensure coherent and seamless safety regulation of the DNE.

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<sup>1</sup> [Secretary of State for Defence policy statement on health, safety and environmental protection - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/secretary-of-state-for-defence-policy-statement-on-health-safety-and-environmental-protection)

## ONR RESPONSIBILITIES

12. ONR is formally established as a public corporation by Part 3 of the Energy Act 2013 (TEA13) and transfers to it specific purposes for nuclear safety, nuclear security, nuclear safeguards, site health and safety and nuclear transport. TEA13 allows regulations to be made under the Act. In the Defence context, only nuclear safety and conventional site health and safety are applicable.
13. ONR's statutory functions are assigned by TEA13 as a body corporate, which in practice is to the ONR Board. It operates within the Framework Document agreed between Department for Work and Pensions (DWP) and ONR. The ONR Chair, accountable to the Secretary of State for Work and Pensions, is responsible for ensuring that ONR performs its statutory functions<sup>2</sup> to deliver the efficient and effective regulation of the GB nuclear industry in line with its statutory purposes. Within ONR, the Director of Regulation Operating Facilities, has specific responsibility for the interface with the DNE, supported by the Head of Regulation of Nuclear Weapons (delegated authority to regulate the Atomic Weapons Establishment (AWE) licensed sites); and the Head of Regulation of Nuclear Propulsion (delegated authority to regulate nuclear licensed defence sites that operate in support of the NNPP) including the provisions of IRR17 and REPP19 which apply to all relevant activities on Defence Nuclear sites (which encompasses both licensed and authorised sites) and are regulated by ONR.
14. TEA13 requires that ONR "must make adequate arrangements for the enforcement of the relevant statutory provisions" which include Part 3 TEA13; and the provision of the Nuclear Installations Act 1965 (as amended) (NIA65).
15. TEA13 also requires ONR to appoint inspectors to discharge its purposes. In pursuit of these purposes, ONR has legal powers under relevant legislation and exercises those enforcement powers consistent with its Enforcement Policy Statement; Enforcement Management Model; and the Regulators Code.
16. The Health and Safety at Work etc. Act 1974 (HSWA) and relevant statutory provisions (RSPs) made under it apply to all employers including MOD. ONR inspectors are also appointed under section 19(1) HSWA and therefore have relevant powers provided by the Act. In the exercise of their powers of inspection, investigation and enforcement on MOD operated DNE sites, ONR will follow the arrangements set out in this MOU.

## LEGISLATIVE ENVIRONMENT

17. The legislation which applies to the DNE and which is within the scope of this MOU is set out below. In addition, DNSR is responsible for regulating the through-life safety of the nuclear weapon and of the NRP and is recognised by ONR as the authority in these matters. DNE sites and activities are regulated as set out in **Appendix 1** 'Approach to the regulation of DNE Sites and Activities'.

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<sup>2</sup> TEA2013 S.78 Principal function

(1) The ONR must do whatever it considers appropriate for the ONR's purposes.

(2) That includes, so far as it considers appropriate, assisting and encouraging others to further those purposes.

### **The Energy Act 2013 (TEA13)**

18. ONR is the enforcing authority for applicable provisions of TEA13 across the following purposes in the DNE:

- nuclear safety, in relation to licensed sites, and
- nuclear site health and safety

### **Health and Safety at Work etc. Act 1974 (HSWA)**

19. Conventional health and safety on nuclear sites relates to the control of risks arising from hazards commonly found in general industry and exclude the specific hazards arising from the use of nuclear materials. ONR is the enforcing authority on Defence Nuclear sites.

- The provisions of HSWA S6(1), (2), (4) & (5) apply, but only in so far as those requirements relate to:
  - articles for use at work which are designed, manufactured, imported or supplied; or
  - substances which are manufactured, imported or supplied

to be used exclusively or primarily in the installation, operation or decommissioning of a Defence Nuclear site.

- The provisions of HSWA S6(3) apply in so far as they relate to:
  - the erection or installation of any article for use at work in any premises which are or are on an authorised defence site.

### **Nuclear Installations Act 1965 (as amended) (NIA65)**

20. NIA65 requires a nuclear site licence and compliance with 36 licence conditions (LC) attached to that licence by ONR. The licence is issued for the full life cycle of the facility. These conditions require licensees to implement adequate arrangements to ensure compliance.

21. There are specific instances where Section 1, NIA65 is disapplied and therefore licensing is not legally required:

- Section 1 does not bind the Crown, and therefore does not bind MOD;
- Reactors comprised in a means of transport (RCiMT)

22. The principles for when the disapplications for the Crown or RCiMT apply to Defence and its activities are set out in MOD policy<sup>3</sup>. Where this is the case, MOD takes responsibility for regulation and DNSR regulates via a regime of Authorisation Conditions, which mirrors Licence Conditions, ensuring there are no regulatory gaps.

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<sup>3</sup> Approach to Regulation in the Context of Disapplications from the Nuclear Installations Act, 1965 (as amended), available on the MCWE (Maritime collaborative Working Environment)

## **Nuclear Weapons**

23. Atomic Weapons Establishment (AWE) sites are subject to the requirements of NIA65 by virtue of the Atomic Weapons Establishment Act 1991, as amended by the Atomic Weapons Establishment Act 1991 Amendment Order 1997 (SI 1396/1997). However, the extent of this is limited under paragraph 6 of the Schedule to the Act *“any conditions which, by virtue of section 4 of the Nuclear Installations Act 1965, are attached to a nuclear site licence granted in respect of a site in designated premises used by a contractor, shall not apply to the extent that such conditions affect the design of a nuclear device or any other device (other than a nuclear reactor) intended to simulate the properties of a nuclear device.”*

## **Emergency Arrangements**

24. Where a Licensee is reliant upon assistance from MOD in its emergency arrangements, ONR accepts that the Licensee can take due account of such arrangements in meeting the requirement of Licence Conditions.

## **Licences, Approvals, Consents, Permissions, Agreement etc.**

25. MOD recognises ONR’s statutory authority to issue Licences, and any Instruments, Approvals, Consents, Directions, Agreements, Notification and Specifications under nuclear site licences to Licensees without reference to MOD. However, both MOD and ONR recognise that to ensure an alignment of understanding requires interface and communication between the Licensee (who is legally responsible for the site), the relevant MOD Programme Team (who contracts the Licensee for safe delivery from the site) and both ONR and DNSR in their respective roles.

## **Ionising Radiation Regulations 2017 (IRR17) and Radiation (Emergency Preparedness and Public Information) Regulations 2019 (REPPPIR19)**

26. Provisions of IRR17 and REPPPIR19 apply to all relevant activities on Defence Nuclear sites and are regulated by ONR. As the statutory regulator, ONR may request information relating to the operators’ Hazard Evaluation and Consequence Assessment (HECA) required by REPPPIR19 Regulations 4 and 5. Provision of information will be covered by the arrangements set out in the ‘Information Security and Disclosure’ section below.

## **Exemptions to IRR17 or REPPPIR19**

27. The SofS for Defence may issue a certificate exempting certain persons or organisations from all or any of the requirements or prohibitions imposed by IRR17 or REPPPIR19. The following may be exempted:

- His Majesty’s Forces;
- visiting forces;

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- any member of a visiting force working in or attached to any headquarters or organisation; or
- any person engaged in work with ionising radiation for, or on behalf of, the Secretary of State for Defence.

28. When it is proposed that SofS for Defence will grant an exemption, MOD will:

- notify ONR of the proposal, its circumstances and any alternative arrangements;
- give ONR the opportunity to comment before a decision is reached;
- notify ONR of the decision on the proposal where relevant, its period of applicability and any other conditions attached to the decision; and
- notify ONR when the decision is rescinded.

29. Where strategic or operational imperatives vital to defence operations are concerned, the above process for seeking an exemption should be followed as far as is reasonable given the circumstances prevailing. An exemption without time limit from IRR17 and REPIR19 is currently in place with respect to visiting forces (within the meaning of the Visiting Forces Act 1952), and those engaged in working with ionising radiation for, or on behalf of SofS for Defence in respect of visiting forces.

### **Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (EIADR)**

30. EIADR requires licensees to seek consent from ONR when a dismantling or decommissioning project is planned for a nuclear power station or a nuclear reactor. EIADR does not apply to defueling where this is in accordance with normal procedures.
31. Regulation 3(3) of the regulations, as amended in 2006, exempts projects “serving national defence purposes where the SofS is of the opinion that application of these Regulations would have an adverse effect on the defence purposes of the project”. MOD will follow the exempting procedure set out in paragraph 29 as for IRR17 and REPIR19 when SofS for Defence is considering an exemption under this Regulation, and in accordance with the SofS for Defence Policy Statement.

### **Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009**

32. In respect of the transport of radioactive materials within Great Britain other than by air or sea, the responsibilities of the Competent Authorities are as defined in regulation 25 of the 2009 Regulations.
33. The SofS for Defence is the Competent Authority for transport of defence radioactive materials, who empowers DNSR to regulate the transport of Defence nuclear material, which is exempt from statute using equivalent provisions, including the approval of packages to be used for such transport.

**Regulatory Reform (Fire Safety) Order 2005 (RR(FS)O 2005) & Fire (Scotland) Act 2005 (F(S)A 2005)**

34. ONR is the enforcing authority for RR(FS)O 2005 and F(S)A 2005 for:

- i) any premises for which a licence is required by virtue of section 1 of the Nuclear Installations Act 1965 or for which a permit is required by virtue of section 2 of that Act;
- (ii) any premises for which such a licence or permit would be required but for the fact that the premises are used by, or on behalf of, the Crown;
- (iii) any workplace which is, or is on, a construction site in relation to which the Office for Nuclear Regulation is responsible for health and safety enforcement.

35. DFSA is the enforcing authority for RR(FS)O 2005 and F(S)A 2005 for:

- i) premises, other than premises falling within paragraph (b)(iii), occupied solely for the purposes of the armed forces of the Crown;
- (ii) premises occupied solely by any visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964;
- (iii) premises, other than premises falling within paragraph (b)(iii), which are situated within premises occupied solely for the purposes of the armed forces of the Crown but which are not themselves so occupied;

36. Unless otherwise agreed between DFSA and ONR, where these statutory duties overlap DFSA has primacy as the Enforcing Authority for Fire Safety on Defence Authorised sites<sup>4</sup> and ONR has primacy as the Enforcing Authority on Licensed sites.

**WORKING ARRANGEMENTS OF DEFENCE SITES**

37. The practical working arrangements of Defence Nuclear sites are set out in the separate Letter of Understanding (LoU) between DFSA and ONR ensuring coherent, consistent and comprehensive regulation of the DNE. This also includes arrangements for site access, reporting of incidents, and defence nuclear emergency response.

**INFORMATION SECURITY AND DISCLOSURE**

Information Requirements

38. MOD and ONR accept that timely and open exchange of information is an important feature of good working arrangements.

39. In conducting their duties, ONR inspectors may require information from:

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<sup>4</sup> Defence Authorised Sites in scope are: HM Naval Base Devonport, HM Naval Base Clyde and Vulcan Naval Reactor Test Establishment (NRTE)



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- the licensee of a licensed site: to justify the safety of activities on site and to demonstrate compliance with licence conditions attached to the Site licence and applicable legislation including HSWA, IRR17 and REPP19;
- MOD: associated with its duties under HSWA, IRR17 and REPP19;
- other employers: whose employees may be working with ionising radiation on the sites.

Where the dutyholder is reliant on MOD owned information, MOD will facilitate their ability to fulfil their legal obligations, through the timely provision of adequate information, subject to the principles below.

### Principles

40. Information sharing is based on the following jointly developed principles which underpin the approach to information security and disclosure between the participants:

- **Provision of information:** The default position is that MOD will share information that will allow ONR to fulfil its statutory function and licensees to meet their legal obligations.
- **Need-to-know:** If MOD is unable to provide information in accordance with the default position, it will, subject to national security considerations, explain why it cannot do so.
- **Limitations on use:** In gaining access to information, ONR will not seek to influence the design of nuclear submarine reactors, nuclear devices or Strategic Weapon Systems. ONR will neither seek to influence the operational deployment of such items nor activities associated with their operational deployment.
- **Ownership:** ONR will in most cases only require transient access to information to allow it to undertake its regulatory activities. This information is not downloaded or stored on ONR's systems and can only be accessed via secure MOD systems.
- **Security Management Arrangements:** ONR will recognise the security restrictions attached to the information and ensure that staff with access to defence information meet the eligibility requirements to access that information, including nationality restrictions and having the appropriate level of security clearance. Where it is necessary for ONR to retain, information will be handled and stored in accordance with security classification.

### Requests for information

41. Requests by ONR for information should be made in writing and be clear and precise, with the style and format reflecting the significance and sensitivity of the information requested.

42. Requests should include:

- what information is required;
- what it is to be used for;
- practical and reasonable timescales;
- how information will be stored;
- potential risks considered for future release.

Responses

43. The default position is that MOD will share requested information that will allow ONR and licensees to fulfil their statutory duties. Where MOD is unable to release the requested information, MOD will consider alternative options to share the material. For instance, a redacted version of the information may be provided or shared in a virtual environment that will not allow ONR to download to their own systems or alter the information.
44. MOD may judge that they are unable to provide alternative forms of information due to restrictions set out under the terms of UK International Agreements or Arrangements or where further assessment can be shown to be dual regulation. Where requests are refused, or restrictions placed on the information, the response should, subject to national security considerations, explain the decision. In these circumstances, ONR should seek and consider DNSR's assurance that arrangements have produced outcomes at least as good as required by statute. Any assurance provided by DNSR is to be based on a proper consideration of all relevant evidence available to it.
45. Whilst there may be situations that require escalation, it should not be considered normal practice. It should only be considered if all options have been exhausted at a working level and where there is additional justification. If escalation is required, information requests should be sent to a single point of contact; the decision will then be reviewed at a senior level and the final outcome communicated.

Information release

46. MOD's approach to information disclosure is underpinned by the knowledge that information held by ONR about Defence activities is subject to the provisions of the Freedom of Information Act 2000 (FOI Act). If ONR receives a request under the FOI Act, then the decision on disclosure is the responsibility of ONR as the information holder, but ONR undertakes to seek and consider representations from MOD (particularly in respect of information originating from MOD) to assist its decision-making process. Following this consultation with MOD, ONR will notify whether or not it intends to disclose MOD information as soon as a decision is made and before disclosure occurs.

Information Handling

47. MOD and ONR will comply with all relevant provisions of the Data Protection Act 2018 (DPA18) and the UK General Data Protection Regulation (UK GDPR), including any applicable amendments made by subsequent legislation. MOD and ONR will act as independent 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.

**STRATEGIC ENGAGEMENT**

48. The participants recognise the importance of engagement at a strategic level and undertake to share information on relevant strategic developments at the earliest opportunity. Early engagement at strategic level will seek to ensure that strategic

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aspirations lead to appropriate outcomes and help to minimise delays and regulatory risks to delivery.

49. Strategic engagement will be delivered through the following groups, and by other means, as and where required.

- The Defence Minister responsible for the nuclear portfolio, supported by nominated MOD representatives, will meet with ONR on an annual basis to be updated on ONR's activities over the last year, priorities for the coming year and discuss key strategic issues related to our engagement.
- A strategic engagement forum will meet at regular intervals, formed of senior leadership from ONR and senior MOD representatives from DNO, DSA, Directorate of Defence Safety and other invited participants as required.
- A strategic forum of senior stakeholders from across the Defence Enterprise will meet at regular intervals. This forum will consider issues common to all which would benefit from an Enterprise approach. Membership will include senior representatives from Defence industry partners, statutory and defence regulators, DNO, SDA and NC.

### ISSUE RESOLUTION

50. Resolution of any differences of opinion between the participants will be managed in the first instance at the working level. Where resolution cannot be reached at this level, the matter will be referred to ONR's Director of Regulation, Operating Facilities and MOD's Deputy Director of Safety, Environment and Emergency Planning in the Defence Nuclear Organisation.

51. If queries or disputes remain, the issue may be escalated by either party to the signatories of this MOU for further review with a view to resolving the issue.

### REVIEW AND TERMINATION

52. This MOU comes into effect once signed by both participants.

53. This MOU will be jointly reviewed at least once every three years or at earlier intervals as decided by the participants.

54. Either Participant may terminate this MOU on two months' notice in writing to the other party.

**SIGNATORIES**

For the Office for Nuclear Regulation:

**Mark Foy, Chief Executive and Chief Nuclear Inspector**

Signature: *Mark Foy*

Date: 22 March 2024

For the Ministry of Defence:

**James Black, DNO Director Security and Safety**

Signature: *James Black*

Date: 16 April 2024

**Appendix 1 - Approach to the regulation of DNE Sites and Activities**

Site/activity	DNSR Authorised	ONR Licensed	ONR regulate compliance with HSWA, IRR and REPIR
Rolls-Royce - Neptune		✓	✓
Rolls-Royce - Nuclear Fuel Production Plant		✓	✓
Devonport Licensed site		✓	✓
Devonport - 5 Basin	✓		✓
HM Naval Base Devonport Authorised Site(s) - Berths	✓		✓
HM Naval Base Devonport Authorised Site(s) – 3 Basin	✓		✓
BAE Systems Marine Ltd Devonshire Dock Complex	✓ (Activities only)	✓	✓
BAE Systems Marine Ltd Devonshire Dock Quay	✓		✓
AWE Aldermaston	✓	✓	✓
AWE Burghfield	✓	✓	✓
HM Naval Base Clyde <ul style="list-style-type: none"> <li>• Faslane Valiant Jetty</li> <li>• Coulport EHJ</li> <li>• Faslane Shiplift</li> <li>• Faslane Nuclear Support Hub</li> <li>• Coulport TSA</li> </ul>	✓		✓
Vulcan Naval Reactor Test Establishment	✓		✓
Rosyth Royal Dockyard 2 Dock & Active Waste Accumulation Facility		✓	✓
Rosyth Royal Dockyard Non-tidal basin	✓		✓
UK Nuclear Powered Warship Berths	✓		✓ IRR & REPIR only
Overseas Facilities made available under GTGA (includes with France under TEUTATES Treaty)	✓		
Defence nuclear material transport	✓		
Naval Reactor Plant Design Through Life	✓		
Nuclear Weapon Design Through Life	✓		