

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE HEALTH
AND SAFETY EXECUTIVE, THE ENVIRONMENT AGENCY AND THE
SCOTTISH ENVIRONMENT PROTECTION AGENCY ON THE
IMPLEMENTATION OF THE SEVESO II DIRECTIVE**

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INTRODUCTION

1. This Memorandum of Understanding (MoU) is between the Health and Safety Executive (HSE), the Environment Agency and the Scottish Environment Protection Agency. In England and Wales HSE and the Environment Agency act jointly as the Competent Authority (CA) under European Council Directive 96/82/EC of 9 December 1996 on the Control Of Major Accident Hazards involving dangerous substances (the Seveso II Directive) as amended. In Scotland HSE and the Scottish Environment Protection Agency act jointly as the CA. In this MoU the Environment Agency and the Scottish Environment Protection Agency are referred to as "the Agencies". The Seveso II Directive is implemented largely by the Control of Major Accident Hazards Regulations 1999, as amended (COMAH). The land use planning requirements of Article 12 of the Directive are separately implemented by planning legislation.
2. HSE and the Agencies work in partnership to meet the CA duties under COMAH. This MoU defines how the organisations work together as an operational authority by identifying how the strategic priorities are established and performance monitored, how the experience and knowledge of each organisation is applied, how information is shared and by recording key agreements.
3. Since HSE has the primary expertise on health and safety issues and the Agencies have the primary expertise on environmental issues, the COMAH Regulations will be enforced in practice by the parties using their particular expertise within the CA. The CA is responsible for discharging the United Kingdom's obligations under the Directive and COMAH Regulations. However, HSE and the Agencies can allocate functions between themselves administratively, and that is a purpose of this MoU. Corporate lead for the CA will be provided by the CA Strategic Management Group (CASMG) (see paragraph 12). CASMG chairmanship will rotate between the three CA partner organisations. The CA Business Support Group (BSG) (see paragraph 13) will ensure that this MoU is reviewed every three years.
4. HSE will enforce relevant statutory provisions at COMAH establishments. The Agencies will also enforce relevant environmental legislation at some COMAH establishments. Consequently it is recognised that there will be areas of overlap between the requirements of other legislation and the requirements of COMAH. This MoU relates solely to the application of COMAH at relevant establishments.
5. The MoU aims to ensure the effective co-ordination of the CA's activities under the COMAH Regulations. Such co-ordination will ensure that the risks to people's health and safety and the risks to the environment from major accidents are properly regulated. It will also ensure that there is consistency of regulation and advice, a burden on industry that is proportionate to risk and arrangements that are transparent and without unnecessary duplication
6. It is the responsibility of all staff within HSE and the Agencies to ensure that the principles and procedures set out in this MoU are observed.

OBJECTIVES

7. The MoU aims to promote high levels of protection from major accidents for people and the environment by ensuring that:
 - a. The activities of HSE and the Agencies, acting together as CA in relation to relevant duties and establishments within scope of the COMAH Regulations, are co-ordinated, consistent, timely, transparent, targeted and proportionate;
 - b. Conflicting requirements are not placed on operators; and,
 - c. HSE and the Agencies actively collaborate on issues of mutual interest and avoid unnecessary duplication of effort.

8. To further the objectives of the MoU the CASMG will publish a Purpose Statement setting out the CA's strategic aims and the regulatory outcomes the CA wishes to achieve for the regulation of major hazards. The Purpose Statement and the CA's strategic aims will be reviewed every three years in line with the arrangements made for reporting the UK's performance in the implementation of the Seveso II Directive to the European Commission (EC). The Purpose Statement will be supported by a Business Plan setting out the CA's priorities for the period covered by the Purpose Statement

WORKING ARRANGEMENTS

9. It is recognised that there are many aspects of an operator's activities that are relevant to both environmental and health and safety protection. HSE and the Agencies share common interest in prevention and mitigation systems and other measures. The working arrangements therefore need to be flexible to reflect this. The central feature of the arrangements is that HSE and the Agencies should be aware of each other's respective interests at the outset. They should continue a dialogue and, where appropriate, agree lead responsibilities throughout the processes of assessment, inspection or other intervention. The aim is to ensure that judgements made by the CA about the adequacy of measures for prevention, control and mitigation of major accidents are balanced, co-ordinated and coherent.

PRINCIPLES

10. The working arrangements of the CA are subject to the Data Protection Act 1998, the Human Rights Act 1998 and the Baseline Personnel Security Standard and in accordance with the Cabinet Office Security Policy Framework and are based on the following principles:
 - a. The CA is responsible for enforcing the COMAH Regulations. However, within the framework of this MoU and based on the primary experience of each organisation, HSE will normally lead in dealing with issues concerning the health and safety of people, and the Agencies will normally lead on issues concerning environmental protection. As

many aspects of prevention, control and mitigation are common both to health and safety and the environment, close communication between the parts of the CA will be essential. The CA will agree who will take the operational lead on a case by case basis;

- b. Detailed methods of working and involvement of staff will be determined at the operational level within the framework of this MoU. The CA will ensure that appropriate contacts are identified to co-ordinate regulatory activities at each COMAH establishment;
- c. For the key regulatory activities which require a response from the CA to the duty holder, the response will reflect an agreed position between HSE and the Agencies. HSE will communicate this to the operator.
- d. HSE and the Agencies will agree jointly any documents such as guidance material, proforma letters and public information leaflets which are to be issued under the authority of the CA. Documents will be issued in a common CA format.
- e. Regulation 18 of COMAH 1999 requires the CA to prohibit the operation of any establishment or installation, or any part thereof, where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient. HSE and the Agencies recognise that each may need to act unilaterally when an immediate need is identified. The body taking such action will inform its partner in the CA of it at the earliest opportunity if it has not been possible to agree the intended action prior to taking it.

HANDLING DISAGREEMENTS

- 11. If HSE and the Agencies disagree concerning the matters addressed in this MoU, specific requirements will not be placed on operators until those disagreements have been resolved. The first step will be to attempt to resolve them locally. If this is not successful, the matter will be referred to the next level of management within HSE and the Agencies. If the disagreements are not resolved at that level they will be then referred to the BSG. If resolution is still not possible disagreements will be referred to the CASMG.

CA STRATEGIC MANAGEMENT GROUP (CASMG)

- 12. The CASMG will act as the senior body within the CA. It will endorse this MoU, set the strategic priorities for the CA, and ensure appropriate resources are deployed to meet the CA's duties under COMAH. It will approve key policy and operating principle decisions on behalf of the CA, resolve key disagreements affecting the integrated operations of the CA, maintain an overview of CA performance via the BSG and provide a single management focal point for the CA

CA BUSINESS SUPPORT GROUP (BSG)

13. The BSG will advise on possible amendments to the MoU, keep under review policies and working arrangements within the framework of this MoU, review operational strategy and, if possible, resolve any problems not resolved at the local management level. Membership of the BSG and the frequency of, and agenda for, meetings will be by mutual agreement between the Head of Chemicals Strategy Unit (Hazardous Installations Directorate) for HSE, the Head of Industry Regulation for the Environment Agency and the Head of National Environmental Protection and Improvement for the Scottish Environment Protection Agency.

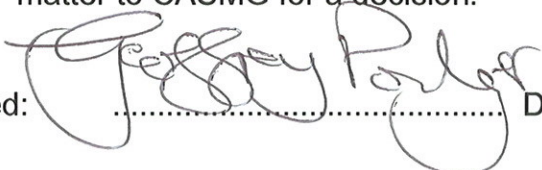
DISCLOSURE OF INFORMATION

14. COMAH establishments are subject to the Freedom of Information (Scotland) Act 2002, the Freedom of Information Act 2000, the Environmental Information (Scotland) Regulations 2004 or the Environmental Information Regulations 2004 and any information requested should be disclosed unless it is covered by an exception or exemption (including any statutory restriction). To encourage a consistent approach to disclosure, it is important that each part of the CA having responsibilities for a particular establishment is aware of any proposed disclosure to the public. The part of the CA intending to disclose information will therefore make its partner in the CA aware of its intention prior to disclosure.

MONITORING OF PERFORMANCE

15. BSG will monitor the CA's performance at the operational level against the principles set out in this MoU. Where deficiencies in performance are found BSG will make enquiries to determine the cause of the deficiency. BSG will report to the CASMG on an annual basis to ensure a senior management overview of the CA's performance. BSG will attempt to resolve any problems relating to the CA's performance and where this is not possible will refer the matter to CASMG for a decision.

Signed:

 Date: 7/9/11

Chief Executive
Health and Safety Executive

Signed:

 Date: 16.9.11

Chief Executive
Environment Agency

Signed:

 Date: 17/11/11

Chief Executive
Scottish Environment Protection Agency