

ANNEX C

ARRANGEMENTS FOR INSPECTION OF HM SHIPS, SUBMARINES AND AUXILIARIES BY HSE INSPECTORS

INTRODUCTION

1. The Health and Safety Executive (HSE) may wish to visit to inspect relevant aspects of the MOD health and safety organisation which may include Her Majesty's (HM) Ships, Submarines and Auxiliaries alongside or in refit at any time in Great Britain, subject to the provisions of this protocol. Exceptionally the HSE may request to visit a vessel at sea. In carrying out such inspections the HSE will not seek to influence the design or operational capability of MOD ships.

APPLICATION OF THE LAW

2. The Health and Safety at Work etc Act 1974 (HSWA) applies up to the baseline of GB territorial waters (e.g. within harbours, ports and certain inland waters). Beyond the baseline, but within territorial waters (generally out to 12 nautical miles), paragraph 8 of HSWA (Application outside Great Britain) Order 2009 applies the HSWA to certain activities carried out by, or associated with, ships. Beyond GB territorial waters HSWA does not apply to ships. The safety of those serving in UK registered merchant vessels is provided for by the Merchant Shipping Acts (MSA) and regulations.

3. Merchant shipping law is enforced by the Maritime and Coastguard Agency (MCA), which is an Executive Agency of the Department for Transport (DfT). HSE, the MCA and Marine Accident and Investigation Branch (MAIB) have established a Memorandum of Understanding (MOU) on the operational demarcation and overlap of their respective legislation in relation to work at the water margin, such as during the loading and unloading of ships, repair and refit. The MOU sets out the primary concerns of the MCA as the safety of ships, their crews, passengers and cargoes on board, and marine pollution matters, whilst HSE is primarily concerned with the safety and activities of shore-based personnel, and facilities on land and offshore installations.

4. Ships of HM Navy, which includes both Royal Navy (RN) Warships and Submarines, and vessels operated by the Army and Royal Marines, are not subject to Merchant Shipping legislation. Inspection of such vessels will be carried out by HSE, in accordance with the terms of this Annex.

5. Other Government ships, i.e. ships owned by the Crown, but not forming part of HM Navy, and including ships belonging to the Royal Fleet Auxiliary (RFA) and the Royal Maritime Auxiliary Service (RMAS), are subject to Merchant Shipping health and safety legislation. Inspection of these vessels by HSE will be carried out in accordance with the HSE-MCA-MAIB MOU referred to in paragraph 3. Inspection

of these vessels by MCA and MAIB will be carried out in accordance with a separate MOU negotiated between MOD, MCA and MAIB which specifically deals with MCA and MAIB's interaction with MOD vessels.

6. The arrangements between MOD and the HSE with respect to access and the inspection of ships of HM Navy are subject to the following principles:

- a. MOD will continue to regulate ship safety on behalf of the Secretary of State for Defence through the mechanism of the Ship Safety Board (SSB). Compliance with the law and justification that equivalent systems of work are in place which are at least as good as those required by statute shall be through a Safety Case regime sponsored by the SSB and the MOD Ship Safety Management System as set out in Joint Service Publication (JSP) 430. The MOD Ship Safety Management System includes the oversight and inspection of all activities carried out by the Commanding Officer (CO) or Ships Company of a Warship, Submarine or Auxiliary.
- b. The SSB mandates that ship safety management systems follow best practice throughout the acquisition cycle. Visibility of these systems will be the prime means of satisfying HSE inspectors of compliance.
- c. MOD vessels classed as Government Ships, but not forming part of HM Navy, are also subject to inspection by the MCA and MAIB, and for certain activities by the HSE (see paragraphs 2 to 5).
- d. HSE will not as a matter of course wish to carry out planned inspection of individual MOD vessels in service.

OBTAINING ENTRY FOR INSPECTION

7. Chief Environment and Safety Officer (Royal Navy) (CESO(RN)) will appoint a Local Responsible Officer (LRO) to act as the administrative co-ordinator for all HSE inspections involving in service RN Ships, Submarines and Auxiliaries. This LRO will liaise with all local HSE inspectors, CO and other relevant authorities. Chief of Materiel (Fleet) (CofM(Fleet)) will similarly appoint a LRO to be the local representative of the Defence Equipment and Support organisation (DE&S). Where an HSE inspector wishes to inspect activities under the authority of the Naval Base Commander the request shall be made, in the first instance, to the DE&S LRO. Where inspection is to be of activities under the authority of the CO of one of HM Ships, Submarines or Auxiliaries, then the request shall be made to the LRO appointed by CESO(RN). If an inspection is likely to involve activities that cross the boundaries of authority then the LRO contacted by the HSE inspector must consult with the other authority's LRO to agree arrangements for the inspection.

8. It is unlikely that an HSE inspector would request access to one of HM Ships, Submarines and Auxiliaries at sea. However, should such circumstances arise CESO(RN) will coordinate all arrangements. The authority of the CO with regard to his vessel is referred to in paragraph 10 below.

9. Before inspection on board a vessel in service, it is essential that the LRO makes prior contact with the CO who may refer the request to the Operating Authority as defined in JSP 430. It should then be possible to make an appointment at a time convenient to both parties. Any difficulty should be referred through the command chain and to CESO(RN). The HSE inspector will similarly refer the position through the HSE management chain and to the Public Services Sector (MOD Lead).

10. When carrying out inspections on board 'in service' MOD vessels, inspectors should bear in mind that for very good safety, operational or security reasons there may, exceptionally, be times when immediate access to parts of a vessel will not be possible or practical. The CO (or his/her representative) will discuss any such restrictions on board his / her vessel with the inspector at the time of the inspection.

NUCLEAR ISSUES AND SENSITIVE ACTIVITIES

11. The application of the various nuclear related Acts and regulations are covered in Annex B to the General Agreement. Arrangements for particularly sensitive activities are covered in Annex D to the General Agreement.

CONDUCT OF INSPECTIONS

12. All HSE inspectors hold a warrant. When inspecting HM Ships, Submarines and Auxiliaries inspectors will conform to the security arrangements of the vessel concerned. Inspectors will be subject to visitor control procedures and must be accompanied at all times by an officer nominated by the CO or CESO(RN). When a vessel is in refit or activities under the authority of the Naval Base Commander are being undertaken onboard, the DE&S LRO shall also accompany the inspector.

13. Operational capability should not be impeded by the process of an inspection. If exceptionally the inspector considers that there is a need to interrupt or stop an activity, the inspector will raise this through the command chain to enable a judgement on the operational implications to be made.

HSE ENFORCEMENT ACTION

14. Action to be taken by the CO in the event of Enforcement Action by the HSE inspector:

- a. Crown Prohibition or Improvement Notice. If the inspector serves or makes it clear that it is his intention to serve a Crown Prohibition or Improvement Notice the CO is to inform and request advice from the Operating Authority immediately. CESO(RN) and relevant IPTs are also to be informed. Where a Prohibition Notice is served on a piece of equipment or work process that would affect the operational requirements of the vessel, then the CO should point this out to the inspector and inform the Operating Authority.

- b. HSE Intention to formally censure MOD (Crown Censure). The Operating Authority should be informed immediately for advice. The Operating Authority will inform CESO(RN) who will inform CESO(MOD) and, if appropriate, CESO(DE&S)

15. In both cases, if the failings arise from activities under the management of the Naval Base Commander, the matter should also be referred to CofM(Fleet) and CESO (DE&S).

DISPUTE RESOLUTION

16. Disagreements between MOD and HSE about the application of this Annex that cannot be resolved locally should be referred through the chain of command/line management for discussion at the HSE/MOD Joint Liaison Committee (JLC), if necessary.