

AN INSPECTOR CALLS!
YOUR COMPANY SITE AND THE
CHEMICAL WEAPONS CONVENTION

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Department of Trade and Industry

1 WHAT IS THE CHEMICAL WEAPONS CONVENTION?

The Chemical Weapons Convention (CWC) is an international arms control treaty, administered by the Organisation for the Prohibition of Chemical Weapons (OPCW) based in The Hague, which aims to eliminate an entire class of weapons of mass destruction. One of the ways the CWC aims to achieve this is by monitoring the peaceful and legitimate use of industrial chemicals in order to prevent the possibility of their diversion into weapons designed to kill and maim. The CWC's provisions extend to all activities involving a large number of toxic and non-toxic chemicals. The UK is a party to the CWC. The Chemical Weapons Act 1996 translated the provisions of the CWC into UK law covering not only acts done in the UK but also acts performed elsewhere by UK individuals and companies and Scottish partnerships.

2 WHO WILL BE INSPECTED ROUTINELY AND WHY?

The CWC provides for routine inspections and each industrial site making a declaration under the CWC is potentially subject to such inspections. Their purpose is to check the accuracy of the information given in the Declaration and to confirm that the activities carried out at the site are consistent with the CWC.

Inspection arrangements for the UK's two sites that are required to make a declaration under **Schedule 1** are based on the risk to the object and purpose of the CWC posed by the relevant chemicals, the characteristics of the facility and the nature of the activities carried out there.

Inspections may be carried out at **Schedule 2** sites that produced, processed or consumed more than 10 kg of a Schedule 2A* chemical, 1 tonne of a Schedule 2A chemical or 10 tonnes of a Schedule 2B chemical in any of the previous three years, or anticipate doing so in the next year.

Inspections may be carried out at a **Schedule 3** site that produced during the previous year, or anticipates producing in the next year, more than 200 tonnes aggregate of any Schedule 3 chemical above the declaration threshold of 30 tonnes.

Inspections may be carried out at plant sites that produced by synthesis during the previous year more than 200 tonnes of unscheduled **discrete organic chemicals (DOC)** and at plant sites comprising one or more plants that produced by synthesis during the previous year more than 200 tonnes of an unscheduled DOC containing the elements **phosphorus, sulphur or fluorine (PSF)**.

All references to 'year' are to calendar years.

3 WHEN WILL YOUR COMPANY BE NOTIFIED ABOUT AN INSPECTION?

Companies will be notified by the CWC National Authority that they have been selected for inspection by the OPCW between one to five days (or, perhaps, more) in advance. The length of notice will vary, depending on whether the inspection relates to a declaration of a Schedule 1, Schedule 2, Schedule 3 or a DOC/PSF site, and on the timing of notifications by the OPCW. It would be helpful if the company appointed a liaison officer to prepare the site for the inspection and to act as a focal point during it.

Different arrangements apply to challenge inspections (see below).

4 HOW LONG WILL AN INSPECTION LAST?

There is no time limit on the duration of an inspection of a **Schedule 1** facility.

An inspection of a **Schedule 2** site may last up to 96 hours, and inspections of **Schedule 3** or **DOC** sites up to 24 hours. Once an inspection starts, activities can continue around the clock, although Inspectors tend not to work this way for routine inspections. An inspection period may be extended by agreement.

Again, different arrangements apply to challenge inspections (see below).

5 HOW OFTEN WILL A SITE BE INSPECTED?

The frequency of routine inspections of **Schedule 1** sites will be determined by the OPCW, taking into account the perceived risk that the particular site presents to the purpose and objective of the CWC. In a similar way, the OPCW will decide on the frequency of inspections of **Schedule 2**, **Schedule 3** and **DOC** sites - subject to such sites receiving not more than 2 routine inspections per year. Any challenge inspections (see below) will be in addition to this number.

6 WHAT IS A CHALLENGE INSPECTION?

In addition to routine inspections, the CWC provides for the possibility of a challenge or surprise inspection of **any** site (whether or not declared) in the UK.

A challenge inspection may be initiated by a State which is a Party to the CWC to clarify any concerns it may have about another's compliance with the Convention. Twelve hours notice will be given of such inspections, which may last up to 84 hours and may involve inspectors working around the clock at the site.

No State Party has yet received a challenge inspection. The UK and some other States Parties have mounted practice challenge inspections to assist the OPCW's preparedness.

7 WHO ARE THE INSPECTORS?

The Inspectors are full-time, qualified and trained members of the Technical Secretariat of the OPCW. They are nationals of countries that have ratified the CWC and each inspector will have been accepted by the UK Government, in consultation with industry associations, to undertake inspections in the UK.

The size of an Inspection Team will be determined by the Technical Secretariat, based upon its assessment of the requirements of a particular inspection. A Team will usually comprise about 4 Inspectors, although it could be much larger (up to 50) for challenge inspections.

8 WHAT WILL THE INSPECTORS DO DURING AN INSPECTION?

The Inspection Team will formulate an initial inspection plan which will indicate whether it intends to divide into sub-teams, what areas it wishes to inspect initially, areas where it envisages that samples might be taken and the equipment which it proposes using. (See also “**Facility Agreement**” below). This plan will be updated as the inspection proceeds.

The Inspection Team, which normally divides into no more than two sub-groups, will undertake its work in a way which minimises the disruption to the site but which still enables the Team to complete its mission in a timely and effective manner. The Team will be escorted at all times by a representative of the site and the CWC National Authority while away from their room at the site.

During the inspection, the Inspectors will observe all the site’s rules and regulations on health and safety. They will have rights of access to areas of the site sufficient to enable them to undertake their duties. The Team will be entitled to interview site staff as necessary about their duties. They will also have the right to inspect relevant documents and records, and to have photographs and samples taken as necessary. Unless agreed by the company, the Inspectors will not operate any of the site’s equipment, but they can require particular operations to be performed by the site’s staff.

9 WHAT DOES THE COMPANY DO DURING AN INSPECTION?

As soon as the Inspection Team arrives at the site, the inspected company will be expected to brief the Inspectors about the nature of the activities undertaken at the site, the physical layout of the site, health and safety regulations, the availability of staff and documents, any particular concerns about confidentiality, the administrative and logistical arrangements for the inspection, etc. It would be helpful, at this stage, to supply a detailed plan of the inspected site, and copies of any health and safety regulations or other relevant information including trade literature. The inspected company representatives should provide a guided tour of the site which will help the Inspection Team to formulate its inspection plan. At the end of the briefing, which may last for no more than 3 hours, the inspection will formally begin and the inspection "clock" will start.

Although inspections will take place only comparatively infrequently, sites should have a contingency plan. Staff involved need to be made aware of what to expect so that they are prepared to help the inspectors fulfil their remit and answer any queries during the course of the inspection.

The company should provide office space - preferably a lockable room equipped with a telephone and, if possible, a fax machine - for the

inspectors, and space - equipped with power and running water - for any analysis the Inspectors need to undertake. If possible, meals should be provided for them by the site (the National Authority will organise packed lunches if necessary). It would also be helpful if the CWC National Authority escort staff could be provided with a work room from where the progress of the inspection can be monitored. Costs incurred in providing these facilities may be refunded by the CWC National Authority. The company will need to provide its own staff to accompany the Inspectors during the inspection. Ideally, these should be people who are knowledgeable about the area to be visited. The company should also be prepared to provide timely access - subject to confidentiality concerns - to any areas (and to the staff working in these areas) which the Team asks to visit in order to fulfil its remit.

Any samples required by the Inspectors will be taken by site personnel advised as necessary by the CWC National Authority. Any analysis will be performed on site if facilities exist. However, samples may be removed from the site for analysis at laboratories designated by the OPCW.

10 HOW WILL CONFIDENTIAL INFORMATION BE SAFEGUARDED?

The CWC, and internal OPCW policy, provide that only information that is strictly necessary for the conduct of the inspection should be sought by the Inspectors, and that access within the OPCW to commercially sensitive information will be allowed solely on a need-to-know basis.

The Chemical Weapons Act 1996 makes the unauthorised disclosure in the UK of information obtained under the Act - with exceptions in certain clearly defined circumstances - a criminal offence. Companies have the right to take measures to protect commercially confidential information and data not relevant to the purposes of the CWC. They may do so by means of Managed Access.

11 HOW DOES THE COMPANY MANAGE THE ACCESS OF THE INSPECTORS TO CONFIDENTIAL INFORMATION?

Access may be managed in a number of ways, including:

- removing sensitive and unrelated papers from offices;
- shrouding unrelated displays, stores and equipment;
- shrouding sensitive pieces of equipment, such as computer or electronic systems;
- limiting the number of inspectors given access to particularly sensitive areas of the site;
- logging off computer systems and turning off data indicating devices.
- using the "Random Selective Access" technique. (Under this, inspectors might, for example, be allowed to choose a particular building for inspection, or identify for review a certain filing cabinet or a selection of documents that may be edited to safeguard confidential information unrelated to the inspection).

It is, however, important that these mechanisms are used sparingly and only where they are strictly necessary to protect commercially confidential information. Their use on a routine basis will only cause suspicions that the site may not be in compliance with the CWC. Moreover, the use of Managed Access Procedures does not absolve the company from the requirement to demonstrate that the activities carried out on its site are fully compliant with the CWC.

12 WHAT IS A FACILITY AGREEMENT?

A **Facility Agreement** contains information specific to the site and its aim is to facilitate subsequent inspections by setting out the various responsibilities of the Inspection Team as well as the Company and the Site being inspected. The contents of the Agreement will include the timing, frequency and duration of inspections; health and safety requirements; agreements related to the protection of confidential information; sampling and analysis; limitations on the use of inspection equipment and the administrative arrangements. Given its scope, the inspected site will need to play an active part in the negotiation of a Facility Agreement with the Inspectors.

Facility Agreements are required for **Schedule 1** sites, and for **Schedule 2** sites unless the Inspection Team agrees that such an agreement is unnecessary. **A Schedule 3** or a **DOC/PSF** site may request a Facility Agreement but they are not required for these sites.

13 WHAT HAPPENS AT THE END OF AN INSPECTION?

The Inspection Team will formulate its preliminary findings in written form within 24 hours of the completion of an inspection. These will be presented to the site personnel and the National Authority and are normally agreed before the Inspectors leave the Site.

A draft factual report on the inspection will be submitted to the National Authority within 10 days. This will be passed on to the site for comments. The final report, incorporating any observations, will be passed to the Director-General of the OPCW within 30 days of the end of the inspection. The report will draw attention to any ambiguities that could not be resolved during the inspection and the degree of co-operation received by the Inspection Team from the inspected site.

14 WHAT HELP WILL BE AVAILABLE?

The National Authority makes preliminary visits to all declared sites that can expect an early inspection. If necessary, after an inspection has been notified by the OPCW, the CWC National Authority will send a representative to your site to take management and others through the processes involved.

The National Authority will inform you about your legal obligations, and on inspection procedures. The National Authority's objective will be to enable you to ensure that, when an inspection takes place, all the legitimate requirements of the Inspection Team are fully satisfied, and at the same time, the minimum unavoidable disruption is caused to the normal activities of your company.

The National Authority will seek clarification on your behalf on any matter, at any time, during the inspection. It will also help you to address any problem that may arise in the course of efforts to protect commercial confidentiality and the implementation of Managed Access Procedures.

15 FURTHER INFORMATION

For further information about any aspect of the Chemical Weapons Convention, please contact:

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