

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF THE ENVIRONMENT AND THE HEALTH AND SAFETY EXECUTIVE

INTRODUCTION

1. This Memorandum of Understanding is between the Department of the Environment (DoE) and the Health and Safety Executive (HSE). Its purpose is to ensure effective co-ordination of the UK Competent Authority designated for the purposes of Council Regulation (EEC) No 793/93 of 23 march 1993 on the evaluation and control of the risks of existing substances (ESR).
2. The Notification of Existing Substances (Enforcement) Regulations 1994 designate the Secretary of State for the Environment and the Health and Safety Executive, acting jointly, as the Competent Authority for the UK. The role of the Competent Authority is to participate in the implementation of ESR in collaboration with the European Commission, in particular in the drawing up of priority lists of substances for evaluation and the subsequent evaluation of those substances.
3. The Memorandum sets out the framework for co-operation between DoE and HSE in the practical working of the Competent Authority.
4. It is the responsibility of staff in both organisations to ensure prompt action to achieve effective liaison whenever the need arises. It is recognised that this will involve principally discussions between staff at working level, to agree how ESR should be implemented and to determine ways of reconciling any differences that may arise.

MANAGEMENT GROUP

5. A Management Group, chaired at Grade 7 level, will meet whenever the need arises, and at least once every 12 months. The chair will be taken in alternate years by DoE and HSE and the organisation providing the chair in any particular year will provide the secretariat for the Group.
6. The terms of reference and composition of the Management Group are at Annex 1, and shall also include a review of the working of this Memorandum of Understanding.

WORKING ARRANGEMENTS

7. Day to day policy work on ESR is the responsibility of designated sections within DoE, Toxic Substances Division and HSE, Health Policy Division Chemicals Branch. Arrangements for enforcement action for ESR are given in Paragraph 9.

8. Most contacts between DoE and HSE will arise in the context of day to day operations. It is the responsibility of staff in both policy sections to identify, as they arise, topics needing liaison, and to ensure that they are dealt with effectively. Any information received by one part of the Competent Authority will normally be copied to the other part. If issues cannot be dealt with by informal contacts they should be referred to the Management Group.

ENFORCEMENT

9. In particular, staff in each policy section shall liaise concerning any enforcement action considered necessary, including acting as contact points with the regulatory authorities (Field Operations Division in HSE, Her Majesty's Inspectorate of Pollution in DoE and Her Majesty's Industrial Pollution Inspectorate of the Scottish Office Environment Department). Responsibility for taking enforcement action shall be determined between those authorities. The policy sections shall ensure that no duplication occurs.

DISCLOSURE OF INFORMATION

10. So that staff in DoE and HSE are aware of any proposed disclosure to the public of information related to ESR, it is the responsibility of the part of the Competent Authority proposing public disclosure of information which may be relevant to the other part to make them aware of the proposed disclosure.

11. In particular, staff should be aware of the restrictions on disclosure of information contained within Article 16 of ESR (Annex 2).

12. Disclosure of information shall be in accordance with the Code of Practice on Access to Government Information and the Environmental Information Regulations 1992.

CITIZEN'S CHARTER

13. The principles of the Citizen's Charter apply to the work of the Competent Authority.

SUCCESSOR BODIES

14. The arrangements in this Memorandum applicable to HMIP, HMIPI or THSD shall apply to any successor bodies (or internal Divisions of HSE) set up to carry out the functions of those bodies (or Divisions) relevant to this Memorandum.

Signed

For DoE

For HSE

Date:

Date:

Competent Authority for the Existing Substances Regulation
in the UK

Introduction

The Existing Substances Regulation (No. 793/93) came into direct effect on 4 June 1993. Regulations in the UK make provision for offences, penalties and the appointment of the Competent Authority. The Competent Authority is the Secretary of State for the Environment and the Health and Safety Executive acting jointly. However there is a need for an efficient system that will ensure that the UK meets the obligations placed upon the UK Competent Authority in the ESR.

Competent authority Management Group

The purpose of the Group is to ensure adequate arrangements are in place for the implementation of ESR in the UK. The Group is the management arm of the Competent Authority and ensures that the UK Competent Authority meets the statutory obligations placed upon it by ESR.

The Competent Authority Management Group consists of officials from DoE (TSD) and HSE (HPD C and THSD). Representatives of other Government Department are invited, as appropriate where they have an interest. The enforcement agencies (HSE - Field Operations Division, and HMIP/HMIPI) are consulted as appropriate, and are invited where they have an interest. The chair for meetings is rotated on an annual basis between officials of DOE and HSE.

The Group addresses the following issues:

- i) Monitoring the introduction of UK implementing Regulations.
- ii) Ensuring guidance to accompany ESR is amended as necessary in the light of experience.
- iii) Advising on arrangements, if appropriate, for informing industry on ESR.
- iv) Setting up UK briefing meetings for EC meetings on ESR.

- v) Ensuring adequate security arrangements on ESR.
- v) Ensuring adequate security arrangements are in place for dealing with the confidential information associated with ESR.
- vi) Drawing up and endorsing draft Memoranda of Understanding between HSE and HMIP/HMIPI concerning enforcement.
- vii) Determining the allocation of work for priority substances - both UK substances and those which UK will shadow.
- viii) Monitoring the work on priority substances with respect to technical matters and resources.
- ix) Acting as UK rapporteur, allocating and managing the work associated with this.
- x) Co-ordinating any necessary enforcement action by the "lead department" in accordance with the memoranda of Understanding.
- xi) Endorsing and co-ordinating submission of reports on priority substances to the EC.
- xii) Monitoring the work programme and reviewing resource allocation with respect to the statutory obligations placed on the Competent Authority.

Outputs

At this stage there is no intention to over formalise the arrangements. A written annual report is not seen as necessary, but regular information will be given to the Advisory Committee on Toxic Substances (HSC/E) and the Advisory Committee on Hazardous Substances (DoE). There will also be the assessments on substances allocated to the UK for evaluation.

Disclosure of Information under ESR

Article 16 of ESR states:

"1. If he considers that there is a confidentiality problem, the manufacturer or importer may indicate the information provided for in Articles 3, 4, 7 and 12, which he considers to be commercially sensitive and disclosure of which might harm him industrially or commercially, and which he therefore wishes to be kept secret from all persons other than Member States and the Commission. Full justification must be given in such cases.

Industrial and commercial secrecy shall not apply to:

- the name of the substance, as given in EINECS,
- the name of the manufacturer or importer,
- data on physico-chemical properties of the substance and on pathways and environmental fate,
- the summary results of the toxicological and ecotoxicological tests, in particular data on carcinogenicity, mutagenicity and/or the substance's toxicity for reproduction,
- any information relating to the methods and precautions relating to the substance and the emergency measures,
- any information which, if withheld, might lead to animal experiments being carried out or repeated needlessly,
- analytical methods that make it possible to detect a dangerous substance when discharged into the environment as well as to determine the direct exposure of humans to the substance.

If the manufacturer or importer should himself later disclose previously confidential information, he shall inform the competent authority accordingly.

2. The authority receiving the information shall decide on its own responsibility which information is covered by industrial and commercial secrecy in accordance with paragraph 1.