

SUPPLEMENTARY MEMORANDUM OF UNDERSTANDING BETWEEN HER MAJESTY'S INSPECTORATE OF POLLUTION AND THE HEALTH AND SAFETY EXECUTIVE

BACKGROUND

1. The Notification of Existing Substances (Enforcement) Regulations 1994 (SI 1994 No. 1806) came into force on 29 July 1994 providing for the enforcement of EC Regulation 793/93 on the Evaluation and Control of the Risks of Existing Substances.
2. The Health and Safety Executive (HSE) and the Secretary of State for the Environment (DoE) acting through the Chief Inspector of Pollution (HMIP or HMIPI in Scotland) have overall responsibility for enforcement of the Regulation.
3. The Notification of Existing Substances (Enforcement) Regulation 1994 designated the Health and Safety Executive and the Secretary of State for the Environment, acting jointly, as the Competent Authority.

SUPPLEMENTARY MEMORANDUM OF UNDERSTANDING

4. This memorandum of Understanding is supplementary to and should be read in conjunction with the Memorandum of Understanding between Her Majesty's Inspectorate of Pollution (HMIP) and the Health and Safety Executive (HSE) dated 17 October 1990 (existing memorandum). Its purpose is to ensure effective co-ordination of the enforcement of Council Regulation (EEC) No. 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances (ESR) so as to achieve full UK implementation without excessive burden on UK businesses and enforcement authorities. Both Enforcement Authorities will work under the general policy supervision of the Competent Authority for the Regulation, which is responsible for implementing the ESR scheme within the UK.
5. In most circumstances requests for enforcement action will come from the Competent Authority itself. These will be channelled from the Competent Authority to both the Director of Operations, HMIP and the Unit Director (FOD E1) of HSE's Field Operations Division, who are responsible for co-ordinating liaison on operational matters. They in turn will pass the request to the inspectors in each authority responsible for the particular premises. It will be the responsibility for the local inspectors to liaise and to determine which authority should carry out the enforcement action in the particular case. Factors that should be taken into account when deciding on the appropriate authority include:

- a. Which authority has legal powers;
 - b. The subject matter requiring enforcement. In general, if the main concern is for risks to human health then enforcement should be carried out by HSE inspectors, while if the main concern is for risks to the environment then enforcement should be carried out by HMIP;
 - c. Any other current contacts between the regulatory authorities and the company concerned which would minimise the use of resources by the enforcement authorities and/or reduce regulatory burdens on industry.
6. For operational issues relating to enforcement, the appropriate contacts are:
- i) in HMIP, the relevant Area Managers;
 - ii) in HSE, the Principal Specialist Inspector (Occupational Hygiene) in the relevant Field Consultancy Group.
7. Any issue that cannot be resolved at Area Manager and Principal Inspector level should be referred to the appropriate Regional Manager HMIP and Head of Field Consultancy Group in HSE. If the issue still cannot be resolved locally, the views of the Competent Authority should be sought. If the matter still cannot be resolved, it should be referred to senior management who will refer, if necessary, to the Joint Review Group set up to monitor the working of the existing memorandum.
8. Each authority will inform the other and the Competent Authority on any proposed enforcement action and subsequent progress.
9. Under Article 16 of ESR companies are able to keep certain information confidential. Before disclosing information provided in connection with ESR, inspectors at the working level should keep each other informed and where necessary consult the Competent Authority. Such disclosure will be in accordance with the Code of Practice on Access to Government Information and the Environmental Information Regulations 1992.

SUCCESSOR BODIES

10. 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 HMIP

For HSE

Date:

Date: