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Target Audience
All HSE Inspectors

HEALTH AND SAFETY (ENFORCING AUTHORITY) REGULATIONS 1998

OM 1998/108 summarised the main changes introduced by the Health and Safety (Enforcing Authority) Regulations 1998, which came into force on 1 April 1998. This OC gives detailed and specific guidance on the meaning of the revised Regulations and should assist inspectors in resolving questions which may arise although the interpretation given is subject to judicial decision in any particular case.

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INTRODUCTION

1 The Health and Safety (Enforcing Authority) Regulations 1998 (EA Regulations), which came into force on 1 April 1998, allocate to local authorities (LAs) the responsibility for enforcing the Health and Safety at Work etc Act 1974 (HSW Act) and the relevant statutory provisions (RSPs), subject to specific exceptions, in all premises where the main activity is listed in Schedule 1 to the Regulations. The majority of these are premises where the LAs were the enforcing authority under the previous 1989 Regulations.

2 Any difficulties encountered with these Regulations should first be raised with the enforcement liaison officer (ELO). The role of the ELO is described in OC 124/6. Difficulties which cannot be resolved should be referred by the ELO to the Enforcement Liaison Section of the Food and Entertainment Sector, Glasgow Office.

DETAILED COMMENT ON THE REGULATION

Regulation 2(1) - Interpretation

3 Regulation 2(1) reflects the new regulatory changes as well as updating other definitions, additions or omissions following other statutory changes. These are discussed in detail in this OC.

'Agricultural activities'

4 'Agricultural activities' are defined by reg.2(1)(a). However, reg.2(1)(b) excludes such activities from the definition when they are carried out in a garden centre or other shop. The main activity in such premises will be retail and the LA will be the enforcing authority. A shop operated by a farmer on farm premises is allocated to HSE as the main activity remains 'agriculture'.

'Construction work' and 'contractor'

5 'Construction work' and 'contractor' now have the meanings assigned to them by the Construction (Design and Management) Regulations 1994 reg.2(1).

'Dock premises'

6 Although not listed in the EA Regulations, dock premises are also allocated in their entirety to HSE by virtue of a provision in the Docks Regulations 1988 reg.22. However, dock premises are not the whole of the land area within a dock or port. The Docks Regulations reg.2(1) defines 'dock premises' as 'any dock, wharf, quay, jetty or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities'. Some docks may have activities carried on within them which would normally fall to the LAs for inspection, eg pubs, shops, clubs, warehouses or offices. Where this activity is easily separable from the dock, then such activities are enforced by the LA. The unloading of fishing vessels is allocated to HSE by virtue of the Loading and Unloading of Fishing Vessels Regulations 1988 reg.8.

'Fairground'

7 The definition of 'fairground' has been changed to restrict it to those areas used wholly or mainly for the operation of any fairground equipment, other than a coin-operated ride, non-powered children's playground equipment, swimming pool slide, go-kart, or bouncy castle and similar bouncing devices. It does not change the definition of 'fairground equipment' ([see the appendix](#)) but it means that the presence of a bouncy castle in a pub garden does not become an isolated fairground requiring inspection by HSE. [See also paras 95-100](#) of this OC.

'Local authority'

8 The definition of 'local authority' has altered slightly to take into account the recent creation of unitary authorities.

'Railway' and 'prescribed system of guided transport'

9 'A prescribed system of guided transport' is now included in the interpretation of a 'railway' as defined in the Railways and Other Transport Systems (Approval of Works, Plant and Equipment) Regulations 1994 Schedule 1.

Regulation 3(1) - Allocation to LA of main activities listed in Schedule 1

10 Local authorities are given responsibility for the RSPs of Schedule 1 activities in non-domestic premises irrespective of previous responsibility for

enforcement, subject to other provisions of reg.3 and of regs.4, 5 and 6.

'Work in domestic premises' - clarification

11 Local authorities will normally have no enforcement role in private dwellings for any work within the meaning of 'work' and 'at work' (as defined by HSW Act s.52). However, where a Schedule 1 activity is carried out in premises as a distinct undertaking, it is necessary to have regard to the layout of the premises in order to decide whether the workplace is separate from the domestic premises and will therefore fall to the LA. If the workplace is in a dedicated part of the premises which may be approached by customers or clients without passing through the domestic part, then this would normally result in allocation of that part of the premises to the LA. Home workers will invariably fall to HSE, unless the work is carried out in a dedicated area where the activities would fall within Schedule 1, eg office work.

'Common parts of domestic premises'

12 The final part of reg.3(1) expressly provides for HSE enforcement in any other case including the common parts of domestic premises.

13 Such premises will include lobby areas and common staircases of blocks of flats. Most of these premises are not permanent workplaces and any work that does take place is likely to be transient in nature and involve activities reserved to HSE by Schedule 2, such as construction work or the maintenance of a electricity systems.

14 But the responsibility only relates to common parts of 'domestic premises' as defined by HSW Act s.53(1)(b), so it does not affect LA enforcement in hotels, guest house and hostels. Nor does it have any affect on LAs' continuing enforcement role where the main activity is the provision of permanent or temporary accommodation as set out in the Regulations Schedule 1 para 5.

Regulation 3(2) - Separate occupancies in premise

15 Regulation 3(2) provides for each part of non-domestic premises separately occupied by a different occupier to be separately allocated according to the main activity of that separate occupancy. Separate parts of a building occupied by the same firm, eg a factory in one part with its office in another, do not have different occupiers and hence will not be separately allocated. Similarly, a factory canteen staffed by employees of the factory occupier will remain with HSE. A factory canteen which is run by a different occupier, eg a catering contractor, will generally fall to the LA for enforcement, but see reg.4(2) for the exceptions. Where anomalies arise resulting in the inefficient use of resources, these should be resolved using local transfer arrangements.

Regulation 3(3) - mobile vendor

16 The use of the highway by mobile vendors created some uncertainty as to the correct enforcing authority and this change seeks to clarify the issue. Although HSE has responsibility for work activities on the highways, it lacks the day-to-day knowledge of the locations where such vendors (ice-cream vans, burger vans etc) stop to trade, making inspection programmes difficult to plan. Local authorities already enforce food safety/hygiene regulations for those mobile vendors selling food or drink. They also have the licensing responsibility to allow such vendors to trade,

thereby developing a knowledge of the trading arrangements and activities involved. However, although food safety was the principal argument for this statutory change, there is an increasing number of mobile vendors selling a wide range of articles such as books, jewellery, paintings etc.

17 Regulation 3(3) is a new provision which addresses this issue. The regulation deals with any vehicle which is parked in connection with the sale from it of food, drink or other articles. The vehicle and its pitch shall be regarded as separate premises. Local authorities are the enforcing authority for all mobile vendors.

18 Additional guidance on main activity, peripatetic workers and mobile workplaces is given in HELA LAC 23/6 (currently under review).

Regulation 3(4)(a) - Common parts

19 The LA will be the enforcing authority for the common parts of non-domestic, multi-occupancy premises except that HSE will be the enforcing authority where:

1. all separate occupiers are enforced by HSE, or
2. an HSE-enforced occupier has the responsibility for any or all of the common parts, but only to the extent of his/her liability. Thus if an LA-enforced occupier also has responsibility for some common parts, the LA will be responsible for those.

20 Common parts are defined in reg.2(1).

Regulation 3(4)(b) - Land within the perimeter of an airport

21 Any land within the perimeter of an airport was previously allocated to HSE. But local reg.5 transfers have frequently been used to allocate the separate retail and catering premises in the public areas to LAs. This has resulted, in practice, in LAs enforcing the catering and shops premises within airport buildings and HSE enforcing the cargo and baggage handling activities, and the security x-ray machines. To bring the Regulations into line with current practice, reg.3(4)(b)(i) and (ii) allocate to HSE those common parts outside a building (except car parking) or those 'air-side' to which only passengers and airport employees have access. Local authorities are the enforcing authority for airport car parks (Schedule 1 para 14).

Regulation 3(5) - Complex sets of premises

22 Regulation 3(5) is consequential to para 3(2) of the Regulations. It allocates complex sites, of the type listed, to HSE. However, a transfer by local agreement may be considered for premises that are generally allocated by Schedule 1, eg a bank, catering establishment or retail outlet on a educational campus.

Regulations 3(5)(a) and (b) - The Channel Tunnel and offshore installations

23 Regulations 3(5)(a) and (b) now include updated references to the 'tunnel system' as defined by the Channel Tunnel Act 1987 and 'offshore

installation' as defined by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995.

Regulation 3(5)(c) - Building or construction site

24 The references to building or construction sites remain unaffected.

Regulation 3(5)(d) - Educational establishments

25 The exception from reg.3(2) for educational establishments is limited to the 'campus'. The campus should be taken as meaning the grounds associated with buildings, or other facilities, in which the main activity is education and any other activities, occupiers or buildings within those grounds will also fall to HSE by virtue of this provision. Local transfer as outlined in para 21 above could, however, be considered. At some universities, residential accommodation for students is provided at clearly separate sites at which little or no educational activities take place, such premises would be allocated to LAs by virtue of Schedule 1 para 5. The colleges of collegiate universities such as Oxford and Cambridge, are considered to fall to HSE as the main activity is education despite there also being a large element of residential accommodation.

Regulation 3(6) - Special provisions for railways

26 For the purposes of reg.3(6), a railway is defined as a 'railway or tramway with (in either case) a gauge of 350 millimetres or more or a prescribed system of guided transport'. Regulation 3(6) identifies the HSE as the enforcing authority for the common parts in a railway station or terminal or in a goods yard which is served by a railway. Local authorities, by virtue of Schedule 2 para 12, cannot enforce activities relating to the operation of a railway. Therefore, HSE is also the enforcing authority for any activity in a railway control office relating to the operation of a railway. Local authorities, however, are the enforcing authority for the office activities, as defined by reg.2, of these premises. This new paragraph replaces the references to the previous specific operators of railway systems reflecting privatisation and the separate franchises now responsible for rail operation.

Regulation 3(7) - modification

27 This simply allows the exceptions in reg.4 and local transfers or assignments in regs.5 and 6 to take precedence over reg.3.

28 Where changes made in re-enacting the Regulations have the affect of altering the allocation of premises to a different enforcing authority, this is not a transfer under reg.5. There is strictly no requirement to notify persons affected. The employers concerned should, however, be notified of the change by the new enforcing authority.

29 Where a premises is re-allocated by the Regulations (on 1 April 1998) or by subsequent local transfer, any incident occurring before the date of transfer will fall to the original enforcing authority to deal with as if no re-allocation had occurred.

Regulation 4 - Exceptions overriding allocation under Regulation 3(1)

Regulation 4(1) - Specified bodies

30 Regulation 4(1) makes HSE the enforcing authority for the activities of the bodies listed in reg.4(3) (this has been amended slightly to take into account the creation of unitary authorities), and those of their officers or employees wherever they happen to work as well as any part of premises which such bodies occupy. Thus as a consequence, HSE will enforce for activities conducted by the named bodies wherever they arise, eg an LA refuse collection activity at a supermarket premises for which the LA is the enforcing authority. HSE will also enforce for common parts of multi-occupied premises for which the bodies have duties under the RSPs but which may not be occupied by that body, eg common parts of an LA-owned market. Separate occupiers in that market will be enforced by the LA.

Regulations 4(2) - Premises occupied by specific bodies - separate occupiers

31 This provides for HSE enforcement for any separate occupier within premises occupied by a specified body, eg LAs, Crown, where 2 conditions apply, ie that:

1. the premises are mainly occupied by the specified body; and
2. the part occupied by the other person is for the purpose of providing services at the premises for the specified body.

An obvious example will be NAAFI at an MOD establishment (but not NAAFI in the high street of a garrison town). A privately run canteen facility in an LA office would fall to HSE to enforce. The part occupied may be by lease or licence. This is another exception to the separate occupancy concept under reg.3(2) but restricted to specified bodies.

'Indoor sports halls owned by LAs'

32 The 1989 Regulations (reg.4(4)) reserved enforcement of sports halls where LAs had any section 4 responsibilities to HSE. This paragraph has now been deleted to bring the enforcement position for sports halls into line with that for other LA-owned premises such as shopping malls. HSE will still be responsible for enforcing any duties on the LA, but the sports activities, where they are managed by another, will be for LAs to enforce, in line with the Regulations Schedule 1.

33 In most cases the sports halls are 'occupied' solely by the contracted managing agents of the activities and facilities available, even though some LAs may hold the freehold or occupy under a lease parts of the premises. In these cases, reg.4(1)(b) and (2) do not apply and the LA becomes the enforcing authority by virtue of reg.3(1).

34 However, where a clear conflict of interest is demonstrated, a reg.5 local transfer can be undertaken.

Regulation 4(3)(h) - Crown courts, magistrates' courts and the Probation Service

35 Crown and magistrates' courts, HM Coroners' courts, and Sheriff's courts in Scotland, are allocated to HSE as the main activity carried on in such premises does not appear in Schedule 1.

36 The activities of the Probation Service are largely allocated to HSE as the main activity does not appear in Schedule 1. However, where the main

activity comprises office activities or the provision of accommodation such as hostels, the LA will be the enforcing authority. Workshops, such as those offering activities such as metal working, will be allocated to HSE.

Regulation 4(4)(a) - Enforcement of HSW Act s.6

37 This gives HSE sole enforcement responsibility for HSW Act s.6, both to inspect and enforce in relation to articles or substances for use at work, including at LA-enforced premises. However, in practice, HSE will consult with LAs before exercising this responsibility in LA-enforced premises.

38 Local authorities have been requested to advise the ELO of any significant contraventions of section 6. Where ELOs receive such information it should be relayed to the PI supplier in the usual manner. Local authorities should be advised that a speedy response can only be anticipated for urgent matters. Matters relating to the Supply of Machinery (Safety) Regulations 1992, should be treated similarly.

39 If additional information is required from the LA, this should be sought in the first instance through the appropriate ELO. If it is considered that a visit should be paid by any HSE inspector to the LA-enforced user, arrangements for such visits should be made, in conjunction with the ELO, through the appropriate LA.

40 Such special arrangements are not considered necessary for routine section 6 visits to the suppliers' premises where enforcement at the premises is otherwise undertaken by an LA.

Regulation 4(4)(b) - Specified activities

41 Any activity in Schedule 2, whether or not the main activity at premises, is excepted to HSE. [Refer to paras 93-117.](#)

Regulation 4(5) - 4(7) - Other legislation

42 Regulation 4(5) provides for enforcement allocation under reg.3 and exceptions contained in reg.4 to be modified by other regulations made under HSW Act. For example, the Notification of Installations Handling Hazardous Substances Regulations 1982, the Docks Regulations 1988, the Loading and Unloading of Fishing Vessels Regulations 1988 all of which give enforcement allocation to HSE and the Petroleum Consolidation Act (Enforcement) Regulations 1979, which provide for enforcement by petroleum licensing authorities are unaffected by these Regulations.

43 Regulation 4(6) enables the exceptions contained in reg.4 to be modified through transfers, or assignments where appropriate under regs.5 and 6 ([see paras 45-53](#)).

44 As outlined above, reg.4(5) provides for enforcement powers given to other bodies under the RSPs to remain unaffected by allocation under reg.3 and reg.4(1) to (4).

Regulation 5 - Transfer of responsibility

45 Regulations 3 and 4 and Schedules 1 and 2 allocate enforcement responsibility for premises. However such allocation can, if necessary, be subject to subsequent transfer.

46 Regulation 5(3) requires notice to be given by the recipient authority to persons affected by the transfer, after a transfer has been made.

47 Regulation 5(4) corresponds with a similar provision under the 1989 Regulations for Crown occupancies. The transfer procedures under reg.5(1) 5(3) are disappplied. However, a residual power of transfer is maintained for office activities, exercised by an agreement of both enforcing authorities and the Government department or other public body concerned.

48 Additional guidance on the use of local transfers will be given in OC 124/8 (to be issued shortly).

Regulation 6 - Assignment in cases of uncertainty

49 The arrangements described below are for use in those situations where on the facts relating to particular premises, part of premises or activity, the correct allocation of enforcement between HSE and LAs is unclear. Additional guidance on the use of assignment is given in HELA LAC 23/8.

50 Regulation 6(1) permits assignment between authorities, but only if 2 conditions are simultaneously fulfilled, ie:

1. they agree that uncertainty does exist; and
2. they agree which authority is the more appropriate to enforce.

51 Enforcement liaison officers are asked to inform the Enforcement Liaison Section of the Food and Entertainment Sector, Glasgow, when an assignment is being considered in order to allow early detection of any significant trends. Enforcing authorities should be guided by their legal advisers as to whether uncertainty does exist; where such advice does indicate there is genuine uncertainty and there is agreement as to which is the appropriate authority then an assignment can proceed. Where the legal advice is that uncertainty does not exist then allocation according to the Regulations should stand unless a transfer is made under reg.5. Either enforcing authority may apply to the Commission under reg.6(2) for the purpose of removing uncertainty and to have the premises allocated by the Commission to the most appropriate authority. In such cases however, to retain credibility and authority with employers, it is essential that the enforcing authorities agree about enforcement in the interim period before the final decision is reached. It is hoped that in almost all cases agreement can be reached, and that the Commission will only be approached as a very last resort.

52 The Executive has delegated its assignment functions to (principal inspector grade), ELOs and other suitably authorised senior officers. Local authorities will also have made arrangements to ensure that formal delegation of this function has been made to an appropriate officer, or officers.

53 The authority to which responsibility has been assigned should give notice of the assignment to the persons affected (employers' and employees' representatives).

SCHEDULE 1 - MAIN ACTIVITIES ALLOCATED TO LOCAL AUTHORITIES

54 Schedule 1 lists the main activities in non-domestic premises which determine whether LAs will enforce. Premises or activities not included in Schedule 1 or reserved specifically to HSE under regs.3 and 4 and Schedule 2, or excepted in Schedule 1 itself, will be the responsibility of HSE.

55 Further guidance on 'main activity' will be given in OC 124/9 (to be issued shortly).

Para 1 - The sale of goods, or the storage of goods for retail or wholesale distribution

56 'Wholesale' may be defined as 'the re-sale (sale without transformation) of new and used goods to retailers, to industrial, commercial, institutional or professional users; or to other wholesalers; or acting agents in buying merchandise for, or selling merchandise to, such persons or companies. It includes the usual manipulations involved in wholesaling such as assembling, sorting and grading of goods in large lots, break bulks, repacking and redistribution in smaller lots'.

57 'Retail may be defined as 'the re-sale (sale without transformation) of new and used goods to the general public for personal or household consumption or utilisation, by shops, department stores, stalls, mail-order houses, hawkers and pedlars, consumer co-operatives etc'.

58 Paragraph 1 includes premises such as shops or warehouses where the main purpose is the retail or wholesale sale of goods, or the storage for retail or wholesale distribution. Manufacturer's or producer's off-site warehouses in which finished goods or produce await transfer to the distribution chain does not exclude them from the scope of para 1. However, where such warehouses are under the direct control of the manufacturing or producing site there is a case for consideration of reg.5 transfer back to HSE. Such warehouses within the factory or producers premises will not change the main activity on those premises and enforcement duties will therefore remain with HSE. The storage of raw materials, components or part-finished goods intended for further processing would not fall within the scope of this section. Sales include auction. Inspectors should also note Regina v Farthingstone Silos Ltd a Crown Court case (unreported). Here the court decided that, in order to establish that storage for retail or wholesale distribution is a main activity at particular premises, it is not necessary for the goods to be distributed by the occupiers of that premises.

59 The reference to 'goods' in para 1 includes animals, so LAs would be responsible for enforcement of the sale of animals in pet shops. But this does not include the sale of livestock. Enforcement responsibility for 'the management of livestock up to the point of slaughter or export from Great Britain' is allocated to HSE by virtue of the definition of 'agricultural activities' in reg.2 and the provisions of Schedule 2, para 7. This activity would include anything that is physically done in relation to livestock at a market. Although the main activity at such a market is the sale of livestock it is unlikely that there would be any aspect of this activity that would fall outside the definition of 'agricultural activities' which are reserved to HSE. Therefore, HSE has enforcement responsibility for the sale of livestock. (NB: 'livestock' excludes horses).

60 The definition of sale of goods in para 1 includes the sale and fitting of motor car tyres, exhausts, windscreens, and sunroofs. Any residual difficulties in these types of premises should be dealt with by local transfer. 'Motor car' appears to exclude premises where the main activity is work on heavy goods vehicles.

61 It is considered that metal stockholders and timber merchants will normally fall to LAs under this provision. However, where there is complex

equipment on site or significant processing of the material but the main activity still falls within Schedule 1, these premises, or appropriate parts, should normally be transferred to HSE using the local transfer arrangements. Premises whose main activity is storage as a service (eg furniture removers' storage warehouse, intervention store) will not fall to LAs because the goods are not for retail or wholesale distribution. It is considered, however, that such sites may be suitable for local transfer provided they are not covered by the exceptions in Schedule 1 paras 1(a)-(c).

62 Areas of uncertainty arise with regards to the warehouses or depots of freight forwarders, couriers and parcel carriers. Such instances should be brought to the attention of the Enforcement Liaison Section of the Food and Entertainment Sector.

'Transport undertaking'

63 The sale and storage of goods for retail or wholesale distribution, as part of the business of a transport undertaking is enforced by the LA.

Paragraph 1(a) - Exception for container depots

64 Exception (a) specifically removes doubt in the case of container depots linked with storage of goods en route to and from docks, airports and railways. HSE is the enforcing authority.

Paragraph 1(b) - Exception for wholesale distribution of dangerous substances

65 Warehouses where the main activity is the sale or storage for wholesale distribution of any substance or preparation dangerous for supply are allocated to HSE. 'Substance dangerous for supply' and 'preparation dangerous for supply' are defined in the Chemicals (Hazard Information and Packaging for Supply) Regulations 1994 (CHIP 2) reg.2(1). These Regulations, as amended by the Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 1996, the Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 1997, the Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 1998 and the Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 1999, set out the legal requirements.

66 The 4 documents supporting CHIP 2 (as amended) are:

- | | |
|--|--------------------|
| (1) L115 The Approved Supply List (4th edition) | ISBN 0 7176 1641 X |
| (2) The Approved Supply List (Supplement to 4th edition) | ISBN 0 7176 1683 5 |
| (3) L100 The Approved Classification and Labelling Guide (3rd edition) | ISBN 0 7176 1366 6 |
| (4) L62 Safety Data Sheets for substances and preparations dangerous for supply (2nd edition). | ISBN 0 7176 0859 X |

67 Pesticide active ingredients are a major group of substances which are generally not found in the 'Approved Supply List' at present. It should be noted that formulated pesticide products which have been approved are required to be labelled in accordance with the Control of Pesticides Regulations 1986, as amended, or the Plant Protection Products Regulations 1995 and not CHIP. Where it is reasonably foreseeable that the contents of a warehouse will regularly change, with the resulting frequent change in enforcement allocation, an assignment should be made under reg.6, subject to prior discussion with the Enforcement Liaison Section of the Food and Entertainment Sector.

Paragraph 2 - Exhibitions

68 Paragraph 2 gives LAs duties in regard to premises such as exhibition halls. All other exhibitions would also fall to LAs under Schedule 1 para 9. Any section 6 considerations in relation to products on display will, however, fall to HSE under reg4(4). [See also para 111](#) of this OC for agricultural shows.

Paragraph 3 - Office activities

69 Paragraph 3 allocates to LAs premises in which the main activity is administration and allied activities. The definition of office activities includes computer software houses (see reg.2(1)).

Paragraph 4 - Catering services

70 Paragraph 4 allocates catering services to LAs where such activities are the main activity of an undertaking at premises. Where catering is a minor activity carried on by the same occupier it will be inspected by the authority responsible for the premises as a whole, eg factory canteens incidental to a manufacturing activity. Where catering services are provided in part of the premises separately occupied by a separate occupier these will be separate premises allocated to LAs, unless they are in premises occupied by the specified bodies covered by reg.4(3) when HSE will be responsible for such activities.

71 Where the main activity at a premises is the preparation of 'in-flight catering' this will fall to the LA as a catering service.

Paragraph 5 - Residential accommodation

72 Premises obviously falling within this paragraph are hotels, guest-houses, hostels, residential care homes, and temporary or permanent caravan/camping sites. Clarifications are as follows:

1. homes registered under the Registered Homes Act 1984 s.21, in relation to England and Wales, and the Nursing Homes Registration (Scotland) Act 1938, in Scotland, have as their main activity provision of nursing or medical care. The fact that they are registered automatically allocates these premises to HSE.
2. privately run homes/centres where the main activity is the provision of sheltered residential accommodation for the chronic disabled fall to LAs. However, if education is the main activity at premises, HSE will be responsible.

'Dual-registered care homes'

73 There are over 800 premises that are dual registered as both residential care homes and nursing homes under the provisions of the Registered Homes Act 1984 (in England and Wales) and the Nursing Homes Registration (Scotland) 1938 Act. These offer both residential care for some clients and nursing care for others. The major risks to employees are present in both types of premises and are the manual handling of patients and residents, and slips, trips and falls, as well as risks from scalding and legionella. Some nursing homes provide care similar to that found in hospitals, with attendant risks, others provide care similar to that found in residential homes and need to control a similar range of risks.

74 The provision of qualified nursing care distinguishes a nursing home from a residential care home so, when determining the most appropriate enforcing authority, it is necessary to consider carefully the main activity - this should focus on the main purpose for which an organisation uses a premises. The time spent caring for patients or residents, or the number of beds, cannot be the sole indicators of allocation, however, they are factors which may need to be taken into account.

75 Paragraphs 76-77 set out a number of considerations that will provide a guide to ensuring a consistent allocation of enforcement responsibility. Where nursing/medical care is the main activity, HSE will be the enforcing authority.

76 To decide if nursing care is the main activity it may be helpful to consider the following:

1. National Care Homes Association, represents mainly residential care homes;
2. Registered Nursing Homes Association, represents only registered nursing homes, including some dual registered homes;
3. Independent Health Care Association, represents private hospitals and some nursing homes;
4. medical care - nursing homes would involve clinical decisions relating to the dispensing of drugs (usually via a local GP as an in-house doctor is unlikely);
5. nursing homes will require staff to be on duty at all times;
6. mobility of patients - nursing involves much more manual handling, bathing and toileting of patients as the patients mobility is more often than not significantly impaired due to ill health;
7. nursing homes may use medical devices such as drug infusion devices;
8. nursing homes will need to take measures to control infection risks and will often have to make arrangements for the disposal of clinical waste;
9. nursing homes include registered mental nursing homes. In such homes, patients will include the mentally ill and infirm including, in some cases, those sectioned under the Mental Health Act.

77 To decide if residential care is the main activity it may be helpful to consider the following:

People in residential care homes will have various degrees of dependence from the rehabilitation of alcoholics to the elderly. It is undesirable to set down strict guidelines across this range. Residential care homes differ from nursing homes in that those in residence are likely to have much more mobility, be in better health and enjoy many of the same pursuits as those living in their own homes. This said, it is normal for people to take responsible risks and people living in residential care homes are entitled to do the same where they are competent to do so.

Paragraph 6 - Consumer services

78 Whereas LAs will have responsibility for a large range of unspecified services, eg repairs to consumer goods where this is a main activity at premises, the scope of the allocation is restricted to:

1. Provision of the services in a shop in the ordinary meaning of that word. Whereas repairs to consumer goods, eg watches, shoes, clothing, household goods undertaken in shops will pass to LAs, services of the same kind at a factory unit, eg central repair factories, would be excluded.
2. Provision of the service mainly to 'non-trade' consumers. This point is primarily intended to exclude from allocation to LAs premises where the main purpose is the provision of a service to traders or manufacturers, eg plant hire or repair or instant print shops serving mainly trade customers.

'Shop with manufacturing attached'

79 Where the 'manufacturing' activity is in support of the shop, the LA is the enforcing authority. However, if the activity serves a number of shops then the main activity should be considered and the correct enforcing authority determined.

Paragraph 7 - Coin-operated launderettes

80 This repeats the allocation in the 1989 Regulations and includes coin-operated dry cleaning units. Laundries are not included under this para nor under para 6. Coin-operated launderettes are not shops. Laundry services provided in shops are considered consumer services. Service washes carried out by an employee in a coin-operated launderette will not affect the allocation. Local authorities are the enforcing authority.

Paragraph 8 - Therapeutic treatments etc

81 Paragraph 8 allocates to LAs a wide range of premises where the main activity is cosmetic and therapeutic (including 'fringe' medical) services to LAs, provided these are not carried out under the supervision or control of a member of one of the professions listed in the Regulations. Where a peripatetic practitioner carries out work in his/her client's private domestic premises, this work will fall to HSE. Therapeutic treatments include chiropody, naturopathy, acupuncture and ophthalmic opticians. Opticians shops have, in the past, been considered to fall under para 1 of the Schedule (retail, sale) or para 6 (consumer services).

Paragraph 9 - Leisure, cultural activities etc

82 This allocates a wide range of premises to LAs for example sports facilities, cinemas, circuses, racecourses, riding schools etc. Cultural activities will include non-educational pursuits such as dance schools, other than those which are attached to schools. Where the main purpose of a premises is educational or vocational training similar to that provided in the mainstream educational system, such premises will remain with HSE including their evening use for leisure purposes.

83 Non-LA run museums, art galleries and theatres have been deleted as an exception and therefore now fall to LAs. However, although such theatres and museums have been allocated to LAs for enforcement, the Commission noted that there are a small number of premises where the risks involved might suggest that such premises should continue to be enforced by HSE. It may become necessary for HSE to discuss such premises with LAs to determine and agree local arrangements using reg.5, transferring these premises back to HSE. In practice, though, most theatres and museums will be enforced by LAs in line with current practice.

'Monuments, stately homes and grounds'

84 Some monuments, stately homes and/or grounds are owned or operated by English Heritage, part of the Crown. Where this is the case, HSE is the enforcing authority. Local authorities are the enforcing authority for similar premises that are owned or operated by The National Trust or similar organisations. However, the National Trust also own/operate premises which are open to the public but which may essentially be working factories or farms. If this is the main activity, local transfers are usually arranged to transfer such premises back to the HSE.

Paragraph 10 - Pleasure craft hire

85 Paragraph 10 allocates to LAs premises where the main activity is pleasure boat hire for use on inland waters, where 'inland waters' are all waters other than the sea. It is considered that the main activity should not change if, during the out of season period, the hire company carries out its own maintenance or repair of its fleet at the same premises. Inland water transport undertaking will remain with HSE under exception 1(a) of the Schedule. 'Pleasure craft' is defined in the Docks Regulations 1988, reg.2(1) and means 'any description of vessel when used solely for sport or recreation other than for carrying fare paying passengers'.

Paragraph 11 - Animal care

86 This will include premises such as kennels, catteries, animal cosmetic parlours, and exhibition of creatures, eg zoos, where these are main activities. These are limited by exception to HSE for the main activities of veterinary practice, racehorse training stables, horse breeding stables, fish, maggot, and game breeding and agricultural activities as defined in reg.2(1) and listed in Schedule 1 para 11, and Schedule 2 paras 7 and 10. Clearly premises where research involves care and use of animals will fall to HSE.

Paragraph 12 - Undertakers' services

87 Paragraph 12 allocates funeral parlours and undertakers' services to LAs. Where embalming as a main activity arises (probably rare), this will be

enforced by HSE, as will coffin manufacture as a main activity.

Paragraph 13 - Religious activities

88 Under para 13, premises where the main activity is all forms of religious worship, evangelical and church social events are allocated to LAs. Church-run accommodation, eg hostels, will pass to LAs normally under para 5, but not premises where the main purpose is education or training (both vocational and non-vocational) or medical (hospitals run by a religious order). Where the graveyards of churches are run by an LA, then that part of the premises will be inspected by HSE. Graveyards, separate from churches, and crematoria will fall to HSE.

Paragraph 14 - Car parking facilities at airports

89 Car parking facilities at airports now fall to LAs.

Paragraph 15 - Child care, playgroup or nursery facilities

90 Paragraph 15 relates to pre-school child care and the provision of playgroups or nurseries in non-domestic premises that are not part of a school and are independently run. Where such child care is provided on school premises, HSE will act as the enforcing authority, irrespective of whether or not the premises is operated by the LA or an independent operator, as the main activity of the premises is education, reg.3(5)(d) refers. HSE will also inspect those child-care premises run by the LA.

91 It is recognised that some pre-school child care premises offer an element of education. It is helpful to consider the provision of compulsory education as a guiding principle for premises where this occurs to determine who is the correct enforcing authority; compulsory education begins in the term after a child reaches 5 years of age.

92 Some pre-school child care activities are provided in domestic premises. Since such premises require to be registered with the LA there seems little point in introducing a separate enforcing authority for those domestic premises where there is no separate access/egress ([see para 11](#) of this OC). Enforcement may be transferred to the LA under reg.5.

SCHEDULE 2 - ACTIVITIES RESERVED TO HSE

93 Regulation 4(4)(b) gives HSE the enforcement responsibility for all of the activities listed below, whether or not carried on as the main activity and regardless of the allocation of the rest of the premises.

Paragraph 1 - Mines and quarries

94 Apart from mining or quarrying operations, any activity carried on at an active mine or quarry which otherwise might fall within Schedule 1, eg an entertainment facility at a non-operational mine, are also reserved to HSE.

Paragraph 2 - Fairgrounds

95 The definition of 'fairground' is given in reg.2(1) and refers, in turn, to 'fairground equipment'. 'Fairground equipment' is a defined term inserted into HSW Act by the Consumer Protection Act 1987 ([see the appendix](#) to this OC).

96 This definition has been the subject of misunderstanding as to whether it refers to any part of premises, or any premises, part of which (for the time being...). The definition has been amended to read 'fairground' means such part of premises as is for the time being used wholly or mainly for the operation of any fairground equipment, other than a coin-operated ride,'.

97 It is recognised that this definition remains very wide in scope, so the definition of fairground in reg.2(1) has been drafted to exclude certain types of low- risk equipment so as to ensure, for example, that coin-operated children's rides outside shops do not constitute a 'fairground' excepted to HSE for enforcement. Similar equipment on a fairground site will, however, fall to HSE as part of the fairground. A fairground at a premises otherwise allocated to LA, eg a holiday camp, will clearly fall to HSE for inspection.

98 Because 'fairground equipment' is defined in terms of rides, problems may be experienced with the allocation of sideshows, stalls etc, when the fair does not occupy a discrete site, eg a street fair. Some street fairs may have a clearly identifiable central core mainly of rides etc which would fall to HSE, but may also extend into side streets where there are only side shows, stalls etc, which would fall to the LA. The inspection arrangements under these circumstances will need to be agreed locally. Whenever a fairground consists of a mixture of rides, stalls etc on a discrete site, this will fall wholly to HSE.

99 In the 1989 Regulations, some entertainment facilities such as some go-kart tracks, motor-cycle circuits, quad bikes and moon-buggy circuits, which are not normally considered to be 'fairgrounds' were caught by the wide definition of fairground equipment and thus fell to HSE for inspection. This resulted in HSE enforcing go-kart events and individual bouncy castles. As LAs already enforce HSW Act at all other motor sport events, as well as leisure venues where bouncy castles are commonly found, the situation was confusing and led to dual enforcement.

100 The change to the definition of 'fairground' (para 7 of this OC) now allocates go-karts and bouncy castles, which are not part of a fairground, to LAs for consistency and to avoid HSE's involvement in such activities.

Paragraph 3 - Radio, TV etc

101 HSE will be the enforcing authority in the following situations:

1. for all activities in premises occupied by a television radio or film undertaking in which the activity of broadcasting, recording or filming is carried on;
2. for broadcasting, recording or filming activities, when conducted at premises otherwise allocated to local authorities eg sports coverage (broadcasting does not include the mere showing of films); and

3. recording in any premises allocated to the LA will fall to HSE as the exception of the activity of 'recording' is not limited to radio television or film undertakings.

Paragraph 4 - Construction work and work on systems

102 Local authorities will be the enforcing authority for all work relating to telecommunications and water systems, and the stripping of asbestos insulation from pipework within LA-enforced premises.

Paragraph 4(a) - Construction work

103 Non-notifiable construction work, ie not exceeding 30 days duration, which is entirely internal to the building and which is not separated off from the normal operations of the premises will fall to LAs where they are the enforcing authorities for that class of premises. The Construction (Design and Management) Regulations 1994 reg.2(4) says that a project is notifiable if the 'construction phase' will be longer than 30 days or will involve more than 500 person days of construction work. These projects are reserved to HSE.

Paragraph 4(b) - Gas systems

104 The term 'gas system', defined in EA Regulations reg.2(1), excludes a portable or mobile appliance supplied with gas from a cylinder, or the cylinder, pipes, and other fittings used for supplying gas to that appliance. Work on gas systems is allocated to HSE except where it is carried out by a person who normally works at a premises allocated to an LA. The use of gas in LA-enforced premises is, however, still allocated to the LA.

Paragraph 4(c) - Electricity systems

105 The definition of electricity systems in reg.2(1) has been framed such that LAs are allocated all work on the consumer side of the electricity system in premises that fall to LA enforcement by virtue of Schedule 1. This will normally include the whole of the building electrical system up to but not including the output terminals of the supply meter. Work on the electricity supplier's side of these terminals will fall to HSE.

Paragraph 4(d) - Ionising radiations

106 Work with ionising radiations carried on within LA-enforced premises by the staff who normally work there will usually be inspected by the LA. Work by contractors involving ionising radiation will normally be excepted to HSE. The exception leaves certain categories of work with LAs. These normally relate to work with modern smoke detectors, beta lights, eg in fire exit signs, and other type- approved equipment (see the Ionising Radiations Regulations 1985 (IRR85) Schedule 3 (SI 1985 No1333)).

Paragraph 5 - Medical use of ionising radiations

107 All uses including ionising radiations involving medical exposure to humans will fall to HSE. 'Medical exposure' is defined in IRR85 as 'the purpose of his medical or dental examination or treatment which is conducted under the direction of a suitably qualified person and includes any

such examination or treatment conducted for the purpose of research'. In some small therapeutic clinics allocated to the LA it may be that the only significant hazard is an x-ray set. In these circumstances the entire premises should be transferred to HSE using the local transfer arrangements.

Paragraph 6 - Radiography undertaking

108 The exception in para 6 is intended to cover premises where ionising radiations are used or stored but which otherwise may fall to LAs under Schedule 1, eg because the main activity of the premises may be an office.

Paragraph 7 - Agricultural activities

109 The definition in the EA Regulations reg.2(1) contains several illustrative descriptions of what is included within this wide term, but is not exhaustive. Agricultural activities is an extremely wide term, and includes cultivation of ground, sowing and harvesting of crops and the raising of livestock. Tree felling is not included except where it is part of forestry, arboriculture or preparation of land for agricultural use or for construction work. Where LAs have enforcement responsibility for the grounds of non-English Heritage stately homes open to the general public, any agricultural activities carried on there, will remain with HSE. Where livestock breeding and keeping is incidental to the main activity eg a circus or zoo (entertainment) or a shop (sale), local authorities will enforce. Camping sites on farms will not be allocated to LAs unless there is separate occupancy under reg.3(2).

110 Regulation 2(1)(b) has changed the definition of 'agricultural activities' which now excludes activities at a garden centre or other shop where retail is the main activity. Local authorities now enforce in these premises. 'Pop concerts' and similar activities may take place on farms. Where the concert site occupier is a person/company different from the farm occupier, then it is allocated to the LA. If the farm occupier sets up a concert on his/her own land, then HSE would remain the enforcing authority. It has been agreed, however, that such concerts should normally be allocated to the LA by local transfer.

'Agricultural shows'

111 At an agricultural show many of the activities will be covered by Schedule 1 and will fall to LAs for enforcement, eg banks/slopes, side stalls, horse riding, show horses and show jumping etc. This provision however excepts to HSE those activities which involve the handling of livestock (excluding horses) or the working of agricultural equipment.

Paragraph 8 - Activities on ships

112 This provision reserves to HSE Schedule 1 activities which may be carried on by separate occupiers on board a sea going ship, eg shop or consumer services franchise holders. 'Ship' includes any vessel used in navigation and includes pleasure craft. A ship is not 'sea-going' if it never gets further than an estuary.

Paragraph 9 - Ski lifts etc

113 Because of their similarity to fairground rides and certain construction equipment, activities including this equipment are allocated to HSE whenever they occur.

Paragraph 10 - Fish, maggot and game breeding

114 Despite the width of scope of the definition of agricultural activities, these 3 categories fall outside of the definition, and are therefore allocated separately to HSE.

Paragraph 11 - Any activity in relation to a pipeline

115 The provisions that need enforcing including the provisions of the Pipelines Safety Regulations 1995.

Paragraph 12 - The operation of a railway

116 This provides a regulatory change that reserves enforcement responsibility for the operation of any railway or a mode of guided transport to HSE. [See para 9](#) of this OC for a definition of 'railway'.

QUERIES

117 Any queries on the contents of this OC should be directed to the Enforcement Liaison Section of the Food and Entertainment Sector.

ANNOTATION AND CANCELLATION OF INSTRUCTIONS

118 OM 1998/108 - **note** 'See also OC 124/7'.

119 OC 124/3 and its Supplements 1 and 2 - **cancel** and **destroy**.

17 March 1999
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APPENDIX ([para 7](#) and [para 95](#))

'FAIRGROUND EQUIPMENT' AS DEFINED BY THE CONSUMER PROTECTION ACT 1987

'“Fairground equipment” means any fairground ride, any similar plant which is designed to be in motion for entertainment purposes with members of the public on or inside it or any plant which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and in this definition the reference to plant which is designed to be in motion with members of the public on or inside it includes a reference to swings, dodgems and other plant which is designed to be in motion wholly or partly under the control of, or to be put in motion by, a member of the public.'

