

<b>Health and Safety Executive</b>		<b>Operational Circular</b>	
		<b>OC 124/8</b>	
<b>Review Date</b>	15/10/2009	<b>Open Government Status</b>	Fully Open
<b>Version No &amp; Date</b>	1: 15/10/1999	<b>Author Unit/Section</b>	Food and Entertainment Sector

Target Audience:  
All HSE Inspectors

**HEALTH AND SAFETY (ENFORCING AUTHORITY) REGULATIONS 1998**

**THE USE OF REG.5 (TRANSFER) AND REG.6 (ASSIGNMENTS)**

[OC 124/7](#) gives detailed and specific guidance on the Health and Safety (Enforcing Authority) Regulations 1998. This OC gives further guidance on the interpretation and use of regs.5 and 6.

**Regulation 5**

- 1 Regulation 5 allows enforcement responsibility for any particular premises, part of premises, or any activity carried on there, to be transferred from HSE to the local authority (LA) or vice versa.
- 2 The basic purpose of reg.5 is to enable the inevitable complexities of allocation in respect of individual premises for which the Regulations are not able to cater to be smoothed out with sensible pragmatic local arrangements, which result in more efficient inspection.
- 3 A transfer may be made only by agreement between the 2 enforcing authorities involved, although the Commission may also make a transfer, even where there is disagreement between the 2 enforcing authorities.
- 4 Except in the case of Crown offices (see para 5) there is no need to seek the views or obtain the agreement of those who are the subject of the transfer.
- 5 Except in relation to office activities, Crown premises or activities cannot be transferred for enforcement to LAs. Any transfer of Crown office activities and the premises used for them requires agreement between HSE, the LA concerned and the government department or other public body concerned.

6 Where a transfer has been made from an LA to HSE, the PI should ensure that those affected by the transfer are informed that it has taken place. Those affected will vary in each case but will normally be:

- (1) the employer,
- (2) the owner or controller of the premises, and
- (3) representatives of the employees.

A suggested text for advising of a transfer is at [Appendix 1](#).

7 A new occupier taking over premises which have previously been transferred, under circumstances where the transfer will continue to be valid, does not have to be notified of the existing transfer arrangement.

8 Agreement to transfers is an Executive function under the Regulations. This has been delegated to regional directors who are in turn empowered to authorise inspectors of Band 2 and above to exercise these powers. In practice, delegation would normally be to the enforcement liaison officer (ELO). These authorisations should be made in writing. General Administrative Procedures document [GAP 7](#) provides full details, and the model form of notice of appointment is given at the appendix to [OC 124/6](#). It is no longer necessary to name inspectors.

9 Situations in which such transfers might be appropriate include:

- (1) where a single business is artificially split between enforcing authorities by the presence of a road between buildings;
- (2) where the presence or absence of significant hazards makes the allocation inappropriate, such as complex wood machining equipment attached to a timber merchant, or a metal slitting and coiling line in a steel stockholder, both of which may be more appropriate for HSE inspection;
- (3) book shops, banks etc and clubs on a university campus which may be more appropriate for LA inspection;
- (4) minor activities when they are located in premises allocated to the other authority, e.g. a small, simple recording studio in an arts centre;
- (5) premises which are operated by major companies and the bulk of whose business is inspected by the other enforcing authority and inspection of the whole business by a single authority leads to greater efficiency and effectiveness. This is most likely where the business is inspected under either the HSE lead PI arrangement or the LA Lead Authority Partnership Scheme;
- (6) activities operated by contractors, e.g. leisure centres on behalf of LAs but where the extent of LA involvement makes fair enforcement problematic due to the potential conflict of interest; and

(7) activities in domestic premises such as pre-school child care, bed and breakfast provision, where LAs already have an inspection role for other purposes, e.g. pest control or social work registration and they would otherwise be allocated such activities were they located in separate premises. Allocation of the activities rather than premises themselves would seem necessary to avoid permanently transferring individual private residences for all health and safety at work enforcement purposes. However, the priority afforded to inspection of such premises by either HSE or LAs would be unlikely to warrant a transfer.

10 Regulation 5 is designed for the transfer of particular premises, therefore the transfer of generic categories of premises is not permissible. However, lists of individual identified premises can be used in conjunction with a single notice of transfer where large numbers are involved.

11 Transfers should be agreed and confirmed in writing. Agreements should be clearly stated and specific about the effective date and time of transfer. Careful consideration should be given to the objective of the transfer, in particular whether the transfer applies to an occupier, or to the premises or part of premises. Transfers limited by a named occupier would give rise to a need for a repeat transfer if the occupier changed but the activity did not. A suggested form of notice is given at [Appendix 2](#).

12 Written agreements to transfers should be made by ELOs. Inspectors signing agreements should satisfy themselves that representatives signing for LAs have been given the delegated authority by their council.

13 Where a request for transfer is refused, it is possible to request that the Commission use its powers to make a transfer (see [paras 19-23](#)). This power of the Commission has not been delegated. Requests by LAs for transfer should therefore be considered carefully and any intention to refuse should normally be referred to the Food and Entertainment Sector, Enforcement Liaison Section. The Food and Entertainment Sector should also be advised of any proposal to request transfer by the Commission.

14 Regulation 5 cannot be used retrospectively to avoid a defence to enforcement activity brought about by the wrong enforcing authority. Transfer must take place before enforcement action is commenced.

15 Enforcement liaison officers should copy all notices of transfer to the Enforcement Liaison Section who will:

- (1) monitor the operation of this regulation;
- (2) maintain a national register of transfers; and
- (3) report to HELA meetings.

### **Regulation 6**

16 Where there is uncertainty about whether HSE or an LA is the appropriate enforcing authority under the Regulations, reg.6 may be used to make an assignment to either enforcing authority. In order to allow reg.6 to be used, both enforcing authorities must agree that there is uncertainty and they must also agree which should be the appropriate authority to enforce. Every effort should be made to agree an assignment but where local

agreement cannot be reached about an assignment the Commission has power to make one (see [paras 25-27](#)).

17 The arrangements and procedures for completing an assignment are the same as those for effecting transfers under reg.5. A suggested form of notice is given at [Appendix 3](#).

18 The Food and Entertainment Sector should be advised where assignments have been made.

### **Transfers by the Health and Safety Commission**

19 It is hoped that, in almost all cases, transfer proposals can be discussed and agreed locally and that the Commission will be approached only as a last resort. The Food and Entertainment Sector should be informed at an early stage if a transfer has not been agreed locally and the LA involved wishes to refer it to the Health and Safety Commission.

20 Under reg.5(2), the Commission has the power to transfer enforcement responsibility. Although there are no limitations to the circumstances in which this power can be used, it is most likely to be used to resolve disagreements between authorities.

21 If agreement to transfer cannot be reached locally, but one of the enforcing authorities involved still wishes to pursue transfer, they should write to the Secretary of the Commission, giving details of the premises/activities in question and the case for transfer. Submissions should be addressed to:

The Secretary  
Health and Safety Commission  
Rose Court  
2 Southwark Bridge  
London SE1 9HS

22 FOD submissions should be made through the Food and Entertainment Sector.

23 The Secretary for the Commission will then notify the other authority to seek their comments before putting the case to the Commission for a decision.

24 The Secretary for the Commission will convey the Commission's decision to the 2 enforcing authorities involved. If the case for transfer has been supported, the authority to which responsibility is being transferred should notify those affected by this transfer, as in para 6.

### **Assignments by the Commission in cases of uncertainty**

25 Paragraphs 16-18 describe what should be done if it is unclear, from the Regulations, which enforcing authority should take responsibility for particular premises or activities within them, but where HSE and the LA agree on which is the more appropriate to take the responsibility, in the

circumstances.

26 If there is uncertainty but agreement cannot be reached, reg.6 gives the Commission the power to assign responsibility to one enforcing authority or another. Either of the authorities involved may ask the Commission to consider a particular case. The Food and Entertainment Sector should be informed at an early stage if a local authority is considering a referral to the Health and Safety Commission.

27 Submissions outlining the areas of uncertainty, and the details of those affected, should be addressed to the Secretary of the Commission, as in para 21. Before making their decision the Commission will consider the circumstances, and any views expressed by the enforcing authorities in question or those affected.

28 When the Commission has made their decision and the assignment, the Secretary of the Commission will inform both the enforcing authorities and those affected by the decision.

#### ANNOTATION OF INSTRUCTIONS

29 [OC 124/7](#) - **note** 'see also [OC 124/8](#)'.

15 October 1999

(220/FOD/1045/1999)

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#### APPENDIX 1 (para 6)

#### DRAFT HSE LETTER TO THOSE AFFECTED BY TRANSFERS OF ENFORCEMENT RESPONSIBILITY

Dear Sir,

#### **The Health and Safety (Enforcing Authority) Regulations 1998**

#### **The Health and Safety Information for Employees Regulations 1989**

Enforcement responsibility for health and safety legislation in relation to (specify premises, parts of premises and/or activity) has been transferred to the Health and Safety Executive at (address), as indicated on the enclosed form.

This has been done to facilitate more efficient inspection in your locality and there is no change to any other laws affecting your business. Exactly the

same standards of health and safety will apply and will be enforced in accordance with HSE's principles, set out in the enclosed leaflet. (enclose HSE35 The Health and Safety Executive - working with employers).

You will need to tell employees about the transfer of enforcement responsibility. The Health and Safety Information for Employees Regulations 1989 require employers to provide their employees with the name and address of the enforcing authority for the premises in which they work. This should either be written on the poster "Health and Safety Law: What You Should Know" approved by HSE under the Regulations, or provided on a written notice to accompany the approved leaflet. You should inform your employees of the change in enforcing authority by the above means as soon as possible, and certainly within the six-month maximum time period allowed by the Regulations.

If you need any further advice, please contact .....

Yours faithfully

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APPENDIX 2  
(para 11)

**THE HEALTH AND SAFETY (ENFORCING AUTHORITY) REGULATIONS 1998**  
**REGULATION 5 - NOTICE OF TRANSFER OF ENFORCEMENT RESPONSIBILITY**

It is hereby agreed between the Health and Safety Executive and (name) Council that with effect from (date) enforcement responsibility for health and safety legislation in relation to:

Name

Work activity

Address

shall be transferred to (name) Council.

This transfer has been made in accordance with regulation 5 of the above Regulations.

For and on behalf of (name) Council

For and on behalf of the Health and Safety Executive

Signed:.....

Signed:.....

Name:.....

Name:.....(ELO).....

a person duly authorised to act on that behalf

HM Principal Inspector of Health and Safety, an inspector appointed under S19 of the Health and Safety at Work etc. Act 1974 and duly authorised to act on that behalf

Date: .....

Date: .....

APPENDIX 3  
(para 17)

**THE HEALTH AND SAFETY (ENFORCING AUTHORITY) REGULATIONS 1998**

**REGULATION 6 - NOTICE OF ASSIGNMENT OF ENFORCEMENT RESPONSIBILITY**

It is hereby agreed between the Health and Safety Executive and (name) Council that with effect from (date) enforcement responsibility for health and safety legislation in relation to:

Name

Work activity

Address

shall be assigned to (name) Council.

This assignment has been made in accordance with regulation 6 of the above Regulations.

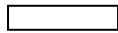
For and on behalf of (name) Council

Signed:.....

Name:.....

a person duly authorised to act on that behalf

Date: .....



For and on behalf of the Health and Safety Executive

Signed:.....

Name:.....(ELO).....

HM Principal Inspector of Health and Safety, an inspector appointed under S19 of the Health and Safety at Work etc. Act 1974 and duly authorised to act on that behalf

Date: .....