



Health and Safety Executive		Operational Circular	
		OC 301/4	
Review Date	06/09/2000	Open Government Status	Fully Open
Version No & Date	6/09/1990	Author Unit/Section	Biocides & Pesticides Unit

Target Audience:
All Inspectors

FOOD AND ENVIRONMENT PROTECTION ACT 1985 (FEPA): PART III

AGENCY AGREEMENT

1 This OC, which replaces FIM 1987/136, AIM 1987/7, gives guidance on the enforcement of FEPA Part III. HSEM 1987/7 provides inspectors with information and guidance on FEPA Part III and instructions on the role and scope of HSE in its enforcement.

2 The Agency Agreement for the Health and Safety Commission to perform certain functions under Part III of FEPA was signed on 27 April 1987, and came into effect on 27 June 1987. On that day HSE assumed enforcement responsibilities under the Act in relation to the Control of Pesticides Regulations 1986 (COPR). The appendix contains the text of that part of the agreement which relates to the authorisation of inspectors and the scope of their responsibilities.

3 Inspectors may only perform their functions under FEPA if they hold a certificate of authorisation. The delegated functions arising from the Agency Agreement permit HSE to authorise its staff to enforce the provisions of COPR using the powers in Part III of FEPA. However, inspectors do not have authority to enforce Regulation 7 which contains the power to seize or dispose of pesticides or anything treated with a pesticide. This power has been retained by the Executive itself and its authority is required before such action can be taken.

4 The Ministry of Agriculture, Fisheries and Food (MAFF) are negotiating with LAs and the Department of Transport (Railway Inspectorate) on the inspection and enforcement role they will undertake under FEPA Part III. No agreement has been reached and accordingly officers of MAFF Agricultural Departments and officers of the Department of Agriculture and Fisheries for Scotland are the only persons authorised to inspect and enforce in premises other than those for which HSE is responsible (see paras 7, 8 and 10 of HSEM 1987/7).

Action by inspectors

5 Until further notice, all complaints, accidents, incidents etc relating to FEPA and COPR which fall outside the scope of the Agency Agreement (paras 2 and 3) should be referred directly to either:

Ministry of Agriculture, Fisheries Department of Agriculture,

and Food Fisheries and Food

Pesticides Safety Division Division D

Ergon House Branch B

17 Smith Square 47 Robbs Loan

London Edinburgh

SW1P 3JR EH11 1TY

Tel: 071 238 3000 Tel: 031 556 8400

6 Inspectors should note that FEPA work should be recorded as a separate topic on WR1.

6 September 1990

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ASI headings

Control of Pesticides Regulations 1986: Food and Environment Protection Act 1985: pesticides.

APPENDIX (para 2)

EXTRACT FROM AGENCY AGREEMENT BETWEEN HSC AND MINISTERS

It was agreed that:

1 Subject to paragraph 2, 3 and 4 below, the Commission shall perform on behalf of the Ministers their function under section 19(1) of the Food and Environment Protection Act 1985 ("the 1985 Act") of authorising persons to enforce Part III of that Act in relation to contraventions of the Control of Pesticides Regulations 1986 ("the 1986 Regulations").

2 Paragraph 1 above shall only apply in relation to contraventions in the course of a work activity by an employer, employee or self-employed person; but not by reason only that a person employs another, or is himself employed, as a domestic servant in a private household.

3 Paragraph 1 above shall not apply to enforcement:

- in or in relation to premises for which a local authority is the enforcing authority for the relevant statutory provisions (within the meaning of the 1974 Act) by virtue of Regulation 3 of the Health and Safety (Enforcing Authority) Regulations 1977 or any amendment or re-enactment (with or without modification) thereof,

- in relation to those railways and tramways for which the Secretary of State for Transport is responsible for enforcement of the relevant statutory provisions by virtue of an agreement

made under section 13(1)(a) of the 1974 Act, and

- in relation to a contravention of Regulation 4(1) of the 1986 Regulations (which relates to advertising a pesticide).

4 Only members, officers or servants of the Health and Safety Executive ("the Executive") may be authorised pursuant to this Agreement; and nothing in this Agreement shall prejudice or affect the right of the Ministers to authorise any other person under the said section 19(1).

