

National Local Authority Enforcement Code

Health and Safety at Work

England, Scotland & Wales

Introduction

1. In his report "*Reclaiming health & safety for all: An independent review of health and safety legislation*", commissioned by the then Minister for Employment, Professor Ragnar Löfstedt recommended that HSE be given a stronger role in directing Local Authority (LA) health & safety inspection and enforcement activity.
2. This National Code has been developed in response to this recommendation and as an outcome of the Red Tape Challenge on Health and Safety. It is designed to ensure that LA health and safety regulators take a more consistent and proportionate approach to enforcement.
3. Whilst the primary responsibility for managing health and safety risks lies with the business who creates the risk, LA health & safety regulators have an important role in ensuring the effective and proportionate management of risks, supporting business, protecting their communities and contributing to a wider public health agenda.
4. LA regulators are competent professionals granted powers and duties to deliver proportionate and targeted enforcement. It is vital that LA regulatory resource is used consistently and to best effect by targeting specific risks or focussing on specific outcomes. LAs should use the full range of regulatory interventions available to influence behaviours and the management of risk with proactive inspection utilised **only** for premises with higher risks or where intelligence suggests that risks are not being effectively managed.
5. The Code provides direction to LAs on meeting these requirements, and reporting on compliance.
6. The Code is given legal effect as HSE guidance to LAs under section 18(4) (b) of Health and Safety at Work etc Act 1974 (HSWA) and applies to England, Wales and Scotland.

The National Code

Scope

7. This Code sets out what is meant by 'adequate arrangements for enforcement'. This Code replaces the existing S18 Standard and concentrates on the following four objectives:
 - a) Clarifying the **roles and responsibilities** of business, regulators and professional bodies to ensure a shared understanding on the management of risk;
 - b) Outlining the **risk-based regulatory approach** that LAs should adopt with reference to the Regulator's Compliance Code, HSE's Enforcement Policy Statement and the need to target relevant and effective interventions that focus on influencing behaviours and improving the management of risk;
 - c) Setting out the need for the **training and competence** of LA H&S regulators linked to the authorisation and use of HSWA powers; and
 - d) Explaining the arrangements for collection and publication of LA data and peer review to give an **assurance on meeting the requirements of this Code**.

Section 1: Roles and responsibilities

8. Businesses, regulators, and professional bodies all have a role and responsibility to help prevent work place death, injury and ill health and to apply health and safety at work in a proportionate way.

Business

9. Health and Safety law in Great Britain clearly sets out that the primary responsibility for managing risks to workers and the public who might be affected by work activity lies with the business or organisation that creates the risks in the first place. This applies whether the organisation is an employer, self-employed, service provider or a manufacturer or supplier of articles or substances for use at work. Whilst the primary responsibility sits with the business, workers also have a responsibility to care for their own health and safety and others who may be affected by their actions. Workers should accordingly be engaged by their employers on health and safety issues.
10. Guidance on risk management is available on HSE's website or, where more specialised external assistance is needed, from the Occupational Safety & Health Consultants Register (OSCHR).

Regulators

11. The role of the regulator is to support, encourage, advise and where necessary hold to account business to ensure that businesses effectively manage the occupational health and safety risks they create.
12. Regulators should ensure they make best use of their resource and help improve the effective management of health and safety risks in a proportionate way. This is achieved through choosing the most appropriate way of influencing risk creators and by targeting their interventions, including inspection, investigation and enforcement activity, on those businesses and sectors that represent a higher level of risk to the health and safety of workers and the public.
13. Enforcement of health and safety is split between HSE and approximately 382 LAs in accordance with the Enforcing Authority (Health & Safety) Regulations 1998. This Code provides statutory guidance to each LA and a framework to guide local approaches. Meeting the requirements of this Code will ensure LAs approach to enforcement is consistent.
14. The focus of LAs may often be broader than specific health and safety outcomes as they can also have an impact on wider public health outcomes/ health inequalities. Additionally, LAs contribute to delivering the growth agenda and can provide invaluable advice to new business.

15. LAs as employers also have a responsibility to ensure that their regulatory staff are sufficiently competent and have sufficient management control/support to carry out the tasks that the LA requires them to undertake.

16. With its central health and safety policy role HSE will provide:

- Authoritative health and safety advice and guidance for business;
- Stakeholder engagement through involvement in industry liaison forums and other appropriate national forums;
- Specialist health and safety support and advice to LAs;
- Specific sector strategies with associated national planning priorities to inform LA regulatory interventions;
- A list of those high risk sectors/activities appropriate to be targeted for proactive inspection by LAs;
- Support for Primary Authorities and their inspection plans;
- Support LA peer review of their enforcement decisions, intervention plans and professional competence; and
- Monitor and publish LA intervention data for benchmarking purposes via the LAE1 return (see paragraph 53 in Data Collection).

Professional bodies

17. The Chartered Institute of Environmental Health (CIEH) (covering England, and Wales) and the Royal Environmental Health Institute of Scotland (REHIS) (covering Scotland) are the two main professional bodies for LA Health and Safety regulators. They are responsible for setting standards for professional practise, promoting training, education and continuing professional development via accredited courses and qualifications for Environmental Health Officers.

18. In addition there are a range of other organisations e.g. the Institution of Occupational Safety & Health (IOSH), who can help support the delivery of the risk-based approach to regulation outlined by the Code.

Section 2: A risk-based approach to regulation

19. Business is responsible for managing the risks it creates to workers and the public who might be affected by its work activity. This applies to all businesses, no matter how large or small.
20. LA regulators should use a range of interventions, by which we mean all available methods and techniques, to influence behavioural change in the way business manages or undertakes its work.
21. This Code seeks to provide advice and direction to LAs on using a risk-based, targeted and proportionate approach to their interventions and enforcement in accordance with the principles of good regulation which requires enforcement to be demonstrably targeted, proportionate, consistent, transparent and accountable.

Targeting

22. This means targeting interventions on those activities that give rise to the most serious risks or where the hazards are least well controlled.

LAs should achieve this by:

- Having risk-based intervention plans focussed on tackling specific risks;
- Considering the risks that they need to address and using the whole range of interventions to target these specific risks;
- Reserving unannounced proactive inspection only for the activities and sectors published by HSE or where intelligence suggests risks are not being effectively managed; and
- Using national and local intelligence to inform priorities.

23. There is already much 'targeting' of LA resource towards the more significant hazards and higher risk activities which are reflected in risk-based intervention plans. At the level of business sectors and nationally recognised specific hazards this is achieved through strategic programmes of work and specified national priorities.
24. At the individual business level, LAs should target their activity at specific risks which have informed the selection of the business. They should not invest limited resources on matters of comparatively low risk – unless, of course, they come across matters of evident concern.

25. LAs should use the whole range of regulatory interventions available based on the premises risk categorisation to ensure a business is managing its risks effectively.
26. Proactive inspection must only be used to target the high risk activities in those sectors specified by HSE or where intelligence suggests risks are not being effectively managed. For this purpose HSE will publish a list of high risk sectors (and the key activities that make them such) that are to be subject to proactive inspections by LAs.
27. The focus of LAs may often be broader than specific health and safety outcomes as they can also have an impact on wider public health outcomes/ health inequalities. By using the list of national priorities for proactive inspection as well as local information LAs can determine the key risks of serious workplace accidents, injuries and ill-health to develop local intervention plans for poorly performing businesses; they can then target their resources effectively using the whole range of available interventions to influence behaviours and improve the management of health and safety risks.
28. Where businesses participate in Primary Authority this provides a framework for strategic engagement across LAs reducing the need for repeated visits. Where there is an inspection plan or information on a company's compliance procedures and performance this should be used to inform LAs about the agreed priorities and arrangements for addressing them by a particular business. (See paragraph 39).
29. Additionally, LAs contribute to delivering the growth agenda and can provide invaluable advice to new business start-ups. Using risk based targeting should free up resource and facilitate the provision of such advisory visits. Advisory visits are distinct from regulatory visits and should be made at the convenience of business and without recourse to the section 20 regulatory powers of entry provided by the HSWA.

Proportionality

30. This means ensuring interventions and enforcement are related to the relative level of health and safety risks, including the potential or actual harm, or to the seriousness of any breach of the law.

LAs can achieve this by having trained and competent officers who can exercise professional judgement to:

- Differentiate between different levels of risk or harm;
- Decide how far short a business has fallen from managing the risks it creates effectively; and

- Apply proportionate decision making in accordance with the LA's Enforcement Policy, HSE's Enforcement Policy Statement and Enforcement Management Model.

31. LAs can achieve this by carrying out enforcement in a proportionate manner in line with their enforcement policies, HSE's Enforcement Policy Statement¹ and the Enforcement Management Model. This will aid LAs in exercising professional judgement to differentiate between different levels of risk or harm and deciding how far short a business has fallen from managing the risks it creates.

32. The interventions available to regulators include reactive interventions such as responding to complaints, accidents and incidents. HSE has developed incident selection criteria and a risk based approach to complaint handling which LAs should consider adopting (see the section on consistency below).

33. Only where businesses have specific activities which fall in the specific sector categories, or where intelligence suggests specific risks are not being effectively managed, should they be subject to proactive inspection (see paragraph 26).

34. LAs should maintain a strong deterrent against those businesses who fail to meet their health and safety obligations and put their employees at material risk thereby also deriving an unfair competitive advantage. LAs achieve this by continuing to take proportionate enforcement action in accordance with the Enforcement Management Model. LAs should publicise successful enforcement action to maintain a strong deterrent effect.

35. For training, competence and the exercise of professional judgement please refer to Section 3 of this Code.

Consistency

36. This means regulators taking a similar approach, in similar circumstances to achieve similar ends. For business this means they can expect to receive a consistent approach to targeting, enforcement, decisions to prosecute and response to incidents from each LA regulator.

LAs can achieve this by having management arrangements that:

- Ensure nationally published guidance is applied appropriately to address both local and national priorities;

¹ HSE's Enforcement Policy Statement sets out the purpose, method and principles of enforcement; and explains role of investigation, prosecution and death at work.

- Take full account of Primary Authority;
- Promote a consistent approach to regulators competence;
- Set clear expectations for delivery; and
- Allow appropriate comparison and transparency, via publication annually of health and safety inspection data.

37. A consistency of approach can be achieved by following national procedures and guidance for targeting. LAs should consider and address local priorities by applying the same philosophy. Maintaining a consistency of approach when addressing both local and national priorities ensures best use of regulator resource and brings greater certainty to business that they are being treated consistently.

38. Supplementary guidance will be provided to support LA implementation of the Code and this will be periodically reviewed in the light of experience and implementation.

39. Primary Authority and the individual inspection plans are an important tool in encouraging a consistent approach is taken to a particular business. To ensure consistency nationally, PA Inspection plans should follow the principles of the Code and be developed taking into account the national priorities and list of activities/sectors considered suitable for proactive inspection (see also paragraph 28).

Transparency

40. This means ensuring businesses are clear on what is and what is not expected of them and what they can expect from the regulator.

LAs can achieve this by:

- Having a clear and easily accessible enforcement policy;
- Following national guidance and restricting proactive inspection to only those specific activities/risks specified by HSE (see paragraph 26) or where intelligence suggests risks are not being effectively managed;
- Providing easily accessible information on the services and advice available to business including pointing to nationally available material on the HSE website e.g. Health and Safety Made Simple;

- Having arrangements for keeping employees, their representatives, and victims or their families informed; and
- Regularly publishing data on their health and safety inspection records.

41. Transparency in the use of nationally available guidance material will assist in providing clarity and certainty for business that they are being treated consistently. It also provides a consistent framework from which LAs can provide a good public service.

Accountability

42. This means LAs need to be accountable to the public and businesses for their actions.

LAs can achieve this by:

- Having publically available risk-based service plans and information on health and safety interventions, enforcement, and prosecution activity;
- Having easily accessible complaints procedures that clearly references the "[Independent Regulatory Challenge Panel](#)"; and
- Benchmarking their performance against other LAs via data returns to HSE and peer review.

43. To ensure they are accountable to their community, LA health and safety services and processes should be designed to meet the local needs of the public and businesses. This should be reflected in publically available risk based service plans and an easily accessible complaints procedure which references the Independent Regulatory Challenge Panel.

44. Being accountable also means being open about your activities and processes and sharing relevant information to allow benchmarking and peer review. See also Section 4 on *Assurance on meeting the requirements of the Code*.

Section 3: Training and Competence

45. LAs have a statutory duty to 'make adequate arrangements for enforcement' and to legally appoint suitably qualified inspectors to carry out the range of regulatory duties they have been appointed for².
46. Using risk based interventions to help improve the effective management of health and safety risks requires LA inspectors to have the professional competence and discretion to differentiate between significant risks and trivial matters; and to intervene appropriately utilising the full range of regulatory interventions available to influence behaviours.
47. LAs should have procedures to legally authorise competent inspectors under HSWA Section 19 (See [LAC 22/8](#) on appointments) and remove such authorisations where they are no longer valid.
48. LAs should ensure inspectors have suitable and ongoing competence in order to exercise the powers granted to them under the HSWA (e.g. by use of the Common Approach to Competency for Regulators which includes the Regulators Development Needs Assessment (RDNA) tool and Guidance to Regulator's Information Point (GRIP)).
49. RDNA establishes competencies and behaviours for a wide range of LA regulatory activity and sets specific competencies and behaviours for health and safety regulators. LA H&S regulators should assess themselves against the competencies at least annually to determine their development needs. The outcome of the self-assessment should be discussed with their line manager to allow a decision to be reached about their ongoing development needs and how they might be addressed.
50. The [Independent Regulatory Challenge Panel](#) was set up to enable a business to challenge specific health and safety regulatory advice they believe to be unreasonable or disproportionate. LAs should take into account competency and training needs when considering the outcome of any cases referred to this panel by a business.
51. In addition, LAs should find that regularly reviewing enforcement decisions (e.g. via a peer review process) provides a useful benchmark and reassurance.

² See Health & Safety at Work etc Act 1974: section 18 (Authorities responsible for enforcement of the relevant statutory provisions); section 19 (Appointment of Inspectors); and Section 20 (Powers of Inspectors).

Section 4: Assurance on meeting the requirements of this Code

52. To provide assurance that the requirements of this Code are met HSE will put in place arrangements to monitor LA performance.

Data collection

53. LAs should ensure they have a means of monitoring, capturing and sharing health and safety intervention, enforcement, and prosecution activity.

54. LAs must make this information available to the public to encourage local accountability and share it with HSE via the LAE1 return to allow the preparation of national data, which in turn will assist LAs to benchmark and peer review their work with other LAs. To encourage transparency and accountability, HSE will publish data for all LAs annually. Where there is a lack of information or where the information prompts questions about compliance HSE will work with the LA in question to assist their implementation of the Code.

55. The information given to HSE will also be shared with The Chartered Institute of Public Finance and Accountancy (CIPFA) who would otherwise also collect this information but instead has agreed to use HSE's health and safety data to help reduce reporting burdens on LAs

Peer review

56. Inter-authority peer review e.g. those undertaken by neighbouring authorities, provides LAs with a tool that gives independent assurance that the requirements of the Code are being met. Peer review is not meant to be a formal inter-authority audit but it is expected that LAs will support each other in implementing and complying with the Code and providing assurance that they have done so.

57. Peer review:

- a) Provides an opportunity to discuss, refresh and share best working practices through seeing the work of others, and hearing different views and approaches;
- b) Offers a means to instigate improvement in working practices. Ideas for improvement can be discussed, moderated, and developed during the peer review process;
- c) Can verify that key messages have been understood and necessary change properly embedded;

d) Raises confidence and competence (e.g. confirming good practice and providing reassurance).

58. Inter-authority peer review allows the consideration and discussion of any aspects of the Code by a small group of, ideally 6-8, peer LA or within existing liaison groups. The peer review can range from a short informal group discussion without papers, to a formal meeting involving prior consideration of cases and production of a written report.

59. LAs decide when to carry out a peer review, the subject and the approach. Peer review can be used for most aspects of the Code where there is a common business function undertaken by the LA peer group. For the purposes of monitoring LA's compliance with this code, any peer review should consider the following questions:

- a) Does the LA have a risk based approach to intervention planning for both local & national priorities?
- b) Do specific intervention plans meet the requirements of the Regulators Compliance Code (e.g. no inspection without a reason); and the Enforcement Management Model (e.g. was enforcement action proportional to risk)?
- c) Is there a published enforcement policy and is it being followed?
- d) Are there adequate arrangements to manage the appointment of suitably qualified inspectors?
- e) Is there a system for ensuring on-going Inspector competence?
- f) Do LAs benchmark their intervention activity?
- g) Do LAs peer review their enforcement decisions as part of their peer review process?