



# **HEALTH AND SAFETY ENFORCEMENT POLICY**

**DEVELOPMENT SERVICES**

**ENVIRONMENTAL HEALTH SECTION**

## INTRODUCTION

The Council is responsible for the enforcement of the Health and Safety at Work etc Act 1974 in the types of premises specified in the Health and Safety (Enforcing Authority) Regulations 1998.

Section 18(4) of the Act requires that local authorities make adequate arrangements for health and safety enforcement and to perform their duties in accordance with the mandatory guidance, commonly known as “Section 18 Guidance”, issued by the Health and Safety Commission (HSC). This Enforcement Policy has been developed so as to be consistent with the revised Section 18 guidance issued by the HSC in October 2002 and the current HSC Enforcement Policy Statement.

The principles contained in the HSC Enforcement Policy Statement are in accordance with the Enforcement Concordat. The Council has adopted the Enforcement Concordat confirming its commitment to good enforcement practice.

The ultimate purpose of the Council is to protect the health, safety and welfare of people at work and to safeguard others, mainly members of the public, who may be exposed to risks from the way work is carried out. It is the objective of the Council to work with duty holders (employers, self-employed persons and employees and their representatives) in ensuring that risks are effectively managed and controlled to prevent accidents and ill health at work.

The Council believes in firm but fair enforcement of health and safety law. This will be informed by the principles of **proportionality** in applying the law and securing compliance; **consistency** of approach; **targeting** of enforcement action; and **transparency** about how we operate and what those regulated may expect from us.

## PROPORTIONALITY

Enforcement action taken will be in proportion to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law. Wherever possible, informal action such as verbal advice and letters will be used to secure compliance with the law but there will be occasions however, when formal action will be required.

Duty holders must control risks so far as is reasonably practicable and when considering the protective measures taken by duty holders, the Council will take

into account the degree of risk and also the commitment, whether in money, time or trouble, involved in the measures necessary to avert the risk.

### Informal Action

The use of informal action, including advisory and warning letters and verbal advice, will be considered appropriate where:

- The breaches of the law are of a minor nature and persons are not exposed to serious risks to their health and safety;
- The breaches of the law are of a more serious nature but the past history of the business and duty holder is such that co-operation can reasonably be expected;
- The level of confidence in the duty holder is such that it can reasonably be expected that the necessary corrective action will be taken.

### Formal Action

An **Improvement Notice** will be served when:

- There are significant breaches of legislation which require to be addressed promptly;
- The duty holder has a history of non-compliance with the use of informal action;
- There is a lack of confidence in the duty holder to respond to an informal approach.

A **Prohibition Notice** will be served when:

- The work carried on, or likely to be carried on, involves a risk of serious personal injury;
- There is insufficient confidence that the activity will cease or not take place unless a Prohibition Notice is served;
- The consequences of not taking immediate and decisive action would be unacceptable.

A **Report to the Procurator Fiscal** will be considered where one or more of the following circumstances apply. Where:

- Death was a result of a breach of legislation;

- The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the duty holder warrants it;
- There has been reckless disregard of health and safety requirements;
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- A duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- There has been a failure to comply with an Improvement or Prohibition Notice;
- A breach, which gives rise to significant risk, has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity;
- It is appropriate, in the public interest, to draw attention to the need for compliance with the law and to deter other duty holders from similar serious failures to comply with the law;
- False information has been supplied wilfully, or there has been intent to deceive, in relation to the matter which gives rise to significant risk.

## **CONSISTENCY**

The Council recognises the importance of ensuring that a similar approach is taken in similar circumstances to achieve similar ends. Duty holders managing similar risks have a right to expect a consistent approach in the advice tendered; the use of enforcement notices; decisions on whether to submit reports to the Procurator Fiscal; and in the response to incidents.

In accordance with HSC Guidance, the Council recognises that only those officers who have the relevant qualifications and the appropriate level of competence and experience will be appointed under Section 19 of the Act and be authorised to exercise any or all of the specific enforcement powers.

Methods for promoting and monitoring consistency will include the following:

- Periodically checking letters and enforcement notices issued by inspectors;
- Checking a sample of premises files to analyse case studies and evaluate the action taken;
- Carrying out accompanied inspections, desktop exercises and peer review;
- Carrying out postal questionnaire surveys of duty holders;
- Holding regular team meetings to discuss work programmes, new legislation and guidance and specific health and safety issues;

- Maintaining membership of, and active participation in, the liaison group of other local authorities with the outcomes and discussions of these meetings being fed back to all officers;
- Ensuring liaison takes place with the relevant lead authority in accordance with HELA's Lead Authority Partnership Scheme, which promotes consistency of local authority health and safety enforcement among organisations with multiple premises in different areas.

## **TARGETING**

The Council will establish and maintain a planned inspection programme based on the selection of premises for inspection using a risk-based priority planning system in accordance with current HELA guidance and the priority issues and programmes highlighted by the HSC's Strategic Plans. The risk-based priority planning system will be used to enable resources to be targeted at those employers and activities, which give rise to the most serious risks or where the hazards are the least well controlled.

In addition to carrying out programmed inspections and revisits, other visits will also be carried out to investigate accidents, dangerous occurrences, cases of occupational ill health and complaints. The selection and procedures for these investigations will take account of current HELA guidance with most resources being devoted to the more serious circumstances.

Records of premises and duty holders will be accurately maintained and will contain comprehensive information which includes names, addresses, history of accidents and complaints and details of inspections, investigations, enforcement action and risk priority ratings.

## **TRANSPARENCY**

The Council will help duty holders to understand what is expected of them and also what they should expect from the Council. Copies of the HSC leaflet "What to Expect When a Health and Safety Inspector Calls" will be given to duty holders. This leaflet explains what employers and employees and their representatives can expect when a health and safety inspector calls at a workplace.

### Letters

Any contraventions noted, will be highlighted to the duty holder at the time of the inspection and then confirmed in writing within 10 working days of the

inspection. Letters will identify the contraventions, the actions that are needed for compliance and will clearly differentiate between what are legal requirements and what are recommendations for good practice.

Copies of relevant advisory and guidance leaflets will be provided and details also given of further reference material which the duty holder may wish to obtain to aid compliance.

Employees or their representatives will be provided with written factual information on any matters affecting their health, safety and welfare including details of the action the inspector proposes taking.

### Improvement and Prohibition Notices

In the case of Improvement Notices, the inspector will discuss the notice and, where appropriate, resolve points of difference before serving it. The Improvement Notice will say what needs to be done, why and by when and will state which laws, in the opinion of the inspector, are being breached.

In the case of a Prohibition Notice, the notice will explain why the prohibition is necessary. A Prohibition Notice may take effect immediately or in the case of a Deferred Prohibition Notice take effect at the end of a period specified in the notice.

Information will be provided explaining about the rights of an appeal against notices to an Employment Tribunal including the relevant Appeal Form.

Copies of Improvement and Prohibition Notices will be provided to employees or their representatives.

Copies of notices relevant for the purposes of the Environment and Safety Information Act 1988 (notices other than those which impose requirements or prohibitions solely for the protection of persons at work) will be kept in a Public Register held by the Council. The Public Register of relevant notices will be made available for examination by any person at any reasonable time.

### Complaints Against the Service

Confirmation will be provided that any complaints or representations on any aspects of a visit by an inspector or any subsequent letter or notice can be made to the Environmental Health Manager. Complaints against the service will be dealt with in accordance with the Moray Council's Complaints Policy.

## **MONITORING AND REVIEW**

This Policy and the implementation of it will be reviewed on an annual basis or more frequently if required, for example, when further Section 18 Guidance is received from the HSC. The planned inspection programme and investigation activity will be measured and monitored to ensure practices are in accordance with this Policy.