



Briefing 13/03 February 2013

Consultation on National Local Authority Enforcement Code - Health & Safety at Work

To: All contacts in England, Scotland and Wales
For information: Northern Ireland

Key issues

Move to a risk based approach to inspections
Identification of activities for proactive inspections
Examples of approaches to be taken up by local authorities to improve effectiveness
Opportunity for local authorities to highlight good practice via APSE research publication

1. Context

The Health and Safety Executive has issued a consultation document titled 'CD247 - Public consultation on a National Local Authority Enforcement Code – Health and Safety at Work, England, Scotland and Wales.'

The consultation sets out proposals for a National Local Authority Enforcement Code which has been developed in response to the Professor Ragnar Löfstedt report "Reclaiming health & safety for all: An independent review of health and safety legislation" commissioned by the Minister for Employment which recommended that HSE be given a stronger role in directing local authority's health & safety inspection and enforcement activity to ensure local authority regulators take a more consistent and proportionate approach to enforcement.

The Code sets out Government expectations on a risk based approach to targeting health and safety regulatory interventions. It provides a principle based framework that recognises the respective roles of business and the regulator in the management of risk. It sets out the risk based approach to be followed by local authority regulators that will provide business with a consistency of approach. At the same time, following the principles of the Code will ensure local authorities make the best use of their regulatory resource by focussing their efforts where it really matters.

Implementing and complying with the requirements of the Code will deliver the central Government expectation that business operating in comparatively lower risk premises should not be subject to proactive, unannounced inspections, unless there is reason to suspect poor performance.

The Code can be found at <http://consultations.hse.gov.uk/gf2.ti/f/17314/460517.1/PDF/-/CD247.pdf>

2. The Code

The document notes that whilst the primary responsibility for managing health and safety risks lies with the business who creates the risk, local authority health and 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.

It goes on to state that local authority regulators are competent professionals granted powers and duties to deliver proportionate and targeted enforcement. It is vital that local authority regulatory resource is used consistently and to best effect by targeting specific risks or focussing on specific outcomes. They 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.

It is given legal effect as HSE guidance to local authorities under section 18(4) (b) of Health and Safety at Work etc. Act 1974 (HSWA) and applies to England, Wales and Scotland.

This Code sets out what is meant by 'adequate arrangements for enforcement', replacing 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 local authorities 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 local authorities health and safety regulators linked to the authorisation and use of HSWA powers; and
- d) Explaining the arrangements for collection and publication of local authority data and peer review to give an assurance on meeting the requirements of the Code.

3. Monitoring and implementation

To assess how local authorities are meeting the requirements of the Code, HSE will monitor local authority data returns and where there is a lack of information or where the information prompts questions, HSE will work with the local authority in question to assist their implementation and compliance with the Code. In addition it is expected that via the inter authority peer review process, local authorities will support each other in implementing and complying with the code and providing assurance that they have done so. HSE will annually publish a report detailing how local authorities are complying with this Code to provide transparency on local authority regulatory activity.

4. A risk based approach

The Code notes that business is responsible for managing the risks it creates to workers and the public who might be affected by its work activity and that local authorities should use all available methods and techniques, to influence behavioural change in the way business manages or undertakes its work. The Code seeks to provide advice and direction to local authorities 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.

4.1 Targeting. This means targeting interventions on those activities that give rise to the most serious risks or where the hazards are least well controlled. Local authorities 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;
- Using national and local intelligence to inform priorities.

The Code acknowledges that there is already much 'targeting' of resource towards the more significant hazards and higher risk activities which are reflected in risk-based intervention plans. It goes on to say that at the individual business level, local authorities should target their activity at specific risks which have informed the selection of the business and should not invest limited resources on matters of comparatively low risk.

It states that 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 (see Annex A for the HSE list of high risk sectors).

4.2 Proportionality. 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.

Local authorities 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 local authority's Enforcement Policy, HSE's Enforcement Policy Statement and Enforcement Management Model.

The Code states that local authorities 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. Local authorities achieve this by continuing to take proportionate enforcement action in accordance with the Enforcement Management Model. Local authorities should publicise successful enforcement action to maintain a strong deterrent effect.

4.3 Consistency. 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 local authority regulator.

Local authorities can achieve this by having management arrangements that:

- Ensure nationally published guidance is applied appropriately to address all relevant issues
- 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.

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

Local authorities 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 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.

4.5 Accountability. This means local authorities need to be accountable to the public and businesses for their actions.

Local authorities 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” <http://www.hse.gov.uk/contact/challenge-panel.htm>; and
- Benchmarking performance with other local authorities via HSE and peer review.

5. Training and competence

The Code notes the importance of appropriate training for qualified inspectors with 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. It goes on to say that local authorities should ensure inspectors have suitable and on-going competence in order to exercise the powers granted to them under the health and safety at work acts and should regularly review enforcement decisions, for example, via a peer review process.

6. Assurance on meeting the requirements of this Code

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

- Data collection - local authorities should ensure they have a means of monitoring, capturing and sharing health and safety intervention, enforcement, and prosecution activity.
- Peer review - Inter-authority peer review e.g. those undertaken by neighbouring authorities, provides local authorities 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 that local authorities will support each other in implementing and complying with the Code and providing assurance that they have done so.

7. APSE Response

APSE will make a response to the consultation. If you wish to send in your views they will be incorporated into the response process and I would encourage all to respond to this briefing. We will be compiling its response in mid February 2013 and is requesting replies to this consultation document by Friday 15th February 2013. Responses should be sent to pbrennan@apse.org.uk.

The closing date for the consultation is 1st March 2013 and responses can be made via the online questionnaire <http://www.hse.gov.uk/consult/condocs/cd247.htm> or by completing the electronic form <http://www.hse.gov.uk/consult/condocs/cd247.htm> and sent by email to lau.enquiries@hse.gsi.gov.uk

8. APSE Comment

Local authority health and safety professionals are highly skilled staff, making a vital contribution to the well-being of local people living and working in their communities and are fully aware of the scope and importance of their role. The draft Code does provide some good pointers for actions which can improve enforcement services in local authorities though most will have the same or similar arrangements already in place in their organisations. Examples include risk based intervention plans, peer review, consistency and transparency and benchmarking.

Local authorities are under severe financial pressures currently as are all public service organisations and some might argue that the move towards a risk based approach has more to do with reduced resources than effective enforcement. Nonetheless local authorities do have to prioritise health and safety issues both to undertake their legal obligations and to support and protect service users and their own staff. There is little likelihood of health and safety becoming an area where local authorities do not allocate adequate funds based on previous actions and their awareness of its importance.

Local authorities act as both regulators for local businesses as well as their own internal operations so there is a responsibility on them to ensure their own houses are in order and to act as exemplars in the local community. Appendix A refers to those activities which should qualify for proactive inspection by local authorities and includes activities such as legionella, falls from height, vehicular dangers and catering premises. All of these are commonplace in local authority depots, kitchens and civic facilities as well as operations on the highway and in a building maintenance context.

Clearly the fact that some workplaces are now categorised as 'low risk' means that the chance of an unannounced HSE visit has been removed. This means it is even more important for those businesses that local authority inspectors have responsibility for are up to scratch and have appropriate arrangements in place. The same is true of those working in councils own depots, work places and on site

Health and safety remains an issue to which some private sector providers are not fully committed. This issue has been highlighted anecdotally to APSE in the past and is an area which those with responsibility for making procurement decisions and monitoring contracts must be vigilant and ready to act.

The Code is strategic in nature and will guide the general approach of local authorities. However the messages within it need to filter through to employees delivering front line services. Cultural and behavioral change on the front line is just as important as strategic approaches, service plans, and complaint handling.

Phil Brennan
Principal Advisor

APSE research: Health and safety in refuse collection and recycling operations

APSE are compiling a publication on health and safety in refuse collection and recycling operations. The scope will cover issues such as driving operations/reversing; route risk assessments; manual handling at the kerbside; procurement; and monitoring health and safety (different types of monitoring at different levels within organisations).

The aim of the publication is twofold, to showcase good practice case studies into the above topics and as such it will be a good opportunity to promote your authority across the local government sector,

and to answer questions raised pertaining to areas of confusion for councils. The Health and Safety Executive will provide further guidance on those issues raised.

Therefore, we would welcome feedback from APSE members on the following:

- Good practice case studies on any of the topics above or areas where you have recently (during the past couple of years) improved your operations (a short case study of 1-2 pages, covering background, changes made, outcomes)
- Any areas of confusion/issues requiring clarification in refuse or recycling

If you wish to become involved in this research please contact Debbie Johns on 0161 772 1810 or at DJohns@apse.org.uk

Annex A

List of activities/sectors for proactive inspection by LAs – only these activities falling within these sectors or types of organisation should be subject to proactive inspection

No	Hazards	High Risk Sectors	High Risk Activities
1	Legionella infection	Premises with cooling towers/evaporative condensers	Lack of suitable legionella control measures
2	Explosion caused by leaking LPG	Premises (including caravan parks) with buried metal LPG pipework	Buried metal LPG pipe work For caravan parks to communal/amenity blocks only)
3	e.coli/cryptosporidium infection esp. in children	Open Farms/Animal Visitor Attractions	Lack of suitable micro-organism control measures
4	Fatalities/injuries resulting from being struck by vehicles	Tyre fitters*/ MVR* (as part of Car Sales) High volume Warehousing/Distribution	Use of two-post vehicle lifts Workplace transport
5	Fatalities/injuries resulting from falls from height/ amputation and crushing injuries.	Industrial retail/wholesale premises e.g. steel stockholders, builders/timber merchants	Workplace transport/work at height/cutting machinery /lifting equipment.
6	Industrial diseases (occupational asthma/deafness)	MVR* Industrial retail/wholesale premises e.g. steel stockholders, builders/timber merchants	Use of Isocyanate paints Noise and dust.
7	Falls from height	High volume Warehousing/Distribution	work at height
8	Crowd control & injuries/fatalities to the public	Large scale public events/sports/leisure facilities e.g. motorised leisure pursuits including off road vehicles and track days	Inadequate consideration of public safety e.g. poor organisation and/or supervision of high speed or off-road vehicle movements
9	Carbon monoxide poisoning and gas explosion	Commercial catering premises using solid fuel cooking equipment	Lack of suitable ventilation and/or unsafe appliances.
10	Violence at work	Premises with vulnerable working conditions (lone/night working/cash handling e.g. betting shops/off-licences/care settings.	Lack of suitable security measures/procedures

Annex B

Consultation questions

1. Do you feel that the measures outlined in the Code and Annex will effectively deliver the Government's commitment to stop Local Authorities from proactively inspecting low risk businesses on health and safety grounds?
2. Is the scope of the National Code sufficiently defined?
3. What are your views on the risk based approach proposed?
4. What are your views on the proposal for HSE to publish a list of the higher risk sectors (and key activities) appropriate to be targeted for proactive inspection by local authorities (Annex A)?
5. What are your views on the contents of annex A?
6. What are your views on the assurance measures proposed for local authorities on meeting the requirements of the Code?
7. Will the Code require regular review in the future?
8. If you have answered 'yes' to question 4, would five years be the right frequency or would you suggest an alternative frequency?

Questions 9 to 12 are targeted at Local Authority health and safety regulators and their representative bodies

9. Does the Code adequately set out how local authorities can achieve a consistent approach to regulation via risk based targeting?
10. Does it provide for sufficient local flexibility?
11. Have we provided sufficient direction for local authorities to target their resources based on risk?
12. Does the Code provide sufficient guidance on the management of regulator competence?

Questions 13 to 15 are targeted at businesses and their representative bodies

13. Is there more that the Code can say about ensuring that businesses take responsibility for managing the risks that they create?
14. The Code sets out how local authorities can achieve a consistent approach to regulation via risk based targeting using specified guidance material. Will this bring about the desired consistency of approach?
15. If you have answered 'no' to question 14, what more is needed?

General

16. Do you have any other comments on the ideas and proposals explored in this document?
17. Is there anything you particularly like or dislike about this consultation? Please provide comments