

Compliance and Enforcement Policy

Annex 3 : Health and Safety Enforcement

1. Introduction

- 1.1 This annex supplements the Shared Regulatory Services Compliance and Enforcement Policy in establishing a consistent approach to the enforcement of health and safety law. It must be read in conjunction with the overarching Compliance and Enforcement Policy
- 1.2 This annex has been produced in response to the requirements of section 18 of the Health and Safety at Work Act 1974 which requires Local Authorities to make adequate arrangements for the performance of its duties as an “enforcing authority”.
- 1.3 This annex follows the guidance issued by the Health and Safety Commission and requires Local Authorities to follow the principles and approaches which have been agreed by the Health and Safety Executive and Local Authorities Enforcement Liaison Committee.
- 1.4 This annex will form part of the Health and Safety Service Plan produced in response to the requirements of section 18 of the Act.
- 1.5 Where there is any conflict in interpretation between this annex and the overarching Compliance and Enforcement Policy, the latter will take precedence.

2. Remit of the Service in enforcing health and safety law

- 2.1 Shared Regulatory Services (SRS) is an “enforcing authority” for the authorities of Bridgend, Cardiff and the Vale of Glamorgan and as such it has a responsibility under section 18 of the Health and Safety at Work Act 1974 to make adequate arrangements for the enforcement of health and safety law in relation to specified work activities.
- 2.2 The aim of SRS 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. The main work activities for which SRS is responsible are:-

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- offices
- shops
- retail and wholesale distribution centres
- sporting, leisure and entertainment activities
- catering establishments
- the provision of residential accommodation
- body piercing and tattooing
- consumer services in shops
- animal welfare establishments
- the provision of child care, playgroup or nursery facilities
- places of worship
- Undertakers and funeral directors.

2.3 More detailed information including exemptions to this list can be found in the Health and Safety Service Plan and in the Health and Safety (Enforcing Authority) Regulations 1998

This Enforcement Policy Statement sets out the general principles and approach that SRS will follow; our Inspectors will observe the principles of this Policy document.

The appropriate use of the full range of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare.

3. Taking enforcement action

3.1 Section 8.4 of the SRS Compliance and Enforcement Policy is concerned with decisions on enforcement action and considers the broad range of enforcement options available to the Service. This purpose of this section is to set out the additional enforcement options available that are specific to the administration of health and safety law.

3.2 The enforcement methods available to our inspectors include:

- providing verbal and written advice;
- providing written information regarding breaches of law;
- requiring improvements in the way risks are managed;
- stopping certain activities where they create serious risks; and
- recommending prosecution where there has been a serious breach of law.

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In allocating resources, due regard is given to the principles set out below, the objectives published in Health and Safety Commission's and the Health & Safety Executive/Local Authority Enforcement Liaison Committee's (HELA) strategic plans, and the need to maintain a balance between enforcement and other activities, including inspection.

- 3.3 We believe in firm, but fair, enforcement of the law. Our approach is that all enforcement action should be proportionate to the health and safety risks and to the seriousness of any breach of law. We consider that appropriate use of our enforcement powers is important, both to secure compliance with health and safety law and to ensure that those who have a legal duty (duty holders) are held to account for significant failures.

The following sections of this annex describe:

- the purpose of enforcement;
- the principles of enforcement;
- the enforcement methods available to our inspectors; and
- how our enforcement principles relate to investigations and prosecutions.

4. The purpose of enforcement

- 4.1 The purpose of SRS as an Enforcing Authority is to ensure that duty holders manage and control risks effectively, thus preventing harm.

The purpose of enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law;
- ensure that duty holders who breach health and safety requirements, and directors or managers, who fail in their responsibilities, may be held to account.

- 4.2 Enforcement is distinct from civil claims pursued by individuals such as injured parties, for compensation and is not undertaken in all circumstances where civil claims may be pursued. It is not the policy for Inspectors to assist in such claims other than to provide information requested by the respective parties.

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5. The principles of enforcement

5.1 In line with the overarching SRS Compliance and Enforcement Policy, we apply the following principles when conducting our enforcement activities in the context of health and safety law:

- **proportionality** in applying the law and securing compliance;
- **targeting** of enforcement action;
- **consistency** of approach;
- **transparency** about how the we operate as a regulator and what those regulated may expect;
- **accountability** for our service and actions.

These principles apply both to enforcement in particular cases of breaches in the law, and to our management of enforcement activities as a whole. They are not applied in isolation, but are informed by an understanding of the business environment. They allow for effective enforcement, without stifling economic growth, by requiring our inspectors to be proportionate in their decision-making and mindful in keeping the burden on business productivity to a minimum. These principles are also mirrored in the National Local Authority Code for Health and Safety at Work

5.1.1 Proportionality

- We adopt a proportionate approach to enforcing the law across different industries and sectors, recognising the importance of supporting businesses to comply and grow.
- In our dealings with duty holders, we will ensure that our enforcement action is proportionate to the health and safety risks* and to the seriousness of any breach of the law. This includes any actual or potential harm arising from any breach, and the economic impact of the action taken.
- We expect that duty holders, in turn, will adopt a sensible and proportionate approach to managing health and safety, focussing on significant risks i.e. those with the potential to cause real harm.
- Applying the principle of proportionality means that our inspectors should take particular account of how far duty holders have fallen short of what the law requires and the extent of the risks created.

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- Some health and safety duties are specific and absolute. Others require action “so far as is reasonably practicable”. Our inspectors will apply the principle of proportionality in relation to both.
- Deciding what is reasonably practicable to control risk involves the exercise of judgement. Our inspectors, when considering the adequacy of the protective measures taken, will balance the degree of risk against the money, time or trouble needed to avert that risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, duty holders must take measures and incur costs to reduce the risk and comply with the law.

5.1.2 Targeting

- We use a risk-based approach when deciding which duty holders to proactively inspect, taking into account factors such as size, type of activities, industry sector, and the associated death, injury and ill-health rates.
- We also use proportionate and outcome-based criteria when deciding which incidents, diseases and dangerous occurrences, reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR), have to be investigated. More information on how we decide whether or not we investigate can be found on our website.
- This means that we target our inspection and investigation resources primarily on those activities, industries and sectors giving rise to the most serious risks, where and when the hazards are least well controlled, or where competence to manage health and safety is in doubt. Low risk activities will not, in general, be subject to enforcement unless actual harm has occurred.
- We focus our enforcement activity on the most serious risks, and on those who are responsible for and best placed to control these risks - whether employers, employees, the self-employed, suppliers, contractors, landlords or others.
- We recognise that it is neither possible nor necessary to consider all issues of non-compliance which may come to light during an inspection or investigation. Our inspectors will, therefore target their enforcement action to deal with the most serious risks.
- Where duty holders have responsibilities, we may take action against more than one, when it is appropriate to do so in accordance with this policy.

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5.1.3 Consistency

- We adopt a consistent approach to enforcement of the law across different industries and workplaces, recognising the importance of fair treatment to all in promoting and sustaining economic growth.
- Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve compliance with the law.
- We understand that people managing similar risks in similar industries expect a consistent approach from our inspectors when taking enforcement action. However, consistency is not a simple matter. Every situation is different – by virtue of the industry, workplace, its risks, management systems etc. As a result, our inspectors are faced with many variables in addition to the degree of risk and the seriousness of any breach, including the attitude and competence of management, incident history and previous enforcement action.
- Any enforcement decision therefore requires the appropriate exercise of individual discretion and professional judgement.
- We aim to ensure, through the application of our health and safety enforcement decision-making framework, the Enforcement Management Model (EMM) and through peer review, that our enforcement decisions are consistent.
- Where enforcement action conflicts with the requirements of other regulators we will work with them to resolve the differences.

5.1.4 Transparency

- Our enforcement action should clearly outline to duty holders not only what they have to do but, where relevant, what they don't.
- Where non-compliance has been identified, our inspectors will clearly and promptly explain the decision taken, their reasons, and the actions required to achieve compliance. They will discuss reasonable timescales with the duty holder and explain what will happen if they fail to comply.
- Additionally, our inspectors will differentiate between the actions required to comply with the law, and advice given to achieve good practice or inform of

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upcoming changes to legal requirements. This will ensure that unnecessary economic burdens are not imposed on businesses

- Transparency also involves keeping employees, employee representatives, injured persons and their families informed of relevant enforcement action. However, this is subject to legal constraints on disclosure.

5.1.5 Minimum standards and targets have been set for some specified activities within Health and Safety Enforcement, namely

ACTIVITY		STANDARD
1	All high risk proactive inspections	Routine visits made by appointment
2	All other categories of proactive visits	Visits made on a priority basis or as required as part of the annual business plan
3	All Service Requests, including complaints	All responded to and investigated. Discretion is given to anonymous and vexatious complaints
4	All complaints received in connection with working conditions and work activities	1 st response within 4 days and investigated as per Complaint Investigation Policy
5	Accident and Incident investigations	1 st response within 4 days, and investigated as per Accident Investigation Policy
6	Statutory Reports	Response dependant on details of the Statutory Report
7	Consultation with the Health and Safety Responsible Authority	1 st response within 5 days

Administrative arrangements are in place to monitor our performance against these standards and the results will be published annually in the Service Plan and on the SRS website.

5.1.6 **Accountability**

As a regulator, we are accountable to all and our enforcement actions can be judged against the principles and standards set out in this annex. Whilst not

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diminishing the responsibility of duty holders to comply with the law, this includes our duty to have regard to economic growth in our regulatory activities.

Businesses, employees, their representatives and others will be provided with information to enable them to understand what to expect when our inspectors visit and how to raise any complaints they may have. That documentation will

- describe the procedure to complain about enforcement decisions made by our inspectors, or if procedures have not been followed; and,
- explain about the right of appeal to an Employment Tribunal in cases where statutory notices have been issued.

6. Methods of enforcement

6.1 We have a range of enforcement methods to secure compliance with the law and to ensure a proportionate response to any breaches.

- Our inspectors may provide information, advice, or formal warning letters regarding breaches of the law following a visit. This may include warning the duty holder that, in the opinion of the inspector, they are failing to comply with the law. Where appropriate, we may also serve improvement and prohibition notices, withdraw approvals, vary licence conditions or exemptions, issue simple cautions and we may prosecute.
- In determining what level of enforcement action is appropriate, our inspectors exercise discretion and professional judgement according to the circumstances found. They are guided in this process by the EMM, which provides a framework for consistent enforcement decision making and takes account of the business context on a case by case basis. It also considers aspects of economic gain that could undermine other businesses.
- A prohibition notice can be served when an inspector is of the opinion that there is a risk of serious personal injury associated with a particular work activity or process or, if a serious deficiency in measures is identified, to prevent or mitigate the effects of major hazards. There does not need to be a breach of the law. Such a notice can take immediate effect or be deferred for safety reasons.
- An improvement notice can be served when an inspector is of the opinion that there is a breach of the law which needs to be remedied within a certain period of time.
- Failure to comply with either type of notice is a criminal offence and can result in prosecution.

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- Both prosecution and, where appropriate, cautions, are important ways to hold those responsible to account for breaches of the law. Where it is appropriate to do so in accordance with this policy, these measures can be taken in addition to issuing an improvement or prohibition notice.
- Where a business is found to be part of a Primary Authority partnership, inspectors will follow the Regulatory Delivery rules of primary authority and follow assured advice.

Where inspectors have choices about how they exercise their functions, they will:

- consider how they might carry out their activities to minimise likely negative economic impact: and,
- adapt their activities to maximise any likely positive economic impact

6.2 Investigation

- We use discretion when deciding whether to investigate incidents. It is recognised that it is neither possible nor necessary for the purposes of the Health and Safety at Work etc., Act 1974 to investigate all issues of non-compliance with the law. When making such decisions, including the level of resource to be used, we take the following factors into account:
 - the scale of potential or actual harm;
 - the seriousness of any potential breach of the law;
 - our enforcement priorities;
 - the practicality of achieving results;
 - the wider relevance of the event, including serious public concern
- The criteria for determining which incidents are mandatory to investigate are published on our website. We undertake investigations in order to:
 - gather information and establish the facts
 - identify the immediate and underlying causes and the lessons to be learnt
 - prevent recurrence
 - identify breaches of health and safety law
 - take appropriate action, including the service of notices and prosecution.

SRS will follow the principles of its Accident Investigation Policy in determining

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which accidents will be investigated. *Health and Safety Plan Accident Investigation Policy.doc*

SRS will follow the principles of its Complaint Investigation Policy in determining which complaints or Service Requests will be investigated as indicated *Health and Safety Plan Complaints Investigation Policy.doc*

We devote most resources to investigating incidents involving the more serious circumstances, including the investigation of all work related-deaths.

6.3 Investigation of work- related deaths

Where there has been a breach of law leading to a work-related death, consideration needs to be given to whether or not the circumstances of the case might justify a charge of manslaughter or corporate manslaughter.

To ensure decisions on investigation and prosecution are closely co-ordinated following a work-related death, we, together with other regulators, have jointly agreed and published *Work- related deaths. A protocol for liaison*

The police are responsible for deciding whether or not to pursue a manslaughter or corporate manslaughter investigation and whether or not to refer a case to the CPS to consider possible manslaughter charges. We investigate possible health and safety offences. If, during the course of our investigation, we find evidence suggesting manslaughter or corporate manslaughter, we will refer it to the police. If the police or CPS decide not to pursue a manslaughter or corporate manslaughter case, we will consider whether or not to bring a health and safety prosecution in accordance with this policy.

6.4 Formal legal proceedings

6.4.1 Simple Caution_

Section 8.4.2.5 of the Shared Regulatory Services Compliance and Enforcement Policy deals with Simple Cautions.

6.4.2 Prosecution

Prosecution is an essential part of enforcement, ensuring that where there has been a serious breach of the law, duty holders (including individuals) are held to account. This includes bringing alleged offenders before the courts.

Section 8.4.2.6 of Shared Regulatory Services Compliance and Enforcement Policy

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deals with Prosecutions and the associated decision making process.

Subject to the above, we recommend prosecution, where we consider this is warranted. We will consider the management arrangements and the role played by individual directors and managers and will consider taking action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or was attributable to their neglect and where it would be appropriate to do so in accordance with this annex. Where appropriate, we will seek disqualification of directors under the Company Directors Disqualification Act 1986.

We recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances in the (non-exhaustive) list apply:

- death was a result of a breach of the 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 offender 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;
- work has been carried out without, or in serious non-compliance with, an appropriate licence or safety case;
- 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; or there has been a repetition of a breach that was subject to a simple caution;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- inspectors have been intentionally obstructed in the lawful course of their duties.

We recommend prosecution, where following an investigation or other regulatory contact, one or more of the following circumstances apply:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law, and conviction may deter others from similar failures to comply with the law;

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- a breach that gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

We will continue to seek to raise the courts' awareness of the gravity of health and safety offences to the full extent of their powers whilst recognising that it is for the courts to decide whether or not someone is guilty or not and what penalty to impose on conviction.

6.4.4 **Publicity**

We will make arrangements for the publication annually of the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law. SRS also has arrangements for making publicly available information on these convictions and on Improvement and Prohibition notices which we have issued.

SRS may also consider in all cases drawing media attention to factual information about charges which have been laid before the courts; care will be taken to avoid any publicity which could prejudice a fair trial. We will also consider publicising any conviction which could serve to draw attention to the need to comply with health and safety requirements, or deter anyone tempted to disregard their duties under health and safety law.

6.4.5 **Crown bodies**

Crown bodies must comply with health and safety requirements, but they are not subject to statutory enforcement, including prosecution. The Cabinet Office has established non-statutory arrangements for enforcing health and safety requirements in Crown bodies. These arrangements allow us to issue non-statutory improvement and prohibition notices, and for the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified. In deciding when to investigate or what form of enforcement action to take, we follow, as far as possible, the same approach as for non-Crown bodies, in accordance with this annex and the overarching Compliance and Enforcement policy. Local authority enforcement has no jurisdiction, irrespective of main work activity.

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