



White Paper

Enforcing health and safety – What can you expect when a health and safety inspector calls?

October 2022



Enforcing health and safety – What can you expect when a health and safety inspector calls?

Following on from last month's look at regulatory powers of entry and enforcement, we thought we'd cover some of the other questions that often get asked when an inspector calls or is planning to call.

For most people it is a rare occurrence and so, as well as for those who've never experience an inspection visit, it can be a little daunting. Regardless of the nature of the visit and the inspection subject (although one following an accident or incident is always difficult), your systems and management will be challenged.

So, who can you expect, why and what might the outcomes be?



1. Who has responsibility for the enforcement of health and safety?

In relation to health and safety, primarily enforcement is the responsibility of the Health and Safety Executive (HSE) or local authorities (LA) for most organisations in the UK. It must be noted though that bodies such as the Fire and Rescue Service (FRS), Office of Road and Rail (ORR) and Maritime and Coastguard Agency, have responsible in particular sectors or with certain specific hazards for enforcing the law.

Where the HSE and LA have the responsibility to enforce is directed through the Health and Safety (Enforcing Authority) Regulations 1998 (EA Regulations). This is broadly "main activity" based, but for several subject areas there is also some overlap, for example:

In workplaces such as, factories, farms, building sites, schools and colleges, gas, electricity and water systems, hospitals, offshore installations and central and local government premises, the HSE is responsible for enforcing health and safety.

Whereas in offices (except central and local government offices), shops, hotels, restaurants, leisure premises, nurseries and playgroups, pubs and clubs, museums (privately owned), places of worship and sheltered accommodation, LA environmental health department enforce.

But with, for example, care homes:

- Nursing homes (care homes with nursing), where the main activity is provision of nursing/ medical care it is the HSE;
- Residential care homes/centres (care homes without nursing), where the main activity is the provision of residential accommodation it is the LA;
- For dual registered care homes if the main activity is nursing care, it is the HSE and where residential care the LA;
- If a residential care home/centre is owned or run by a LA, the HSE would enforce; and
- In a residential care educational establishment, if the main activity is educational (despite their also being a large amount of residential care) the HSE would be the enforcer.

Similar situations arise with, for example, permanent and temporary caravan/camping sites and holiday lets too.

A fuller list of the enforcement allocation list can be found on the HSE website at - [Appendix 1: Health and Safety \(Enforcing Authority\) Regulations 1998: A-Z guide to allocation \(hse.gov.uk\)](#)



2. Why might an HSE or local authority inspector call?

There are a wide variety of reasons you could receive a visit from an HSE or local authority enforcement officer. Typically, these will fall into one of two categories, proactive inspection visits and reactive inspection visits.

Proactive inspection visits are usually planned in advance, with the purpose of checking/reviewing the controls in place for a particular topic or activity. While this could cover any activity involving health and safety risks to people, for some defined areas - for example asbestos and construction works or opening a food business - you need to notify/register the HSE or local authority in advance of works starting and this could precipitate a visit too. Typical inspections could include:

- Food safety inspections;
- Evaporative cooling tower inspections;
- Work at height inspections;
- Asbestos inspections; and
- The HSE and local authorities also run targeted programmes of inspection, where they will visit a large numbers of organisations to look at a specific area. Such campaigns have included construction, Legionella, woodworking businesses and COVID-19 in recent years.

Reactive inspection visits tend to occur where something has/may have gone wrong and can cover a range of circumstances including:

- A major accident;
- A RIDDOR reportable accident to an employee or at one of your locations;
- Work related/workplace disease – i.e. an outbreak of Legionnaires' disease;
- A complaint, by for example an employee or member of the public;
- Observed or reported unsafe work activities; or
- As a consequence of previous enforcement action or inspection.

So, for some inspections you may have advance warning and others no control at all. Either way you should have in place procedures and processes as to what you could expect and what you need to do, should an inspector call.



3. What do the HSE/local authorities and Fire Services enforce?

Primary legislation comprises typically Acts of Parliament (statutes). All Acts are introduced as bills and once agreed by both Houses of Parliament and received Royal Assent, it becomes an Act. For health and safety and fire is the Health and Safety at Work etc. Act 1974 and the Regulatory Reform (Fire Safety) Order (RR(FS)O) 2005, respectively.

The secondary legislation comprises Statutory Instruments (SI) or regulations. This is delegated legislation made by a person or body, usually the Government. Currently there are just over 100 regulations owned by the HSE and enforced through the HSE and local authorities. Much of the secondary legislation for fire was removed/repealed at the time the RR(FS)O was introduced.

Approved Codes of Practice (ACoP) occupy a special legal status. Their primary aim is to provide practical advice on complying with the law through the Acts and regulations they are enabled by. However, if you are prosecuted, failure to follow the requirements of an ACoP - unless you can clearly demonstrate you've complied with the law in some other way - means the Court will find you at fault.

The legislation focuses both on the corporate body/employer/dutyholder (persona ficta) and individuals (as highlighted in, for example, Section 37 of the Health and safety at Work etc. Act 1974). It also places duties on employees (Section 7 Health and Safety at Work etc. Act 1974 and Article 23 of the RR(FS)O).

For health and safety, the Health and Safety at Work etc. Act 1974 provides the overarching "goal setting" framework for compliance, with various SI/regulations supporting this by targeting specific subjects/topics (COSHH, asbestos, work at height, PUWER, LOLER, DSE, PPE, noise, vibration, etc.).

The Management of Health and Safety at Work Regulations 1999, also provide details of "employers' obligations in respect of the health and safety of workers and in relation to measures relating to the minimum health and safety requirements for the workplace". This covers areas such as:

- Risk assessment (Regulation 3);
- Health and safety arrangements (Regulation 5);
- Health surveillance (Regulation 6);
- Health and safety assistance (Regulation 7);
- Procedures for serious and imminent danger and for danger areas (Regulation 8);
- Information for employees (Regulation 10);
- Co-operation and co-ordination (Regulation 11);
- Capabilities and training (Regulation 13);
- Employees' duties (Regulation 14); and
- Temporary workers (Regulation 15).



The RR(FS)O takes a slightly different approach with five main sections and schedules contained in the one document. The main sections cover:

Part 1 “General” providing the meanings of the “responsible person” and “general fire precautions” and the duties under the Order; and

Part 2 contains Articles 8-24 which cover “Fire Safety Duties” and the specific areas of fire safety management which the responsible person must comply with. This includes aspects such as:

- Duty to take general fire precautions (Article 8);
- Risk assessment (Article 9);
- Fire safety arrangements (Article 11);
- Fire-fighting and fire detection (Article 13);
- Emergency routes and exits (Article 14);
- Procedures for serious and imminent danger and for danger areas (Article 15);
- Maintenance (Article 17);
- Safety assistance (Article 18);
- Provision of information to employees (Article 19);
- Training (Article 21); and
- General duties of employees at work (Article 23).

Parts 3 to 5 cover Enforcement, Offences and Appeals and Miscellaneous respectively.



With respect to ACoP, there are currently approx. 70 identified by the HSE and these cover a wide spectrum of topics including:

- Legionnaires’ disease;
- Manual handling;
- Lead;
- COSHH;
- Asbestos;
- Vibration;
- First aid; and
- Display screen equipment.

[Legislation owned and enforced by the HSE and local authorities.](#)

4. What could the outcome of an inspector's visit be?

If enforcement is being considered, for example the Health and Safety Executive use an Enforcement Management Model (EMM) underpinning their Enforcement Policy Statement, which "sets out the principles inspectors should apply when determining what enforcement action to take in response to breaches of health and safety legislation." Many Fire and Rescue Services have adopted the same model in their approach.

Each enforcement agency also must comply with the Regulators' Code came into effect in April 2014. The Code "provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate" and is enabled through the Legislative and Regulatory Reform Act 2006.

However, depending on your levels of risk management and compliance and the nature/context of the visit (complaint, RIDDOR notification, proactive visit, follow up visit, etc.), there are several different possible outcomes when an inspector visits, they could:

- Be happy with everything provided and demonstrated and leave requiring no further action – always the best outcome;
- Provide further information/advice on relevant areas of your compliance;
- Request, either during the meeting, in writing or both, that you do something, but don't take formal action "an informal notice";
- Withdraw previous approvals for activities being carried out/to be carried out or vary and amend licences and exemptions in place;
- Serve an Improvement Notice on the dutyholder/employer – where the inspector is of the opinion that one or more statutory provisions has been contravened or that circumstances exist where a contravention is likely to persist or be repeated;
- Serve a Prohibition notice on a dutyholder or employer – where the inspector is of the opinion that an activity being carried/likely to be carried out by or under their control involves/will involve a risk of serious personal injury; and/or
- Prosecute.

Fire and Rescue Service inspectors may also issue an Alteration Notice, requiring the responsible person/duty holder to notify them before making any material alterations or changes to the use of the premises. These are usually served where, in the opinion of the inspector, a serious risk to relevant people in case of fire exists if changes to the premises, their use or hazards present occurs.

Planning officers can also issue amongst other enforcement options, Stop Notices (SN) and Temporary Stop Notices (TSN), Breach of Condition Notices (BCN) and Planning Contravention Notices (PCN), where for example planning control has been breached and/or unauthorised material change of use has occurred.

Typically, there is an appeal process in place where any formal notice is issued.

[HSE - The Enforcement Management Model](#)

5. Some further considerations on enforcement

- If an informal notice has been issued, don't ignore it. Inspectors do keep records and talk to their colleagues. If you do nothing and they re-visit, you are likely to see an escalation in response and requirements.
- Prosecution cases brought by the HSE (and Procurator Fiscal in Scotland), where a verdict has been reached, have dropped from 683 in 2015/16 to 199 in 2020/21. However, over the same time periods, conviction rates have remained between 93% and 95%.
- If a Prohibition Notice is served you may not use/undertake the activity, equipment and/or premises specified by the notice, until all aspects of the notice have been complied with. Appeals do not automatically suspend a prohibition notice, whether it is immediate or deferred.
- With an Improvement Notice, the period for compliance is specified within the document and is typically not less than 21 days (from the date of the initial notice). This is the same time period in which a duty holder receiving an Improvement Notice may submit an appeal.
- Information on health and safety prosecutions, Prohibition Notices and Improvement Notices is maintained on a database by HSE and publicly available. Fire and Rescue Services also publish similar information.
- Since the introduction of the health and safety and food safety sentencing guidelines, prior to COVID-19 overall levels of fines for health and safety prosecutions rose from under £20 million in 2014/15 to over £70 million in 2017/18.
- GOV.UK indicates if you don't follow fire safety regulations "minor penalties can be up to £5,000. Major penalties can have unlimited fines and up to 2 years in prison."
- If you are aware an inspector is planning to visit, get expert help as needed and start compiling the information you are going to need/use. If you believe the incident is/could be serious, get legally privileged support.



Assurity Consulting is the UK's leading independent consultancy specialising in workplace health, safety and environmental solutions. As your partner in compliance management you will reap the benefit of our more than 35 years' experience of helping customers across a range of different sectors – manage their compliance responsibilities as effectively as possible. If you need any help with your health, safety or environmental compliance, or if you would like more information on the services Assurity Consulting offer, please get in touch.



Call us on
+44 (0)1403 269375



Email us at
info@assurityconsulting.co.uk



Visit our website
assurityconsulting.co.uk