

White Paper

Enforcing health and safety – What happens if you don't let an inspector in or obstruct their activities?

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We are all aware that inspectors can potentially visit our organisations at any time to check everything from tax and fire safety to health and safety. But what if you don't let them in, or during their visit they find something wrong?



1. What powers of entry do inspectors have?

Powers of entry are usually exercised to allow certain officials of the state the ability to deal with emergencies, searching for evidence (during an investigation), or of course carry out an inspection.

Through a power of entry, for example police officers, regulatory body enforcement staff (including HSE and FRS personnel), and local authority trading standards and other officers have a statutory right to legally enter defined premises (businesses, vehicles and land).

According to GOV.UK information, currently there are around 900 separate powers of entry under primary and secondary legislation. Additionally, 'associated powers' under specific legislation enables officials (for example) to:

- Search and/or seize;
- Observe and view (and install monitoring equipment);
- Seek or require information or records and take copies of documents;
- Direct others and require explanations;
- Ascertain compliance with regulations and as needed take law enforcement action;
- Take people and equipment with you when exercising the power of entry;
- Take measurements, survey or test, monitor and record, examine and investigate;
- Take photographs, samples and make recordings;
- Carry out works and cut off the supplies; and
- Take possession of and detain substances or articles found.

For health and safety these are laid out in Section 20, Powers of Inspectors, of the Health and Safety at Work etc. Act 1974.

Usually, if an HSE Inspector would like to visit your organisation they will contact someone in advance and arrange a date and time. As with the above powers, they can also turn up unannounced and have the same authority.



2. What does Section 33 of the Health & Safety at Work etc. Act 1974 cover?

Section 33 of the Health & Safety at Work etc. Act 1974 covers offences and identifies a range of possible failings that could lead to enforcement action and/or prosecution, as we have seen. These include:

- Failing to discharge their duties under Section 2 -7 of the Act - i.e. the employers duties to their employees (Section 2) and others (Section 3), in relation to premises (Section 4) and on an individual basis through their acts or omissions (Section 7). This also includes contravening any health and safety regulation and any requirement or prohibition made under them. So, the wider scope of the approximate 100 health and safety regulations owned and enforced by HSE (as relevant of course).
- To contravene the duty to not, interfere with, misuse or charge employees for, things done or provided to meet the requirements.
- To contravene any requirement or prohibition already imposed by an improvement notice or prohibition notice.
- To intentionally obstruct an inspector when exercising their powers or duties, or indeed to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may have.
- To prevent an inspector exercising their duties where a cause of imminent danger has been identified ("any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury.").
- To make false statements to an inspector, or intentionally to make a false entry in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given.
- To forge or use a document issued or authorised to be issued under any of the relevant statutory provisions or required by them with the intention to deceive.
- To pretend to be an inspector.

Having been asked to provide an independent view for several cases where HSE or local authority enforcement action had been taken (none were customers), already a number of the above offences had been committed either unwittingly or deliberately. They never end well.



3. What did two recent prosecutions involve?

Prosecution 1. Following previous concerns regarding unsafe work practices being raised with the HSE, on 16th March 2021 two HSE inspectors attended a construction site in Irvine, Scotland.

Having already observed unsafe work at height taking place as they approached, they found the gates to the site locked and the person in control refusing to let them in despite further discussions.

After the Police being called, access to the site was gained and enforcement action saw the unsafe practices stopped. Unfortunately, two further workers were now stuck on a roof resulting in the Fire and Rescue Service needing to be called.

Baldev Singh Basra pleaded guilty to a Section 33(1) of the Health and Safety at Work etc. Act 1974 offence "for contravening a requirement of an inspector – namely refusing entry to a premise where unsafe work was taking place," At Kilmarnock Sheriff Court and was fined £1,500.

HSE Principal Inspector Graeme McMinn said following the sentencing:

"Inspectors appointed by an enforcing authority have the right to enter any premises which they think it necessary to enter for the purposes of enforcing health and safety at work and any relevant statutory provisions. They may only enter at a 'reasonable time', unless they think there is a situation which may be dangerous. In this case, the priority of the inspectors was to deal with the unsafe work activity, and they could not allow the person in control of the site to refuse them entry to stop the unsafe work."

Prosecution 2. In February 2022, Luke Rogers, a plumber working on a building in Tingley, Wakefield, allegedly left a replaced boiler in such an unsafe condition that a registered engineer – asked to attend the site - then had to disconnect it from the gas supply.

Mr Rogers, who was unqualified to do the work, claimed, under caution, at and HSE interview, that he had arranged for friends, one of whom was qualified, to complete the gas works and some general labouring. He would not however provide the identities of either person.

As this failure prevented an inspector from following reasonable lines of enquiry, Mr Rogers was prosecuted at Huddersfield Magistrates' Court on the 8th August 2022. Pleading guilty to breaching Section 33(1)(e) of the Health and Safety at Work etc Act 1974, he was fined £583 and ordered to pay £1,500 in costs.

HSE inspector David Beaton said, following the hearing:

"The defendant blatantly failed to comply with a requirement under the Health and Safety at Work (etc) Act 1974. This prosecution would not have happened had the defendant provided the information. Hopefully, this will send a warning to others that failing to comply with Her Majesty's Inspectors while they exercise their lawful powers will not be condoned by the HSE."

4. What to expect when an inspector calls

Whether as a proactive inspection or enforcement visit, you may not always know when an inspector will call at one of your buildings. But that doesn't mean you shouldn't be prepared for that eventuality. Some points to consider are:

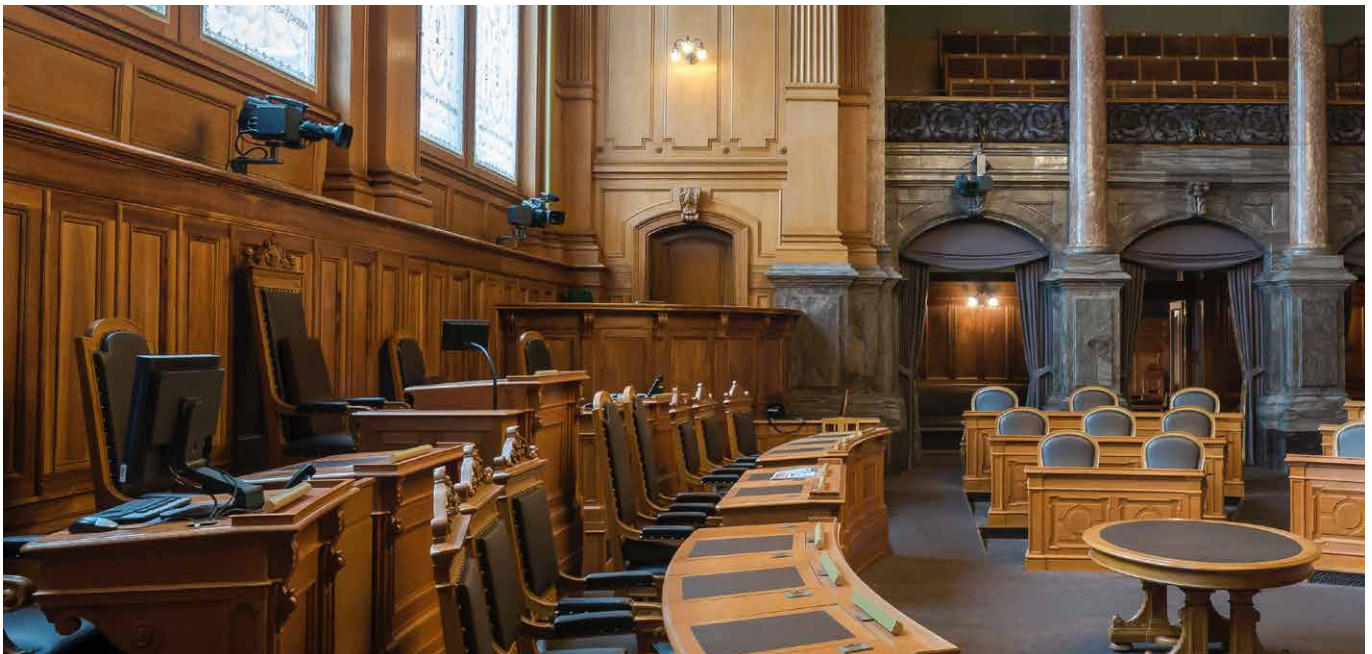
- While most inspector visits will be arranged via an agreed appointment, this may not always be the case. What procedures do you have, should someone just arrive at your reception desk and want to inspect? Initial questions you must ask are:
 - Who they are, where they are from and verify it (if you don't already know them)?
 - What is the purpose of the visit and what their plans are?
- If the visit is planned, ask in advance what information and access they require and start gathering it, as needed.
- Get support. Who else might you need to help with the visit, other staff, contractors, etc.? At Assurity Consulting we're happy to support inspection visits and have a good understanding of what both sides want. Having the right, independent, experienced support can be instrumental in making sure the visit goes well.
- Make sure you have a meeting room booked (if possible), or an area the inspector can base themselves and access to any requested areas has been checked and prepared (someone fumbling for keys or not knowing which ones open a particular area in front of the inspector never looks good).
- Get senior management involved where you can. High level commitment shows intent and the seriousness your organisation takes for health and safety. But brief them – you don't need a loose cannon at all in these meetings!



- Review all relevant documentation. Risk assessment and procedures in particular. Get updates on any outstanding actions or investigations and check any recent trend analysis. Have all the information to hand or know where you can find it. Again, it never looks good if you cannot find the information, you're relying on quickly and efficiently (and especially if you don't know what it says).
- Take notes during the meeting and confirm any actions the inspector needs you to take.
- Never falsify information or make statements about aspects you don't know. We have seen this happen more than once and invariably causes problems and doesn't end well.
- At the end of the meeting confirm the main points of the discussion and any required actions and ask the inspector what the next steps are and any actions they are going to take.
- If there has been an incident – RIDDOR report, complaint, etc. – have any actions (corrective and preventative) and lessons learnt ready for the inspector to see and review.
- If it looks like the inspector is going to take enforcement action, brief your legal department/support and start the process of getting legally privileged investigations under way. Be careful what information you supply the inspector during the visit as this in turn will become evidence.

HSE do provide information on when an inspector visits your premises, and this can be found at - [When a health and safety inspector calls](https://www.hse.gov.uk/when-a-health-and-safety-inspector-calls/) (hse.gov.uk)

As mentioned in the introduction, Section 33 prosecutions are not common, but that doesn't mean to say they won't happen, so be prepared.



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