

# HEALTH AND SAFETY INFORMATION SHEET 1

## Enforcement Policy

This is to let you know how the HSE and Local Authority enforce health and safety legislation. It will also tell you what to expect from enforcement officers when they visit your business, and what guides them when carrying out inspections and dealing with breaches in the law.

### AIM

The aim of Enforcement is to secure efficient compliance with the provisions of health and safety legislation whilst minimising any undue burden to businesses.

### NOTICE OF OCCUPATION

Regulations made under the Offices, Shops and Railway Premises Act 1963 and the Factories Act 1961 include a provision for every person intending to occupy any premises to notify the relevant enforcement authority before the occupation or use begins. Below is a list of the relevant notices;

Notice	Form	Enforcement Body
Occupation of a Factory.	F9	HSE
Building operation or engineering construction	F10	HSE
Employment of people in shops & offices	OSR1	Local Authority

### KEY ELEMENTS OF ENFORCEMENT

The enforcement of health and safety law should 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 the regulator operates and what those regulated may expect.

#### STAGE 1 - PROPORTIONALITY

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance should be proportionate to any risks to health and safety and to the seriousness of any breach. Some health and safety duties are specific and mandatory, others require action so far as practicable, this involves the exercise of judgement by duty holders and discretion by enforcers (risk versus cost). When agreement cannot be reached the courts will decide.

#### STAGE 2 - CONSISTENCY

Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. Enforcement Officers are faced with many variables, the decision on enforcement action is a matter of judgement and the enforcer must exercise discretion.

#### STAGE 3 - TRANSPARENCY

Transparency means helping duty holders to understand what is expected of them and what they should expect from the enforcement authorities. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory

requirements and advice or guidance about what is desirable but not compulsory.

#### **STAGE 4 - TARGETING**

Targeting means making sure that inspection is targeted primarily on those whose activities give rise to the most serious risks or where the hazards are least well controlled; and that action is focussed on the duty holders who are responsible for the risk and who are best placed to control it-whether employers, manufacturers, suppliers or others. Management competence is important, because a relatively low hazard site poorly managed can entail greater risks to its workforce or the public than a higher hazard site where risk control measures are in place.

#### **STAGE 5 – ACCOUNTABILITY**

Regulators are accountable to the public for their actions. This means that enforcing authorities must have policies and standards against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

#### **STAGE 6 - PROSECUTION**

Enforcing Authorities must use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can often promote health and safety more effectively but, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

The Health and Safety Commission expects that enforcing authorities will consider prosecution when:

- \* 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, especially where there would be a normal expectation that a prosecution would be taken or where, through the conviction of offenders, others may be deterred from similar failures to comply with the law;
- \* or there is judged to have been potential for considerable harm arising from breach;
- \* or the gravity of the offence, taken together with the general record and approach of the offender warrants it, eg. apparent reckless disregard for standards, repeated breaches, persistent poor standards.

#### **Prosecution of Individuals**

Subject to the above, enforcing authorities should identify and prosecute or recommend prosecution of individuals, including company directors and managers, if they consider that a conviction is warranted and can be secured.

Authorised Health and Safety Inspectors have the power to enter business premises at any reasonable time; seize or render harmless dangerous articles or substances; take photographs and measurements; interview persons relevant to their investigations (and require relevant information to be provided); and inspect and take copies of books and documents necessary for their investigations.