

# HEALTH AND SAFETY LAW ENFORCEMENT

This factsheet sets out the functions and duties of the health and safety enforcement authorities, some criticisms of their performance and some proposals for improvement. It is aimed at safety representatives and others whose activities bring them into contact with the authorities.

## Division of responsibilities

Health and safety law is enforced by the Health and Safety Executive (HSE) and by local authorities. The HSE is responsible for:

- manufacturing premises
- construction sites
- railways, trams and underground systems
- mines, quarries and landfill sites
- agriculture and forestry
- hospitals and nursing homes
- local government premises
- educational establishments
- domestic gas installation, maintenance and repair
- utilities, including power generation, water and waste
- fairgrounds
- airports
- police, fire authorities and national government
- docks
- nuclear installations
- the oil industry, both offshore and onshore
- transport of dangerous substances
- work with explosives

Local authorities are responsible for:

- shops
- most offices
- some warehouses
- hotels and catering including restaurants and pubs
- leisure and entertainment other than fairgrounds
- undertakers
- places of worship
- animal care including zoos
- therapeutic and beauty services

## Enforcement action

HSE and local authority inspectors are entitled to enter any workplace with or without giving notice to the employer. They can inspect all aspects of work processes and associated records, take photographs and samples and talk to workers and their representatives. Inspectors can:

- Give informal advice to employers on necessary steps to comply with the law. This can be contained in correspondence.
- Issue Improvement Notices. These notices instruct the employer to take action to comply with the law and should set out what needs to be done, why and by when.

Employers have 21 days within which to appeal to an Industrial Tribunal.

- Issue Prohibition Notices. These prohibit any activity which risks causing serious injury. The activity may be prohibited immediately or after a specified period and cannot be resumed until certain conditions are met. Again, the employer has a right of appeal
- initiate prosecutions. A failure to comply with an Improvement or Prohibition Notice can be prosecuted in a Magistrates Court and can result in a fine of up to £20,000 or six months imprisonment or both. Prosecutions in higher courts can lead to unlimited fines or imprisonment. Prosecutions can also be brought by the Crown Prosecution Service.

Enforcement action declined from 1990 to 1997 but has increased since then. In 1998-99, 6328 Improvement Notices and 4516 Prohibition Notices were served and 1797 prosecutions were brought

## Employee consultation

In the course of visits to workplaces, inspectors should check whether employers have arrangements for informing and consulting with employees and their representatives. They should normally meet employees and their representatives during visits, in private if requested. They have a legal duty to provide information, orally or in writing, to employees or representatives on:

- matters of serious concern
- details of any enforcement action to be taken
- an intention to prosecute the employer

The willingness of inspectors to deal with employees and representatives is variable. Safety representatives should make a point of making the acquaintance of the inspector responsible for their workplace and establishing a working relationship, if possible. This could include:

- notifying the inspector of the names of representatives
- asking the inspector to make contact during visits
- asking the inspector for all the information s/he is required to provide
- asking to accompany the inspector on inspections

Workers and members of the public can make complaints, including anonymous complaints, about unsafe work activities to inspectors who are obliged to take note of these but not necessarily to take action.

Complainants should make it clear if they want to remain anonymous.

Inspectors carry out enforcement according to the principles of the Enforcement Policy Statement published by the Health and Safety Commission (HSC). The HSC declares that the aim of inspectors is to secure compliance with the law and that enforcement should be proportional, consistent, transparent and targeted. Proportionality means that enforcement action should be proportional to the seriousness of the breach of law involved., consistency that a similar approach should be used in similar circumstances, transparency that employers should be helped to understand what is required of them, and targeting that attention is given most to the most dangerous workplaces and activities. Prosecutions of both companies and individuals are at the discretion of the enforcement authorities when:

- the breach of the law has the potential for considerable harm
- the general record and approach of the offender warrants it
- there is a general requirement to demonstrate the need for compliance with the law

For work-related deaths, consideration should be given to bringing manslaughter charges in conjunction with the police, coroners and the Crown Prosecution Service.

## Criticisms of the system

Three main criticisms have been levelled against the enforcement system:

- the courts are too lenient
- the HSE is reluctant to prosecute
- the HSE has a poor record of investigating accidents

The average level of fines on companies for all cases rose from £903 in 1990-91 to £5038 in 1998-99. The Labour Government elected in 1997 expressed a wish that the courts should impose larger fines. This was reinforced by a ruling from the Court of Appeal in 1998. There was some improvement subsequently.

Manslaughter and other charges against individuals have become slightly more common since 1995 than before. The charges are almost always brought against small employers or self-employed people and when convictions have been obtained, these have frequently resulted in short or suspended sentences.

The HSE is open about the fact that it sees its primary role as preventive and that it would prefer to persuade employers than prosecute them.

However, an independent inquiry by the West Midlands Health and Safety Advice Centre into workplace deaths in the West Midlands between 1988 and 1992 found that in 24 out of 28 cases, the HSE had failed to initiate prosecutions when the evidence warranted them.

Research by the Centre for Corporate Accountability showed that in 1999 the HSE only investigated 11% of the serious injuries notified to it. Of the cases it did investigate, only 10% led to a prosecution. The HSE has targeted an improvement in this performance but was severely criticised for its record by a Select Committee of MPs who reported in February 2000.

The trade unions have responded to this situation with primary demands for:

- an increased level of fines
- new legislation to make it easier to impose custodial sentences on employers who have contributed to death or injury at work through negligence
- the introduction of a right for safety representatives to issue Provisional Improvement Notices (PINs); these are devices which safety representatives could use in irresolvable disputes with employers on safety matters. The employer would be obliged to abide by a Notice unless s/he made a successful appeal to a local authority or HSE inspector.

The Government has given a general commitment to bring in new legislation in this area but has not stated when it is going to do so. It may be some time before action finally takes place.

## Further reading

*What to expect when a health and safety inspector calls*, Health and Safety Commission, HSC14, 1998

*Enforcement policy statement*, Health and Safety Executive, MISC 030, 1995

*The perfect crime?*, HASAC/David Bergman, ISBN 0 9522962 0 9, 1994

*Fine times: penalties for breaking health and safety law*, TUC/British Safety Council, 1999

*Select Committee on Environment, Transport and Regional Affairs memoranda: memorandum by the Centre for Corporate Accountability (HSE 20)*, Parliamentary copyright, 1999

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