

HIGHLAND COUNCIL

ENVIRONMENTAL HEALTH

HEALTH & SAFETY ENFORCEMENT POLICY

1. Introduction

1.1 The purpose of the policy is: -

- a) to ensure that the statutory enforcement duties of the Council undertaken by Environmental Health and arising from Health & Safety law, are fulfilled;
- b) to ensure comprehensive and consistent enforcement of Health & Safety law within the Highlands and to ensure that officers are aware of their responsibilities;
- c) to ensure the promotion of Health & Safety education and training for those working in areas where Health & Safety law is enforced by the Council;
- d) to ensure co-operation with all other public agencies responsible for Health & Safety issues.

1.2 Any departure from the policy will be exceptional and capable of justification and will only be agreed after consideration by either the Head of Environmental Health, or a relevant Area Environmental Health Manager or Principal Environmental Health Officer, unless immediate action is necessary to avoid a potential significant risk to the public.

2. Enforcement Policy Statement (General)

2.1 It is our aim to carry out the statutory enforcement duties placed on the Council by Health & Safety law in accordance with the guidance set out in **Appendix 1** and such amendments thereto which are made from time to time.

2.2 The primary objective is to seek to promote and enforce standards which preserve public safety and health by ensuring that employers, employees, the self employed and other duty holders comply with all relevant Health & Safety law.

- 2.3 In carrying out these duties, we accept the general principles of proportionality, (i.e. that enforcement action taken is in proportion to the risk posed), consistency, targeting (of resources and enforcement), transparency expected of modern enforcement agencies and accountability. We are also aware of the importance of information and advice for businesses as an aid to compliance with the law.
- 2.4 It is our aim to endeavour to work with local businesses in an open, transparent and positive manner. It is important that those who have a duty to comply with health and safety requirements know what is expected of them and they know what to expect of the Service. Businesses will be informed why enforcement action is being taken and of their rights. Whenever possible and provided persons are not put at risk we will seek to achieve compliance through giving information and advice rather than by formal enforcement action.
- 2.5 It is our aim to have a consistency in approach in enforcement and that similar circumstances receive a similar approach and have a similar outcome. This will be ensured by training, monitoring, auditing and participating in liaison groups.

3. Inspections

3.1 Purpose of Inspections

The principal purpose of inspections of businesses will be to ensure as far as possible, health and safety at work by :-

- identifying risk
- identifying contraventions
- using education and, where necessary, enforcement to secure compliance with Health & Safety legislation.

3.2 Inspection Format

Inspections will comprise: -

- a pre-inspection discussion with the proprietor (or his/her representative) to discuss the risks associated with the business
- a physical inspection of the premises (this will be carried out first where it is suspected that evidence of contraventions may be removed during any pre-inspection discussion))
- a post- inspection discussion with the proprietor (or his/her representative)
- a follow up letter/report

3.3 Security

Before inspecting premises, officers will introduce themselves, state the purpose of their visit and show proof of their identity in the form of their authorised warrant, if requested. A business card may also be left.

3.4 Protective Clothing

All officers will be issued with suitable protective clothing including a white coat and head covering which should be worn in food premises. This will be worn where appropriate, or to conform to the policy of the business being inspected. Where a business has a policy of issuing protective clothing to visitors, this shall be worn by inspecting officers. Protective clothing shall be regularly cleaned by each officer and officers shall take account of the risk of contamination that protective clothing may present as they visit certain types of premises one after the other. All officers will conform to any Health & Safety rules within the establishment.

3.5 Programmed Inspections and interventions

- 3.5.1 The Service will undertake a priority based Preventative Inspection Programme of Premises in terms of the 1974 Act in accordance with the Health and Safety Executive /Local Authority Enforcement Liaison Committee (HELA) Circular 67/2. The Service will therefore comply with the principle of targeting by basing the Inspection Programme on the risks associated with the specific work activity or where hazards are least well controlled.
- 3.5.2 Except where unavoidable (e.g. difficulties in gaining access), no advanced warning will be given of programmed inspections. However, where it is intended to discuss the business's risk assessment or other statutory policies, or where it is otherwise necessary that a proprietor or other individual is present, then an appointment may be made at relatively short notice.
- 3.5.3 With regard to premises, Category A will be inspected not less than once a year, Category B₁ inspected within 18 months and Category B₂ premises will be included in proactive or programme directed work. Where Category B₂ or C premises are not included in proactive or programme directed work, non-inspection interventions are considered acceptable.

3.5.4 Every effort will be made to inspect premises in the aforementioned categories in accordance with HELA Circular 67/2 where resources permit.

3.6 Revisit Inspections

A revisit inspection shall be carried out: -

- where there is significant risk (see “General Enforcement Decisions” below)
- where standards have fallen such that it would not be appropriate to leave the matter unresolved until the next programmed inspection
- to check on compliance with a notice

3.7 Complaints

3.7.1 Complaints from persons alleging: -

- unsatisfactory standards of health, safety and welfare
- injury, accident or occupational disease

shall be investigated, usually by a visit from an officer with responsibility for inspecting the premises concerned, within a time period, proportional to the risk, varying from immediately to within 3 days.

3.7.2 The officer carrying out the investigation will keep the complainant informed of the progress of the investigation and of the final outcome.

3.8 Investigation of Accidents & Other Matters

3.8.1 When an officer is advised of a serious accident, dangerous occurrence or case of occupational disease whether by notification in terms of RIDDOR or by notification via a complaint they shall advise the appropriate Area Environmental Health Manager or Head of Environmental Health who shall ensure that the accident etc. is investigated by a suitably qualified officer in accordance with the Highland Council's incident criteria procedures.

3.8.2 Where an officer is advised of a fatal or serious accident which may lead to a fatality they shall in addition notify the Head of Environmental

Health who shall notify the Director of TEC Services and the Chair or Vice – Chair of the Service Committee.

3.9 Education/Training for Persons at Work

Education will usually be the first course of action to secure improvement.

Officers shall: -

- explain all noted contraventions and recommendations during the post inspection discussion
- explain the assessment made of the business's level of compliance with the statutory requirements
- issue guidance documents on Health & Safety matters where required
- offer further guidance on risk assessment, COSHH etc.if required
- provide details of any available Health & Safety training courses
- encourage attendance at Health & Safety training courses and provide details of any available courses

The Service shall, where appropriate :-

- seek to form working partnerships with the Local Enterprise Companies, further education colleges or other recognised training bodies, and any funding agencies with a view to the introduction and provision of Health & Safety training
- authorise officers to participate in presentations as part of training courses
- seek funding to subsidise attendance of the trade at any relevant Health & Safety training courses
- offer private meetings to the trade to provide education and advice
- organise seminars to assist in compliance with risk analysis and other matters
- maintain stocks of information leaflets and make them available free of charge

3.10 Barriers to Communication

Where it appears to an officer in the course of an inspection/visit that the proprietor's ability to communicate (due to language or disability) may be a barrier to compliance, he/she will: -

- request the proprietor to have a family member or friend present at a subsequent meeting to assist with translation or interpretation

- where the above is not possible, or where formal action is envisaged, arrange for a translator or other appropriate person to be present at a subsequent meeting
- where appropriate, enclose with all communications an offer of help with translation written in the proprietor's own language
- provide, where available, information leaflets etc. in a form appropriate to the proprietor's needs.

3.11 Annual and "One - off" Events (Fetes etc.)

Whereas the inspection of annual and "one - off" events cannot be programmed every reasonable effort will be made to inspect all major and a selection of minor events.

4. Inspection Follow-up

4.1 Inspection Reports

4.1.1 A report will be sent to the proprietor and any appointed employee representative within 10 working days following all programmed inspections and where appropriate, following other inspections/visits. Such reports will detail the following: -

- the date of the inspection
- the person seen/interviewed and their position in the company
- an indication of the officer's assessment of the proprietor's progress towards compliance with the Health & Safety requirement and, where there is poor or no compliance, a general indication of:-
 - what must be done
 - why it must be done
 - the options available to achieve compliance
- those detailed contraventions which require to be rectified
- those detailed matters which are recommended as good practice
- an explanation of the distinction between requirements and recommendation

- an indication to the proprietor that the contraventions (requirements) are expected to be rectified before the next inspection
- where, due to risk or poor health, safety and welfare standards, a revisit is considered necessary prior to the next programmed inspection (see “General Enforcement Decisions” below), the letter shall detail the items requiring attention and the time-scale for rectification i.e. the time until, or the date of the revisit inspection
- a standard paragraph inviting recipient to make representations to report author’s line manager should they be dissatisfied with any of its content etc.
- a standard disclaimer advising recipient that the report does not infer that a full and detailed inspection has been carried out nor does it imply that the defects and/or hazards identified are the only such defects or hazards which exist

4.1.2 The report shall also include: -

- for higher- risk premises (and lower- risk premises where appropriate), an explanatory booklet on aspects of Health & Safety law (unless this has been issued during the inspection).
- for premises where formal action of any type is being considered or initiated, a full explanation of the implications for the proprietor and an offer of help if he/she needs further clarification. Such communications will normally be sent recorded delivery

4.2 Risk Assessment of Premises

Following every inspection/visit, premises shall be risk assessed and the next programmed inspection date calculated as per HELA Circular 67/2 . This date shall not be moved forward unless there are changes to the trading arrangements of the premises which make it impossible to inspect the premises by the original programmed date.

5. **Enforcement**

5.1 Authorisation of Officers

In accordance with Health and Safety Commission guidance and advice, this enforcing authority recognises that only those officers who

are appropriately qualified and experienced should participate in Health and Safety enforcement.

All Enforcement Officers will be appointed under Section 19 of the Health and Safety at Work etc. Act 1974. When carrying out their duties, Enforcement Officers will always be able to produce their warrant on request. In circumstances where the officer is considering taking formal action, any person accompanying an Enforcement Officer to a workplace for the purpose of inspection and investigation will be authorised under Section 19 of the Health and Safety at Work etc. Act 1974, by this Enforcing Authority.

Subject to the provisions of paragraph 10.5 : -

5.1.1 The Head of Environmental Health will be authorised to: -

- inspect workplaces and work activities
- exercise all the powers of an officer authorised in terms of Section 19 of the Health and Safety at Work etc. Act 1974 (**see Appendix 3**)
- sign and serve an improvement notice
- sign and serve a prohibition notice
- report offences to the Procurator Fiscal

5.1.2 Area Environmental Health Managers and Principal Environmental Health

Officers will be authorised to: -

- inspect workplaces and work activities
- exercise all the powers of an officer authorised in terms of Section 19 of the Health and Safety at Work etc. Act 1974 (**see Appendix 3**)
- sign and serve an improvement notice
- sign and serve a prohibition notice
- report offences to the Procurator Fiscal (in consultation with the Head of Environmental Health)

5.1.3 Environmental Health Officers will be authorised to: -

- inspect workplaces and work activities
- exercise all the powers of an officer authorised in terms of Section 19 of the Health and Safety at Work etc. Act 1974 (**see Appendix 3**)
- sign and serve an improvement notice (in consultation with either their Area Environmental Health Manager, Principal Environmental Health Officer or the Head of Environmental Health)
- sign and serve a prohibition notice (in consultation with either their Area Environmental Health Manager, Principal Environmental Health Officer or the Head of Environmental Health)

- report offences to the Procurator Fiscal (in consultation with either their Area Environmental Health Manager or Principal Environmental Health Officer)
- The Head of Environmental Health shall be advised of any proposed report in accordance with existing protocols.

5.1.4 Technical Officers (Environmental Health) will be authorised to : -

- inspect workplaces and work activities
- exercise all the powers of an officer authorised in terms of Section 19 of the Health and Safety at Work etc. Act 1974 (**see Appendix 3**)
- sign and serve an improvement notice (in consultation with an Environmental Health Officer [who has relevant experience in Health and Safety enforcement matters], their Area Environmental Health Manager, Principal Environmental Health Officer or the Head of Environmental Health)
- sign and serve a prohibition notice (in consultation with an Environmental Health Officer [who has relevant experience in Health and Safety Enforcement matters], their Area Environmental Health Manager, Principal Environmental Health Officer or the Head of Environmental Health)

5.1.5 Student Environmental Health Officers will be authorised to : -

- inspect workplaces and work activities under the supervision of (but not necessarily accompanied by) an Environmental Health Officer or Technical Officer

5.2 General Enforcement Decisions

5.2.1 To achieve compliance, the enforcement action shall be proportionate to the risks to health and safety and to the seriousness of any breach in legislation. The aim of the Service is to work with business/employers by providing advice and guidance on all aspects of health and safety management.

5.2.2 In deciding whether or not to take any form of formal action, consideration will be given to the Lead Authority Principle. Where appropriate, the Lead Authority will be consulted and kept informed.

5.2.3 In deciding which form of formal action is most appropriate, the likely time-scale to conclude the action will be weighed up against the risk to health and safety.

5.2.4 In deciding whether or not a business presents a risk to health and safety, regard shall be had to:

- Safety hazard and risk
- Health hazard and risk
- Public risk

5.2.5 Significant risk - In deciding whether or not any risks associated with a business are significant, consideration will be given to the adequacy of control of risks arising within the workplace or work activity and the possible consequences for public safety.

5.2.6 The Enforcement Management Model shall be applied when formal action is being considered. The outcome shall be recorded to enable decisions to be reviewed.

5.2.7 The Work Related Death Protocol shall be followed in the instance of a work related death

5.3 Informal Action

Most minor contraventions will be dealt with informally subject to the following provisos: -

- where the consequences of non compliance will not present a significant risk
- where (from a knowledge of the proprietor's previous record) it can reasonably be expected that compliance will be forthcoming
- where, due to the nature of the business (e.g. voluntary organisations) informal action may be more effective

In all cases, informal requests and agreements will be noted in the file for future reference.

6. Improvement Notice

6.1 When serving Improvement Notices, regard shall be had to HELA Circular 22/6

6.2 Improvement Notices will be served under the following circumstances:

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- where the consequences of non- compliance present significant risk (see "General Enforcement Decisions" above)

- where co-operation in rectifying routine contraventions is not forthcoming
 - where the severity of the contravention is such that it would not be appropriate to leave the matter unresolved until the next programmed inspection or until the conclusion of a prosecution
- 6.3 Where an Officer is satisfied that circumstances merit the service of an Improvement Notice, the procedure shall be initiated at the earliest opportunity.
- 6.4 Improvement Notices may be served on the evidence of the inspecting officer alone (subject to approval by the relevant senior officer). However, where an inspection is made upon expiry of a notice and a prosecution is likely, a witness will accompany the inspecting officer.
- 6.5 Persons failing to comply with Improvement Notices may be the subject of a report to the Procurator Fiscal.
- 6.6 Officers who have not personally witnessed the contravention(s) cited in the notice shall not **sign** Improvement Notices.

7. Prohibition Notice

- 7.1 When serving Prohibition Notices, regard shall be had to HELA Circular 22/6.
- 7.2 A Prohibition Notice will be served if a work activity being carried out on or likely to be carried out on involves a risk of personal injury, and
- the person in control of the activity is unable or unwilling to cease the activity on the informal request of the officer, or
 - the officer has little or no confidence that the activity will cease or not take place unless a Prohibition Notice is served.

A Prohibition Notice may take effect immediately, or take effect at the end of period specified in the Notice.

- 7.3 Prohibition Notices shall only be signed by officers who have personally witnessed the contravention(s) cited in the notice.

8. Procurator Fiscal

- 8.1 Contraventions may be reported to the Procurator Fiscal in the following circumstances: -
- where the contravention presents an imminent risk (i.e. concurrent with Prohibition Notice procedure)

- where the contravention presents a significant risk (i.e. concurrent with Improvement Notice procedure)
 - where there is non-compliance with an Improvement Notice
 - where there has been a history of non-compliance with Health & Safety legislation
 - where there is evidence of reckless disregard for Health & Safety or Health & Safety law
 - where as a result of a substantial legal contravention, there has been a serious accident or a case of ill health
- 8.2 In deciding whether a report should be submitted to the Procurator Fiscal concurrent with Prohibition Notice or Improvement Notice procedure, consideration will be given to the degree of negligence on the part of the person responsible.
- 8.3 Where an officer is satisfied that circumstances merit sending a report to the Procurator Fiscal, this shall be carried out at the earliest opportunity.
- 8.4 The accused will be kept fully informed of the Service's proposals and actions in this regard and where appropriate will be invited to offer an explanation before a prosecution decision is made.

9. New Premises and Change of Owner

- 9.1 Such premises will be contacted as soon as possible after notification or coming to the Service's attention. They will be expected to be in full compliance with all Health & Safety legislation upon commencing business.
- 9.2 Where there are areas of non-compliance which do not present significant risk, a rapid programme of compliance will be agreed with the proprietor.
- 9.3 Where the risk is significant, appropriate formal proceedings will be commenced immediately.

10. Quality Management

10.1 Premises Database

10.1.1 Each Area Environmental Health Manager will maintain comprehensive records of all health and safety businesses within their Areas.

10.1.2 For each fiscal year, the Area Environmental Health Manager will be responsible for compiling an accurate list of health and safety premises

(with names and addresses), fully categorised in terms of the risk assessment system in HELA Circular 67/2) and programmed for the relevant inspection frequencies (by the date due).

10.1.3 Area Environmental Health Managers will keep this information up to date for their areas with regard to new premises or changes of use to existing premises.

10.2 Compliance with Inspection Programmes

Area Environmental Health Managers will ensure that programmed health and safety inspections are carried out by the due date. In particular they will examine the monthly internal monitoring reports in respect of their areas to assess compliance with the programme and ensure that adequate resources are available to meet the demands of the programme on an on-going basis. Officers will endeavour to complete all inspections on their monthly lists and will inform their Area Environmental Health Managers of any difficulty.

10.3 Consistency and Quality of Inspections

Inspection checklist report forms will be used to structure the inspection interview and to ensure that all necessary points are covered. The report forms will be completed during or following every inspection and kept in the premises file.

10.4 Monitoring the Consistency and Quality of Inspections

The Head of Environmental Health will ensure the consistency and quality of inspections by ensuring: -

- regular review and update of the inspection checklist report forms
- monitoring inspection reports, correspondence and statutory notices during area visits.
- surveying "customer" opinion by issuing questionnaires to business operators.
- that each officer is audited during an inspection, at least annually
- organising regular Health & Safety Working Group meetings to which all relevant officers will be invited.
- circulating minutes of the above meetings with confirmation of any agreed operational procedures.
- regularly reviewing the Health & Safety Enforcement Policy
- ensuring appropriate officers attend the North of Scotland Health & Safety Working Group and HASCOG where appropriate

10.5 Qualifications/Experience

10.5.1 Only officers meeting the standards of competence and training as detailed in HSC(G) 4 “ Standards of Competence and Training for Health and Safety Inspectors and Adequate Arrangements for Local Authorities as Enforcing Authorities “ will carry out Health and Safety inspections/investigations and related duties, unless they are undergoing supervised training.

10.5.2 The Area Environmental Health Manager shall ensure that Officers have the necessary experience before carrying out unaccompanied and unsupervised inspections.

10.6 Training and Continual Professional Development

10.6.1 Where a training need is identified for an officer, the Area Environmental Health Manager will advise the Head of Environmental Health who will make the appropriate arrangements subject to resources being available to meet it by making training available either internally or where appropriate, externally.

10.6.2 The Head of Environmental Health shall actively review training needs and shall ensure that appropriate training is made available for all relevant officers, particularly with regard to any changes in legislation. He will ensure that all relevant legislation, statutory codes of practice, Health & Safety guidance notes etc. is made available to officers who will require to familiarise themselves with such information and carry out their duties in accordance with the same.

10.6.3 Officers shall undertake the RDNA process to highlight training needs.

APPENDIX 1

Legislation and Guidance on which this Policy is based

The Principal Legislation

The Health and Safety at Work etc. Act 1974
The Health and Safety (Enforcing Authority) Regulations 1998
Environment and Safety Information Act 1988

Principal Guidance Documents

Health and Safety Commission Guidance Note HSC (G)3 (revised) - Enforcement Procedures - Guidance for Local Authorities

Health and Safety Commission Guidance Note HSC(G)4 - Standards of Competence and Training for Health and Safety Inspectors and Adequate Arrangements for Local Authorities as Enforcing Authorities

Local Authority Circular 22/1 - Choice of appropriate enforcement Procedure

Local Authority Circular 22/5 - Investigation of complaints

Local Authority Circular 22/6 - Notice Procedures: Wording, Subject Matter and Forms

Local Authority Circular 22/8 - The appointment of Local Authority Inspectors to enforce the Health and Safety at Work, etc. Act 1974

Local Authority Circular 62/1 - Health and Safety Executive's Policy and Practices on the Disclosure of Health and Safety Information

Local Authority Circular 67/2 - Advice to Local Authorities on Inspection Programmes and an Inspection Rating System

Local Authority Circular 73/2 - Contact with representatives and employees at visits and disclosure of information

HELA statement on enforcement policy

Health and Safety Commission Enforcement Policy (MISC 030) 1995

APPENDIX 2

Investigations of accidents or ill health reported under RIDDOR¹ and other health and safety incidents reported to this Enforcing Authority

The Incident Selection Criteria for investigations of workplace accidents, dangerous occurrences and work related ill health shall be followed.

Appendix 3

Powers of inspectors appointed under Section 19 of the Health and Safety at Work etc., Act 1974

The powers of Enforcement Officers appointed under Section 19 of the Health and Safety at Work etc. Act 1974 are extremely wide-ranging, and include the following:

- the power to enter premises at any reasonable time
- the power to direct that any part of a premises or anything in it be left undisturbed to allow for examination or investigation.
- the power to take measurements or photographs
- the power to take samples of articles or substances
- the power to ask for the testing or dismantling of any article or substance which may represent a danger
- the power to take possession of any article or substance for the purpose of examination or testing, to prevent tampering, or for the purposes of evidence for formal enforcement action
- the power to inspect and take copies of any relevant documentation
- the power to take statements from any person who can give them relevant information
- the power to be accompanied by a police officer and/or any other person or persons authorised under Section 19 of the Health and Safety at Work etc Act 1974

Please note that this list is merely a summary, and should not be assumed to be an accurate representation of the legislation

¹ **RIDDOR** - the accepted acronym for the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

