

# Health & Safety Adviser



Practical Tips and Advice for Company Owners, Directors, Health and Safety Experts, Managers and Representatives

## Everything You Need to Know About the Enforcing Authorities

### Make sure you understand what to expect and how to respond **BEFORE** **THE INSPECTOR CALLS**

**Find out inside if your business falls under the  
Health and Safety Executive or your local authority  
Environmental Health Officers**

#### **PLUS:**

- **16 Health and Safety documents, procedures and items you MUST have in place before an inspection**
- **Understand the methods of enforcement that will be used if you breach your statutory duty**
- **4 ways to appeal if you receive a prohibition or improvement notice**
- **5 key tips for avoiding having to pay Fee for Intervention charges**



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# Everything You Need to Know and Prepare for the Enforcing Authorities

## 1. The Enforcing Authorities

Health and safety law is enforced both by the Health and Safety Executive (HSE) and by local authority Environmental Health Officers (EHOs). Inspectors' powers are laid down in the Health and Safety at Work Act (HSW) 1974 and are the same for both HSE and local authority (LA) inspectors.

**Whether the HSE or your local authority is the enforcing authority for your organisation depends on what you do.**

The division of enforcement is determined by the Health and Safety (Enforcing Authority) Regulations 1998. Below are listed the main categories of work activity designated either to the local authority (1.1) or the HSE (1.2). Generally LAs enforce in 'commercial' premises and the HSE in higher-risk industrial-type premises. If you are in doubt, you can consult either the HSE or your LA for guidance, but the three key principles are:

- Every work activity has an enforcing authority which is either the HSE or the LA.
- The HSE and the LA should never both be responsible for the same activity in the same premises (no dual inspection).
- HSE premises come under LAs and vice versa (no self inspection).

### 1.1 Local Authority Enforcement Responsibilities

Local authorities are responsible for enforcing health and safety law in the following premises/activities:

- Exhibitions.
- Offices.
- Catering services.
- Permanent or temporary residential accommodation.
- Sites for caravans or campers.
- Consumer services provided in a shop, except dry cleaning or radio and television repairs (whether for profit or not).
- Laundrettes and similar premises.
- Beauty salons and therapeutic treatments, except where they are carried out under the supervision or control of a registered medical practitioner, a dentist, a physiotherapist, an osteopath or a chiropractor.
- Arts centres.
- Entertainment centres.



- Sports, games, entertainment or other cultural or recreational activities, except where the main activity is the exhibition of a cave to the public.
- Pleasure craft for use on inland waterways.
- Animal care and similar centres, except where the main activity is horse breeding or horse training at a stable, or is an agricultural activity or a veterinary surgery.
- Undertakers, except where main activity is embalming or coffin making.
- Religious centres.
- Airport car parks.
- Child care, playgroups and nurseries.
- Locations that sell or store goods for retail or wholesale distribution, except:
  - Dock, railway and airport depots;
  - Premises which distribute or prepare dangerous substances;
  - Where water, sewage or their by-products are sold or stored;
  - Where natural or town gas is sold.

Premises that sell and fit motor car tyres, exhausts, windscreens or sunroofs come under LA enforcement as the main activity is deemed to be the sale of goods.

### 1.2 The HSE Enforcement Responsibilities

The HSE is responsible for enforcing health and safety law in any other case, including the following premises/activities:

- Crown and local authority premises.
- Offshore installations.
- Hospitals.
- Educational establishments including schools, colleges and universities.
- Mines and quarries.
- Fairgrounds.
- Film-making and broadcasting centres.
- The following activities carried out by persons who do not normally work in the premises:
  - Most construction work;
  - The installation of gas systems;



- The installation of electricity systems.
- Most radiography and other work involving ionising radiations.
- Agricultural activities.
- Seagoing ships.
- Ski slopes and associated lifts.
- Fish, maggot and game breeding, except in a zoo.
- Pipeline activity (Pipelines Safety Regulations 1996).
- Railways.

## 2. Methods of Enforcement

Inspectors give advice and enforce the law where they believe an offence has been committed, or may be committed. A number of options are open to inspectors and they may use any one, or a combination of enforcement powers, against you or your organisation.

Options available to enforcement authorities under the HSW Act include:

- **Prosecution:** one of the stronger enforcement tactics. Generally occurs where there is serious, persistent or continuous failure on behalf of the employer/employee. For a prosecution to proceed, the inspector must have the evidence of a breach of the law, and believe it is in the public interest for the case to go ahead. These cases take place in the criminal courts (magistrates or Crown courts). Maximum penalties are a fine of £20,000 and/or a prison sentence of 6 months (magistrates) or an unlimited fine and up to 2 years in prison (Crown Court). The court may also order the defendant to pay costs, which can be as much as or more than the fine imposed. For the case to succeed, the prosecutor must be able to prove the case 'beyond reasonable doubt'.
- **Improvement notice:** issued where, in the opinion of the inspector, there is a breach of statutory duty. Usually issued where the inspector feels the breach will continue.
- **Prohibition notice:** issued where, in the opinion of the inspector, there is a serious risk to life or limb. Note that there does not have to be a clear breach of law. Prohibition notices usually stop activities and may be deferred if necessary to make the workplace safe before the notice takes effect.

**NB:** failure to comply with a notice is itself a serious offence and is likely to lead directly to prosecution.

Inspectors may also provide advice in the form of:

- **Written reports:** these may be issued to ensure clarity and record specific requirements. The documents can be produced in court at a later date if necessary.
- **Oral advice:** probably the most common form of informal enforcement. Oral advice is given for simple or minor breaches that are readily rectified. These are not formal methods of enforcement, but should still be heeded.



### 2.1 Improvement Notices

For an improvement notice to be issued the inspector must believe that an offence has been committed. These notices set out the improvements that must be made and give a period of grace for action to be taken.

The notice will include:

- Detail of the activity that needs to be addressed;
- Specification of the breach that has occurred – there may be more than one;
- Details of the date by when the work must be completed.

Improvement notices must allow at least 21 days for the work to be completed and may include a schedule of those works. Failure to comply carries a similar penalty to prohibition notices. Improvement notices may be extended at the discretion of the inspector when requested to do so by the employer.

#### Tip

If requesting an extension to an improvement notice, always do so before the due date in the notice. Be ready to say why you are requesting an extension and make sure the new agreed date gives you sufficient time to comply.

### 2.2 Prohibition Notices

These notices prohibit the carrying on of specified activities where, in the opinion of the inspector, there is an imminent risk of serious personal injury. The notice will:

- Specify the circumstances the inspector believes will give rise to personal injury.
- Outline the breach, if a breach of legislation has occurred.
- Prohibit the activity.

Prohibition notices are usually issued for serious failings such as unsafe systems of work, for example, work where there is an unprotected risk of a fall from height or unguarded machinery. The circumstances in which these notices are issued vary widely. However, the common theme is the inspector's opinion that the circumstances create a risk of serious personal injury.

Prohibition notices are generally effective immediately in order to control the risk. However, they may be deferred if, in the particular circumstances, stopping the process would give rise to, or exacerbate the risk. For example, a notice served on a fairground Ferris wheel is likely to be 'deferred' to allow riders to dismount. The notice may also be deferred because the 'imminent risk' does not yet exist, but will do so shortly.

The inspector will normally attach a schedule to the notice specifying the works to be completed before the operation resumes. Failure to comply is likely to lead to prosecution. As notices are often served on specific individuals, imprisonment for up to 2 years and/or unlimited fines can be awarded should the case go to the Crown Court.

#### Tip

With any notice, make sure you fully understand what the inspector is asking for before he or she leaves site so that you know what you have to do. It might also influence your decision on whether to appeal against the notice. With a prohibition notice, you can resume work **so long as** you have taken the required remedial action.





### 2.3 Appeals Against Notices

As notices have formal standing in law, there is an appeals procedure. This procedure is set out in law and an appeal can be made where the person receiving the notice believes it has been issued wrongly or is in some way invalid, though this is rarely the case. An appeal must be made within 21 days of the notice and is heard in the employment tribunal. An employer can appeal where:

- The inspector's interpretation of the law is wrong.
- The inspector acted outside his/her legal powers.
- There is a breach of law, but the measures required are not reasonably practicable.

For an improvement notice, you could also appeal on the grounds that the time given to comply was insufficient.

The effect of making an appeal is different, depending on the type of notice. For improvement notices, lodging an appeal suspends the notice, but prohibition notices remain in force until any appeal is heard. **This means you must comply with the prohibition while the appeal is pending.**

The tribunal may amend, add to, affirm or cancel the notice dependent on the particular circumstances.

### 3. Fee for Intervention (Activities Subject to HSE Inspection Only)

Where the HSE is your enforcing authority and one of its inspectors identifies a 'material breach', you can expect to be invoiced at an hourly rate (currently £124 per hour) for the inspector's time under the HSE's cost-recovery scheme, known as 'Fee for Intervention' (FFI). FFI came into force on 1 October 2012 and its fees are over and above any fines a court may impose or other costs you may incur in complying. A 'material breach' is where you have broken a health and safety law and the inspector judges this is serious enough for him or her to notify you in writing. This will either be by notification of contravention, by the issue of an improvement or prohibition notice, or by the initiation of a prosecution.

Five key tips to avoid these charges are:

1. Stay compliant – FFI only applies where there is a material breach.
2. Ensure you're aware of the legislation and guidance that apply to your operations.
3. Ensure your managers are aware of the costs of not complying.
4. Try to get any health and safety issues resolved at a verbal level if at all possible.
5. Query any invoice that you don't agree with – but don't use the formal dispute process unless you expect to win (you'll incur extra charges).

You can find out more about FFI at <http://www.hse.gov.uk/fee-for-intervention>.







<b>Health and Safety Law Poster</b>	<b>Yes</b>	<b>No</b>
Display the 'Health and Safety Law – What you need to know' poster or give employees the official leaflet containing the same information.	<input type="checkbox"/>	<input type="checkbox"/>
<b>First Aid</b>		
You should be ready to show the inspector your arrangements for first aid. These will include equipment (e.g. one or more first aid kits) as well as details of your responsible people, such as appointed persons and trained first aiders. (Numbers will depend on your particular circumstances including the numbers you employ and the type of work they do.) Employees should know what these arrangements are, so would any of your employees be able to explain the action they are required to take in the event of an accident or sudden illness at work?	<input type="checkbox"/>	<input type="checkbox"/>
<b>Risk Assessments</b>		
The inspector may well ask to see your risk assessment documentation and ask you questions about how you carry out risk assessments, who is involved and what action you have taken as a result. The assessments will depend on the specific nature of the work you do, but you can expect an inspector to enquire about:		
1. General risk assessments under the Management of Health and Safety at Work Regulations 1999.	<input type="checkbox"/>	<input type="checkbox"/>
2. Specific risk assessments, where applicable – for example:		
■ Control of Substances Hazardous to Health (COSHH);	<input type="checkbox"/>	<input type="checkbox"/>
■ Manual handling;	<input type="checkbox"/>	<input type="checkbox"/>
■ Noise;	<input type="checkbox"/>	<input type="checkbox"/>
■ Display screen equipment;	<input type="checkbox"/>	<input type="checkbox"/>
■ Work equipment;	<input type="checkbox"/>	<input type="checkbox"/>
■ Personal protective equipment;	<input type="checkbox"/>	<input type="checkbox"/>
■ Fire;	<input type="checkbox"/>	<input type="checkbox"/>
■ Dangerous Substances and Explosive Atmospheres Regulations (DSEAR).	<input type="checkbox"/>	<input type="checkbox"/>
<b>Records (Some Common Examples)</b>		
Do you have records available to prove you have carried out safety inspections in respect of:		
■ All pressure systems?	<input type="checkbox"/>	<input type="checkbox"/>
■ All lifting equipment?	<input type="checkbox"/>	<input type="checkbox"/>
■ Access equipment?	<input type="checkbox"/>	<input type="checkbox"/>
■ Personal protective equipment – such as harnesses?	<input type="checkbox"/>	<input type="checkbox"/>
■ Checks required by your risk assessment?	<input type="checkbox"/>	<input type="checkbox"/>
■ Gas supplies?	<input type="checkbox"/>	<input type="checkbox"/>
■ Electricity supplies?	<input type="checkbox"/>	<input type="checkbox"/>
■ PAT (portable appliance testing)?	<input type="checkbox"/>	<input type="checkbox"/>
■ Test certificates for the fixed electrical distribution system?	<input type="checkbox"/>	<input type="checkbox"/>



<b>Training</b>	<b>Yes</b>	<b>No</b>
<p>Training carried out for operation of equipment including cranes, fork lift trucks, etc. All training should be specific to the operation and be:</p> <ul style="list-style-type: none"> <li>■ Properly designed;</li> <li>■ Delivered;</li> <li>■ Recorded;</li> <li>■ Updated when refresher training is needed.</li> </ul> <p>Additionally, competent staff/advisers should be appointed (this should be detailed in the safety policy with areas of responsibility).</p>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
<b>Fire Safety</b>		
<p>This topic will probably be checked by an inspector from your local fire and rescue service. Can you show him/her:</p> <ul style="list-style-type: none"> <li>■ That you have the necessary fire-fighting equipment, e.g. fire extinguishers that are sufficient for your requirements and regularly inspected/maintained?</li> <li>■ Documents setting out your emergency procedures, e.g. what to do in case of fire?</li> <li>■ Records of the training you have given to fire wardens, etc?</li> <li>■ That signs are clearly displayed?</li> <li>■ That you have an effective fire alarm?</li> <li>■ That your emergency routes and exits are clear at all times?</li> <li>■ Your fire alarm testing procedures and records?</li> <li>■ Your emergency lighting test procedures and records?</li> <li>■ Your fire drill arrangements?</li> <li>■ How you monitor and review your fire safety arrangements?</li> </ul>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
<b>Injury Reporting and Accident Log Book</b>		
<ul style="list-style-type: none"> <li>■ Is your accident book or other reporting method kept up to date?</li> <li>■ Have you reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) where applicable?</li> <li>■ Do you have an accident reporting procedure so that your staff know what to report, and to whom?</li> <li>■ Can you demonstrate how you investigate when something's gone wrong, and that you take action to prevent a recurrence?</li> </ul>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>  <input type="checkbox"/>
<b>Personal Protective Equipment (PPE)</b>		
<p>Do you have a policy that specifies:</p> <ul style="list-style-type: none"> <li>■ Personal protective equipment to be used (detailed in the risk assessments)?</li> <li>■ Procedures for procurement?</li> </ul>	<input type="checkbox"/>  <input type="checkbox"/>	<input type="checkbox"/>  <input type="checkbox"/>



	<b>Yes</b>	<b>No</b>
<ul style="list-style-type: none"> <li>■ Procedures for selection and fit testing?</li> <li>■ Procedures for inspection and maintenance?</li> <li>■ Procedures for replacement?</li> <li>■ Provisions for training and use including specialised equipment such as breathing apparatus?</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>Policies for High Risk and Special Groups</b>		
<p>Do your policy and risk assessment arrangements cover groups such as:</p> <ul style="list-style-type: none"> <li>■ Agency workers?</li> <li>■ Young workers?</li> <li>■ Disabled staff?</li> <li>■ Pregnant staff?</li> <li>■ Visitors (depending on the activity)?</li> <li>■ Contractors?</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>Display Screen Equipment</b>		
<p>For display screen equipment (DSE), workstation assessments need to be completed and actions taken and recorded accordingly. Can you show the inspector the actions you have taken to comply?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Hazardous Substances</b>		
<p>If you use hazardous substances, do you have a control policy that includes your COSHH assessments and details on:</p> <ul style="list-style-type: none"> <li>■ Safe storage?</li> <li>■ Safe handling?</li> <li>■ Safe usage?</li> <li>■ Procedures for emergency and spillage?</li> </ul> <p>In addition, have you:</p> <ul style="list-style-type: none"> <li>■ Clearly identified all materials using recognised symbols on all containers?</li> <li>■ Documented your management controls?</li> <li>■ Provided training covering the hazards, risks and controls?</li> <li>■ Made available Materials Safety Data Sheets (MSDS)?</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>Food Hygiene</b>		
<p>If you handle, prepare or serve food, the Environmental Health Officer may ask you for:</p> <ul style="list-style-type: none"> <li>■ Food hygiene certificates to be displayed or available for all food handlers.</li> <li>■ Hazard analysis and critical control points (HACCP) – risk assessment for food operations to include: <ul style="list-style-type: none"> <li>■ Delivery;</li> </ul> </li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>



	<b>Yes</b>	<b>No</b>
<ul style="list-style-type: none"> <li>■ Storage;</li> <li>■ Preparation;</li> <li>■ Cooking;</li> <li>■ Serving;</li> <li>■ Waste collection;</li> <li>■ Disposal.</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>Manual Handling</b>		
<p>Can you show the inspector:</p> <ul style="list-style-type: none"> <li>■ Your policy?</li> <li>■ Training documentation?</li> <li>■ You have carried out a risk assessment?</li> <li>■ You have trained your staff?</li> <li>■ You have considered alternatives to manual handling, such as the provision of mechanical aids?</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>Employee Welfare</b>		
<p>Can you show the inspector your:</p> <ul style="list-style-type: none"> <li>■ Stress Policy?</li> <li>■ Arrangements for keeping employee records?</li> <li>■ Details of the action employees and managers should take in the event of someone suffering from stress?</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>