

Enforcement Guidelines for Health and Safety at Work in Northern Ireland

In developing these enforcement guidelines for Northern Ireland, HSENI would like to acknowledge the assistance of the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) in Great Britain.

Introduction

The Health and Safety Executive for Northern Ireland (HSENI) aims to see that the risks to peoples' health and safety arising from work activities are effectively controlled, thereby contributing to the overall economic and social well-being of the Northern Ireland community.

HSENI's statutory functions include proposing new or updated laws and standards, the provision of an information and advisory service and making adequate arrangements for the enforcement of health and safety law in relation to specified work activities.

It may also make arrangements for the preparation and issue of codes of practice, research, the provision of training and information, and promote both general and key occupational health and safety messages.

Responsibility for securing workplace health and safety standards is mainly shared between HSENI and the District Councils ("the enforcing authorities").

HSENI is the enforcing authority for health and safety in many areas of employment. Some of the main areas within HSENI's remit include manufacturing, construction, agriculture, quarries, docks, chemical plants, education, fairgrounds, hospitals and nursing homes, District Councils, railways, the Fire Authority, the Police Service, and Crown bodies.

District Councils promote and enforce health and safety law in workplaces allocated to them by the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999 – including offices, shops, retail and wholesale distribution centres, leisure, hotel and catering premises.

HSENI has adopted these Enforcement Guidelines and they will be followed by its Inspectors. HSENI has also determined under Article 20 of the Health and Safety at Work (Northern Ireland) Order 1978 that these Guidelines

should have the status of mandatory guidance and must therefore be followed by the other enforcing authorities in Northern Ireland with responsibilities for the enforcement of health and safety statutory legislation (mainly the District Councils).

The Enforcement Guidelines set out the general principles and approach which all health and safety enforcing authority staff are expected to follow when taking enforcement decisions. For simplicity, the Guidelines refer to health and safety enforcing authority staff as “Inspectors”.

The appropriate use of enforcement powers, including prosecution, is important, both to secure compliance with the law and to ensure that those who have duties under it may be held to account for failures to safeguard health, safety and welfare at work.

In allocating resources, enforcing authorities should have regard to the principles set out below. They should also have regard to the objectives published in the HSENI Corporate Plan and the Strategic Plan for Health and Safety in the District Council enforced business sectors in Northern Ireland (HELANI Strategic Plan) as appropriate to their particular remit. They also need to maintain a balance between enforcement and other activities, including inspection, promotion and the provision of health and safety information and advice.

The Purpose and Method of Enforcement

The ultimate purpose of the enforcing authorities is to ensure that duty holders (employers, the self-employed, employees and others) manage and control risks effectively, thus preventing harm. The term ‘enforcement’ has a wide meaning and applies to all dealings between enforcing authorities and those on whom the law places duties.

The purpose of enforcement is to:

- ensure that duty holders take action to deal immediately with serious risks
- promote and achieve sustained compliance with the law
- ensure that duty holders who breach health and safety requirements, and directors or managers who fail in their responsibilities, may be held to account, which may include bringing alleged offenders before the courts in Northern Ireland in the circumstances set out later in these guidelines.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be pursued, nor is its purpose to assist such claims.

The enforcing authorities have a range of tools at their disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Inspectors may offer duty holders information and advice, both face to face and in writing. This may include warning a duty holder that, in the opinion of the Inspector, they are failing to comply with the law. Where appropriate, Inspectors may also serve Improvement and Prohibition notices, administer cautions, and recommend prosecutions.

Giving information and advice and issuing improvement or prohibition notices are the main means which Inspectors use to achieve the broad aim of dealing with serious risks, securing compliance with health and safety law and preventing harm. Improvement and Prohibition notices have legal standing and there are penalties for failure to comply with their requirements.

An improvement notice may be used where an Inspector is of the opinion that a person is in breach of legislation and the notice will state a time by which matters must be remedied. In situations where an activity involves, or will involve, a risk of serious personal injury, the Inspector may serve a prohibition notice. A prohibition notice stops a work activity in order to prevent serious personal injury. Improvement and prohibition notices and written advice may be used in court proceedings.

Cautions and prosecutions are important ways to bring duty holders to account for alleged breaches of the law. Where it is appropriate to do so in accordance with these guidelines, a caution or prosecution may be considered instead of, or in addition to, issuing an Improvement or prohibition notice.

Investigating the circumstances encountered during inspections or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, enforcing authorities should have regard to the principles of enforcement set out in these guidelines and the objectives published in the HSENI Corporate Plan and the HELANI Strategic Plan, as appropriate to the particular enforcing authority's remit. In particular, in allocating resources, enforcing authorities must strike a balance between investigations and mainly preventive activity.

Sometimes the law is prescriptive – spelling out in detail what must be done. However, much of modern health and safety law is goal setting – setting out what must be achieved, but not how it must be done. Advice on how to achieve the goals is often set out in Approved Codes of Practice (ACoPs). These give practical advice on compliance and have a special legal status. If someone is prosecuted for a breach of health and safety law and did not follow the relevant provisions of an ACoP, then the onus is on them to show that they complied with the law in another way.

Advice is also contained in other guidance material describing good practice published by HSE, HSENI and District Councils. Following this guidance is not compulsory but doing so is normally enough to comply with the law.

Neither ACoPs nor guidance material are in terms which necessarily fit every case. In considering whether the law has been complied with, Inspectors will need to take relevant ACoPs and guidance into account, using sensible judgement about the extent of the risks and the effort that has been applied to counter them. More is said about these matters later in these guidelines.

HSENI expects enforcing authorities to use discretion in deciding when to investigate or what enforcement action may be appropriate. Enforcing authorities should have supporting arrangements to be followed when making decisions on enforcement action. HSENI expects that such judgements will be made in accordance with the following principles. These are in accordance with the Regulators' Compliance Code and the regulatory principals required under the Legislative and Regulatory Reform Act 2006.

The Principles of Enforcement

HSENI believes in firm but fair enforcement of health and safety law. This should be informed by the principles of proportionality in applying the law and securing compliance; targeting of enforcement action; consistency of approach; transparency about how the regulator operates and what those regulated may expect; and accountability for the regulator's actions. These principles should apply both to enforcement in particular cases and to the health and safety enforcing authorities' management of enforcement activities as a whole.

Proportionality

Proportionality means relating enforcement action to the risks (in this guidance, 'risk', where the term is used alone, is defined broadly to include a source of possible harm, the likelihood of that harm occurring, and the severity of any harm). Those whom the law protects and those on whom it places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance or bring duty holders to account for non-compliance should be proportionate to any risks to health and safety, or to the seriousness of any breach, which includes any actual or potential harm arising from a breach of the law.

In practice, applying the principle of proportionality means that enforcing authorities should take particular account of how far the duty holder has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Some health and safety duties are specific and absolute. Others require action so far as is reasonably practicable. Enforcing authorities should apply the principle of proportionality in relation to both kinds of duty.

Deciding what is reasonably practicable to control risks involves the exercise of judgement. Where duty holders must control risks so far as is reasonably practicable, enforcing authorities considering protective measures taken by duty holders must take account of the degree of risk on the one hand, and on the other the sacrifice, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.

Enforcing authorities will expect relevant good practice to be followed. Where relevant good practice in particular cases is not clearly established, health and safety law effectively require duty holders to establish explicitly the significance of the risks to determine what action needs to be taken. Ultimately, the courts determine what is reasonably practicable in particular cases.

Some irreducible risks may be so serious that they cannot be permitted irrespective of the consequences for the duty holder.

Targeting

Targeting means making sure that contacts are 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 focused on the duty holders who are responsible for the risk and who are best placed to control it – whether employers, manufacturers, suppliers, or others.

HSENI expects enforcing authorities to have systems for deciding which inspections, investigations or other regulatory contacts should take priority according to the nature and extent of risks posed by a duty holder's operations. The duty holder's management competence is important, because a relatively low hazard site poorly managed can entail greater risk to workers or the public than a higher hazard site where proper and adequate risk control measures are in place. Certain very high hazard sites will receive regular inspections so that enforcing authorities can give public assurance that such risks are properly controlled.

Any enforcement action will be directed against duty holders responsible for a breach. This may be employers in relation to workers or others exposed to risks; the self-employed; owners of premises; suppliers of equipment; designers or clients of projects; or employees themselves. Where several duty holders have responsibilities, enforcing authorities may take action against more than one when it is appropriate to do so in accordance with these guidelines.

When Inspectors issue Improvement or prohibition notices, administer cautions, or initiate prosecutions, enforcing authorities should ensure that a senior officer of the duty holder concerned, at board level, is also notified.

Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Duty holders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc; decisions on whether to initiate or recommend prosecutions; and in the response to incidents.

HSENI recognises that in practice consistency is not a simple matter. Inspectors are faced with many variables including the degree of risk, the attitude and competence of management, any history of incidents or

breaches involving the duty holder, previous enforcement action, and the seriousness of any breach, which includes any potential or actual harm arising from a breach of the law. Decisions on enforcement action are discretionary, involving judgement by the enforcer. All enforcing authorities should have arrangements in place to promote consistency, including effective arrangements for liaison with other enforcing authorities.

The Health and Safety Executive/ Local Authority Liaison Committee for Northern Ireland (HELANI) has been established to facilitate consistency among the main health and safety regulatory bodies in Northern Ireland. It provides a regional forum for the discussion and exchange of information on enforcement issues. It also provides an effective liaison mechanism between District Councils and HSENI.

Transparency

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

Transparency also involves the enforcing authorities in having arrangements for keeping employees, their representatives, and victims or their families informed. These arrangements must have regard to legal constraints and requirements.

These Guidelines set out the general framework within which enforcing authorities should operate. Enforcing authorities are expected to take all reasonable measures to ensure that duty holders, employees, their representatives and others know what to expect when an Inspector calls and what rights of complaint are open to them. [The leaflet, What to expect when a Health and Safety Inspector calls: A brief guide for businesses](#), employees and their representatives, explains what employers and employees, and their representatives, can expect when a health and safety Inspector calls at a workplace. In particular:

- a. when Inspectors offer duty holders' information or advice, face to face or in writing, including any warning, Inspectors will tell the duty holder what to do to comply with the law and explain why. Inspectors will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice;

b. in the case of Improvement notices, the Inspector will discuss the notice and, if possible, resolve points of difference before serving it. The notice will say what needs to be done, why and by when, and that in the Inspector's opinion a breach of the law has been committed.

c. in the case of a Prohibition notice, the notice will explain why the prohibition is necessary.

Many of the enforcing authorities have customer care charters. The [HSENI Customer Care Charter](#) provides information about HSENI, the standard of service it will provide, outlines a complaints procedure if things go wrong and provides contact details and lists of helpful publications.

Accountability

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

HSENI's procedures for dealing with comments and handling complaints, are set out in the publications referred to in our [Complaints page](#). In particular, they:

a. describe a complaints procedure in the case of decisions by officials, or if procedures have not been followed; and

b. explain about the right of appeal to an Industrial Tribunal in the case of statutory notices.

District Councils also have their own complaints procedures – details are available from individual councils.

HSENI expects enforcing authorities to use discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. HSENI's Corporate Plan details priority issues which would be one of the factors to be taken into consideration in deciding if an investigation should be initiated. District Council priorities are specified in the HELANI Strategic Plan. This is used by District Councils to target their activities and resources.

Investigations are undertaken in order to determine:

- a. the causes of the incident;
- b. whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- c. lessons to be learnt and to influence the law and guidance; and
- d. what response is appropriate to a breach of the law.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. HSENI and District Councils recognise that it is neither possible nor necessary for the purposes of the Health and Safety at Work Order to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

Enforcing authorities should carry out a site investigation of a reportable⁵ work-related death, unless there are specific reasons for not doing so. In such a case those reasons should be recorded.

In selecting which complaints or reports of injury or workplace ill health to investigate and in deciding the level of resources to be used, the enforcing authorities should take account of the following factors:

- a. the severity and scale of potential or actual harm;
- b. the seriousness of any potential breach of the law;
- c. knowledge of the duty holder's past health and safety performance;
- d. the enforcement priorities;
- e. the practicality of achieving results; and
- f. the wider relevance of the event, including serious public concern.

Prosecution

The authority to initiate a prosecution rests with an inspector or the Public Prosecution Service for Northern Ireland (PPSNI). However, following the Review of the Criminal Justice System in Northern Ireland (March 2000), HSENI has decided that all of its cases, which result in a recommendation for prosecution, will be referred to the PPSNI.

The decision whether or not to prosecute is taken in accordance with established principles of law and practice, which are set out in the [Code for Prosecutors \(pdf format, www.ppsni.gov.uk\)](#). This Code is issued pursuant to the statutory duty placed on the PPSNI by section 37 of the Justice (Northern Ireland) Act 2002.

In Northern Ireland, prosecutions are initiated or continued in accordance with the TEST FOR PROSECUTION. This is where the prosecutor is satisfied that the evidence, which can be adduced in court, is sufficient to provide a reasonable prospect of conviction and that prosecution is required in the public interest. Both of these requirements must be satisfied before any prosecution is directed to be initiated or continued.

A reasonable prospect of conviction exists if, in relation to an identifiable individual (or corporate body) there is credible evidence which the prosecution can adduce before a court upon which evidence an impartial jury (or other tribunal), properly directed in accordance with the law, may reasonably be expected to find proved beyond reasonable doubt the commission of a criminal offence by the individual who is prosecuted.

While the primary purpose of the enforcing authorities is to ensure that duty holders manage and control risks effectively, thus preventing harm, prosecution is an essential enforcement tool. HSENI expects that, where the TEST FOR PROSECUTION is met, then a prosecution, or a recommendation to prosecute, will be taken by the enforcing authority. In such circumstances, consideration will also be given as to whether it may proceed without prior warning or recourse to alternative sanctions, such as the issuing of an Improvement or Prohibition notice.

The presumption to be applied is that the public interest requires prosecution where there has been a contravention of the criminal law. However, this presumption only provides a starting point for consideration of each individual case. In some circumstances, the serious nature of the case will make the presumption a very strong one but there are many instances and circumstances in which, although evidence is sufficient to provide a reasonable prospect of conviction, prosecution is not required in the public interest.

If the evidential part of the TEST FOR PROSECUTION is met, HSENI expects that, in the public interest, enforcing authorities should normally prosecute, or recommend prosecution, where, following an investigation or other regulatory contact, one or more of the following circumstances apply. Where:

- a. death was a result of a breach of the legislation;
- b. the gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- c. there has been reckless disregard of health and safety requirements;
- d. there have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- e. work has been carried out in the absence of or in serious noncompliance with an appropriate licence or safety case;
- f. a duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- g. there has been a failure to comply with an Improvement or Prohibition notice; or there has been a repetition of a breach that was subject to a caution;
- h. false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- i. Inspectors have been intentionally obstructed in the lawful course of their duties.

Health and safety sentencing guidelines regard death resulting from a criminal act as an aggravating feature of the offence. If there is sufficient evidence, HSENI considers that normally such cases should be brought before the court, and that consideration should be given to proceeding on indictment. However, there will be occasions where the public interest does not require a prosecution, depending on the nature of the breach and the circumstances surrounding the death.

HSENI also expects that, in the public interest, enforcing authorities will consider prosecution, or consider recommending prosecution, where following an investigation or other regulatory contact, one or both of the following circumstances apply;

- a. 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, and conviction may deter others from similar failures to comply with the law;

b. a breach which gives rise to significant risk has continued despite relevant warnings from employees, or their representatives, or from others affected by a work activity.

Prosecution of Individuals

Subject to the above, the enforcing authorities recommend prosecution of individuals if they consider that the TEST FOR PROSECUTION is met. In particular, consideration should be given to the responsibility of Directors, senior staff and management. Under section 22 of the Interpretation Act (Northern Ireland) 1954, inspectors should consider recommending to the PPSNI that action be taken against an individual, where the inspection or investigation reveals that the offence was committed with their consent, knowledge or connivance, or, to have been attributable to lack of reasonable diligence on their part depending upon the particular circumstances of the case and the nature of the liability which arises. Where appropriate, Inspectors should draw to the attention of the PPSNI that disqualification of a director may arise under the relevant legislation. Publicity by the Enforcing Authorities.

HSENI publishes the names of all the companies and individuals who have been convicted in the previous 12 months of breaking health and safety law within HSENI's Annual Report and Statement of Accounts. A public register of convictions is also maintained on HSENI's website. Similar information for convictions within the District Council area of enforcement is contained in the Annual Report on Health and Safety in the District Council Enforced Business Sectors in Northern Ireland. Where Inspectors are assaulted, enforcing authorities will seek police assistance, with a view to seeking the prosecution of offenders.

Enforcing authorities in Northern Ireland should also consider in all cases alerting the media to any conviction, which could serve to draw the attention of a wider audience to the need to comply with health and safety requirements or deter anyone tempted to disregard their duties under health and safety law. Action by the Courts

Health and safety law gives the courts considerable scope to punish offenders and to deter others, including imprisonment for some offences. Certain courts may impose unlimited fines. While recognising that the sentencing of offenders is entirely a matter for the judiciary, HSENI will

seek to inform the court of the nature and circumstances of health and safety offences committed, and, when requested, as to the extent of their sentencing powers. A list of the sanctions presently available to the courts is attached to these guidelines (Appendix A).

The choice of venue for a case to be heard is a matter for the prosecuting authority. In cases which are serious, consideration should be given as to whether the case should be prosecuted on indictment before the Crown Court.

Death at Work

Where a death has been occasioned in circumstances where there may have been a breach of the law, it is necessary to consider whether the evidence is sufficient to justify a charge of manslaughter or corporate manslaughter.

Broadly, the Police Service for Northern Ireland (PSNI) is responsible for deciding whether to pursue a manslaughter or corporate manslaughter investigation and to report the case to the Public Prosecution Service for Northern Ireland (PPSNI). HSENI and District Councils are responsible, under Article 20 of the Health and Safety at Work (Northern Ireland) Order 1978, for making adequate arrangements for the enforcement of health and safety at work legislation but cannot carry out an investigation for manslaughter or corporate manslaughter. If, in the course of their health and safety investigation, HSENI or the relevant District Council find evidence which indicates that an offence of manslaughter or corporate manslaughter may have been committed, they should pass the case immediately to the police.

PSNI and HSENI, or the District Council or other enforcing authority involved in the investigation of a work-related death, should agree upon: • Which organisation should take the lead responsibility for the investigation;

- How resources are to be specifically used;
- How evidence is to be disclosed between the parties;
- How the interviewing of witnesses, the instruction of experts and the forensic examination of exhibits is to be co-ordinated;
- How, and to what extent, corporate or organisational failures should be investigated;
- A strategy for keeping the bereaved, witnesses, and other interested parties such as the coroner, informed of developments in the investigation; and

- A media strategy to take account of the sensitivities of the bereaved and those involved in the incident, and to encourage consistency of approach in reporting.
- To ensure that decisions on the investigation and prosecution of such matters are properly co-ordinated, HSENI, the District Councils and the Police Service of Northern Ireland will work to the principles of the Northern Ireland agreement for liaison, Investigation of Work-Related Deaths. In certain circumstances it may be necessary for PSNI and the relevant enforcing authorities to meet with the PPSNI at an early stage to seek advice on any prosecutorial issues.

If the PSNI have decided to investigate for manslaughter or corporate manslaughter and HSENI/District Council have investigated for health and safety offences, every effort will be made to co-ordinate the submission of one file, containing the evidence of breaches of the criminal law, to the PPSNI.

Crown bodies

Crown bodies must comply with health and safety requirements, but they are not subject to statutory enforcement, including prosecution. However, HSENI has non-statutory arrangements in place for enforcing health and safety requirements in Crown bodies. These arrangements allow HSENI to issue non-statutory improvement and prohibition notices, and for the censure of Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified. In deciding when to investigate or what form of action to take, HSENI follows as far as possible the same approach as for non-Crown bodies, in accordance with these guidelines.

Further information

More information about the way health and safety is enforced and about health and safety legislation generally can be found on the website www.hseni.gov.uk and in these free leaflets:

- What to expect when a Health and Safety Inspector Calls: A brief guide for businesses, employees and their representatives
- District Council Investigation of Work-related Deaths – Northern Ireland agreement for liaison.

District Councils may produce their own further information on enforcing health and safety. You can find your District Council's address and telephone number in your local telephone directory.

HSENI free publications are available from:

HSENI
83 Ladas Drive
Belfast
BT6 9FR
Telephone: 028 9024 3249
Textphone: 028 9054 6896
Facsimile: 028 9023 5383
Email: mail@hse.gov.uk
Web: www.hse.gov.uk

For information about health and safety ring HSENI's Helpline: 0800 0320121.

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APPENDIX A

Penalties for Health and Safety Offences

The Health and Safety at Work (Northern Ireland) Order 1978 (the Order), Article 31 (as amended) sets out the offences and maximum penalties under health and safety legislation.

Following the introduction of the Health and Safety (Offences) Act 2008, for most offences under Article 31, committed on or after 16 January 2009, the penalties are as follows:

- Lower court maximum £20,000 and/or 6 months' imprisonment
Higher court maximum Unlimited fine and/or 2 years' imprisonment
These maximum penalties relate to offences under Article 31 involving breaches of Articles 4-7 of the Order; failure to comply with an Improvement or Prohibition notice, or a court remedy order; and breaches of 'relevant statutory provisions' under the HSW (NI) Order, which include all health and safety regulations.
- The maximum term of imprisonment that may be imposed by a magistrates' court is currently 6 months. When s154(1) of the Criminal Justice Act 2003 is brought into force the maximum term will be increased to 12 months.
- For a few offences under Article 31 the penalties vary from that set out above, e.g. impersonating an inspector. Details can be found in the explanatory note to the Health and Safety (Offences) Act.
- On conviction of directors for indictable offences in connection with the management of a company (all of the above, by virtue of Article 34 of the Order or section 20, paragraph 2, of the Interpretation Act (NI) 1954,), the courts may also make a disqualification order under The Company Directors Disqualification (NI) Order 2002, Articles 3, 4 and 5).
- In appropriate cases, the prosecutor on behalf of the enforcing authority will draw this power to the court's attention. Lower court maximum 5 years' disqualification Higher court maximum 15 years' disqualification.