
Report To:	Education & Communities Committee	Date:	12 March 2013
Report By:	Corporate Director Education, Communities and Organisational Development	Report No:	EDUC/26/13/MMcN
Contact Officer:	Martin McNab	Contact No:	714246
Subject:	Consultation on Proposals for a National Local Authority Enforcement Code – Health and Safety at Work, England, Scotland and Wales		

1.0 PURPOSE

- 1.1 To advise Committee of the proposals for amending the way health and safety inspections will be carried out by Local Authorities throughout the UK and the response to those proposals by Safer & Inclusive Communities.

2.0 SUMMARY

- 2.1 In November 2011 the Department for Work & Pensions published a report by Professor Ragnar Lofstedt entitled '**Reclaiming health & safety for all: An independent review of health & safety legislation**' which recommended that the Health and Safety Executive be given a stronger role in directing local authority health and safety enforcement activity.
- 2.2 The National Local Authority Enforcement Code has been developed in response to this recommendation and as an outcome of the Red Tape Challenge on Health & Safety. It is designed to ensure that Local Authority health and safety regulators take a more consistent and proportionate approach to enforcement.
- 2.3 Businesses, Regulators and Professional Bodies all have a role and responsibility to ensure that suitable health and safety measures are being implemented in the workplace.
- 2.4 The consultation on the Code ran to 1st March 2013. Businesses, regulators and professional bodies were invited to comment on the proposed Code.
- 2.5 A response to the consultation is attached at Appendix 1.

3.0 RECOMMENDATIONS

- 3.1 That Committee notes the response to the consultation and;
- 3.2 That Committee receives an update on actions arising from the final code in due course.

4.0 BACKGROUND

- 4.1 Health and Safety at Work enforcement has been a particularly hot political topic for a number of years. Much of this has arisen more from the often misleading press coverage of the whole “health and safety culture” rather than from any genuine issues arising from enforcement of the legislation by the HSE or Local Authorities.
- 4.2 Over the last few years the political approach to Health and Safety enforcement at a national level has changed on a regular basis. This, together with an ongoing decline in activity from the Health and Safety Executive, has made it very difficult to effectively plan enforcement at a local level.
- 4.3 The publication of a national code would therefore appear at first sight to be a step forward. The version issued for consultation has a number of shortcomings however, being primarily aimed at reducing activity rather than at making enforcement more effective. A full response to the consultation is attached at Appendix 1.
- 4.4 Whatever the outcome of the final consultation it is intended to develop a strategy and enforcement policy for Health and Safety at Work in Inverclyde taking into account the requirements of the final code. This will be brought to Committee in due course.

5.0 PROPOSALS

- 5.1 That a Strategy and Enforcement Policy for Health and Safety at Work in Inverclyde be developed and brought to Committee when the final outcome of the current consultation is known.

6.0 IMPLICATIONS

6.1 Financial Implications

None

6.2 Legal Implications

None

6.3 Human Resources Implications

None

6.4 Equalities Implications

None

6.5 Repopulation Implications

None

7.0 LIST OF BACKGROUND PAPERS

- 7.1 Public Consultation on a National Local Authority Enforcement Code - Health and Safety at Work, England, Scotland and Wales

Health and Safety Executive

**Public consultation on a National Local Authority
Enforcement Code – Health and Safety at Work, England,
Scotland and Wales.**

Reply Form

Completing this Questionnaire

You can move between questions by pressing the 'Tab' / 'Shift-Tab' or 'Page Up' / 'Page Down' keys or by clicking on the grey boxes with a mouse. Please type your replies within the rectangular grey boxes, or click on the square grey boxes to select an answer (e.g. 'Yes' or 'No').

Respondent's details:

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Job Title:	Health Protection Manager
Postcode:	PA16 8EA
Street address:	40 West Stewart Street
Organisation:	Inverclyde Council
Fax:	

Size of organisation:

Choose one option:

Not applicable

1 to 9 employees

10 to 49 employees

50 to 249 employees

250 to 1000 employees

1000+ employees

Self-employed

Type of organisation:

Choose one option:

Business

Local government

Member of the public

National government
If you have selected this please
state the department

Professional body

Trade association

Trade union

Other - please specify:

Is your response being made in your capacity as:

Choose one option:

An employer

An employee

Formal response on behalf of a local authority
If you have selected this, please state the local authority **Inverclyde**

Local authority health and safety liaison group
If you have selected this, please state name of the group

Local authority manager of health and safety regulatory services

Local authority health and safety regulator (non-manager)

Health and safety professional (non-regulator)

Trade union official

Other - please specify:

Confidentiality

Please indicate below if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made available to the public. This takes precedence over any automatic notes on e-mails that indicate that the contents are confidential.)

National Local Authority Enforcement Code Consultation Questions

Q1. Do you feel that the measures outlined in the Code and Annex will effectively deliver the Government's commitment to stop Local Authorities from proactively inspecting low risk businesses on health and safety grounds?

Yes

No

Any other comments?

The code will undoubtedly prevent proactive inspection of low risk businesses however it does not improve health & safety delivery in general in local authority enforced premises. Equally it does nothing to address health and safety standards in businesses falling to the HSE to regulate which do not fall into its priority areas for inspection.

Q2. Is the scope of the National Code sufficiently defined?

Yes

No

Please provide comments in support of your answer.

It is too well defined & prescriptive

Q3. What are your views on the risk based approach proposed?

The code as proposed purports to be a risk based model but in fact is a purely hazard based model. It focuses on businesses which present particular types of hazard but makes no attempt to address the different risks which might arise from the management and operation of those businesses. As such it is an extremely regressive model.

Q4. What are your views on the proposal for HSE to publish a list of the higher risk sectors (and key activities) appropriate to be targeted for proactive inspection by LAs (the example list at Annex A)?

Useful to have an overview of National Priorities however there should also be scope to allow for local discretion.

Q5. What are your views on the contents of Annex A?

Several point in table require clarification including:

High risk activity of explosion by leaking LPG in pipe work in caravan parks leading to communal blocks/amenity blocks- this is going to be very limited especially in smaller authorities.

Open farms/animal visitor attractions- very few of these.

Fatalities/injuries from vehicles in MVR's (as part of car sales) - what about other MVR's?

What is the definition of high volume warehousing?

Industrial diseases- clarification of MVR. Is this as part of car sales only or other?

Falls from height- why only from warehouses where lifting equipment is normally used anyway.

Carbon monoxide poisoning and gas explosion requires to be reworded to mean that there is (1) a risk from carbon monoxide from commercial premises using solid fuel equipment and (2) there is a risk of

gas explosion from premises using gas. As it is presently worded it appears to suggest that solid fuel equipment poses a risk of gas explosion.

Q6. What are your views on the assurance measures proposed for LAs on meeting the requirements of the Code?

If they are going to be put into practise they will be adequate.

Q7. Will the Code require regular review in the future?

Yes

No

Q8. If you have answered 'Yes', would 5 years be the right frequency or would you suggest an alternative frequency?

5 years is far too long to take account of accident trends and developments in higher risk activities. As a minimum the code should be reviewed every 2 years. As an example it would be interesting to know if legionella would have featured in the code had it not been for the scale of the Edinburgh outbreak in 2012.

Questions 9 - 12 are targeted at local authority health and safety regulators, their managers and their representative bodies.

Q9. Does the Code adequately set out how LAs can achieve a consistent approach to regulation via risk based targeting?

Yes

No

Please provide some comments to support your answer.

The code is not risk based therefore consistency will be difficult to achieve.

Q10. Does it provide for sufficient local flexibility?

Yes

No

Please provide some comments to support your answer.

The code is too prescriptive and makes no allowance for enforcement based upon local priorities.

Q11. Have we provided sufficient direction for LAs to target their resources based on risk?

Yes

No

Please provide some comments to support your answer.

There is too much direction to allow for flexibility to take account of local situations.

Q12. Does the Code provide sufficient guidance on the management of regulator competence?

Yes

No

Please provide some comments to support your answer.

The code seeks to reduce inspection and enforcement overall with no real appreciation of the impact of this on regulator competence. There is a real risk that there will not be a wide enough range of enforcement in smaller councils to allow for meaningful competence to be maintained. If the code had been concerned with addressing the gaps in overall regulation, by allowing transfer of some business sectors from HSE to Local Authorities for example rather than merely reducing the overall level of inspection this could have been avoided.

Questions 13 to 15 are targeted at businesses and their representative bodies.

Q13. Is there more that the Code can say about ensuring that businesses take responsibility for managing the risks that they create?

Yes

No

Please provide some comments to support your answer.

Q14. The Code sets out how LAs can achieve a consistent approach to regulation via risk based targeting using specified guidance material. Will this bring about the desired consistency of approach?

Yes

No

Q15. If you have answered 'No' what more is needed?

Further general questions

Q16. Do you have any other comments on the ideas and proposals explored in this document?

It is understood that LAC67/2 is also to be withdrawn. This will make it difficult to adopt a risk based approach to inspections (text box on pg9 point 19)

Point 22 - again difficult to achieve if LAC67/2 goes.

Point 26 - requires clarification as the way it is written suggests that if a LA is doing an advisory visit & sees something of concern then they cannot use the appropriate powers to deal with it. Should this approach be taken resulting in subsequent fatalities or serious injury the regulator and the officer concerned would rightly be criticised. Inverclyde Council could not endorse this approach. The decision as to whether enforcement action is required should rest with the professional judgement of the officer.

Point 27 & text in box - it will be harder to maintain competencies if visits are no longer being carried out.

Point 29 - will be difficult for smaller authorities.

Point 30 - where do we get the intelligence from if we are not visiting premises?

Point 31 - if we are not visiting premises then how can we assess the health & safety of businesses?

Point 35 & text box – where is the intelligence coming from to allow visits to premises. Will surveys be allowed in order to ascertain this?

Point 38 - will be difficult to achieve when everything is nationally specified and is not designed to meet local needs.

Points 40 & 41- it will be difficult to maintain competencies if we are no longer visiting

premises.

Point 43 - the only way to maintain competency is by experience of inspections.

Point 46 - it will be difficult to have meaningful peer review & benchmarking if no inspections are being carried out.

Point 47 - returns provided by LA's (LAE1) have so far only been used for statistics.

Point 51 - Peer reviews have been tried in the past but have been unsuccessful due to being undermined by national policy shifts. In smaller authorities there is a real danger that more time will be spent on the bureaucracy of peer review than will actually be spent on the enforcement of Health and Safety at Work legislation.

In general it is unclear what the significance of the text boxes are in the code. Is the text in the boxes mandatory or advisory?

**Q17. Is there anything you particularly like or dislike about this consultation?
Please provide comments.**

As already mentioned, point 26 requires clarification as it is difficult to imagine any LA not using section 20 powers if they felt there was a need for it. There would be serious repercussions for any Council who did not take appropriate action.

Please send your response by 1 March 2013 to:

Local Authority Unit
Health and Safety Executive,
5S.3 Redgrave Court,
Merton Road
Bootle L20 7HS

Fax: 0151 951 3448
E mail: lau.enquiries@hse.gsi.gov.uk

Thank you for taking the time to complete this questionnaire

Consultation on proposals for a National Local Authority Enforcement Code – Health and Safety at Work, England, Scotland and Wales

Overview

This consultative document is issued by the Health and Safety Executive (HSE) to seek views on its draft National Local Authority Enforcement Code (the Code) from stakeholders including business and local authorities (LAs). The HSE consults stakeholders to seek their views on its proposals. It believes that public consultation provides an open and transparent approach to decision-making that reflects the needs and aspirations of the people they will affect. This consultation is in compliance with HSE's duty to consult LAs under section 18 of the Health and Safety at Work etc Act (1974) and in accordance with the UK Government's Consultation Principles (<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>).

The Code has been developed in response to the Löfstedt review recommendation for HSE to be given a stronger role in directing LA health and safety inspection activity to ensure LA regulators take a more consistent and proportionate approach to enforcement.

The Code sets out Government expectations on a risk based approach to targeting health and safety regulatory interventions. It provides a principle based framework that recognises the respective roles of business and the regulator in the management of risk. It sets out the risk based approach to be followed by LA regulators that will provide business with a consistency of approach. At the same time, following the principles of the Code will ensure LAs make the best use of their regulatory resource by focussing their efforts where it really matters.

Implementing and complying with the requirements of the Code will deliver the central Government expectation that business operating in comparatively lower risk premises should not be subject to proactive, unannounced inspections, unless there is reason to suspect poor performance.

Monitoring implementation & compliance with the Code

In order to assess how LAs are meeting the requirements of the Code, HSE will monitor LA data returns (see section 4 of the Code). Where there is a lack of information or where the information prompts questions HSE will work with the LA in question to assist their implementation and compliance with the Code. In addition it is expected that via the inter authority peer review process that LAs will support each other in implementing and complying with the code and providing assurance that they have done so.

HSE will annually publish a report detailing how LAs are complying with this Code to provide transparency on LA regulatory activity.

Complaints about implementation & compliance with the Code

Where business considers that they operate in a lower risk sector and have been unreasonably subject to a proactive health and safety inspection by an LA they can complain to the Independent Regulatory Challenge Panel whose members have the competence and experience to assess regulatory matters. They will look into the complaint and the outcome of their deliberations will be made publically available on the HSE website.

Where a complaint is upheld by the Panel HSE will work with the LA to provide advice and assistance to improve and enable their implementation and compliance with the Code.

Consultation on the National Local Authority Enforcement Code

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This Consultation

How to respond

On page 18 of this document are a number of questions that we would welcome your response to.

Our preferred method for receiving comments is via the online questionnaire <http://www.hse.gov.uk/consult/condocs/cd247.htm>. However you can also respond by completing the electronic form <http://www.hse.gov.uk/consult/condocs/cd247.htm> and send by email to lau.enquiries@hse.gsi.gov.uk

Responses must be received by 1 March 2013

If either of the above options is not possible please use the response form at the end of this document to provide the background information and send it along with your comments to:

Local Authority Unit,
5S.3, Redgrave Court,
Merton Road,
Bootle
L20 7HS

If you require a more accessible format of this document please send details to creative@hse.gsi.gov.uk and your request will be considered.

Any queries should be sent to:
E-mail lau.enquiries@hse.gsi.gov.uk

What happens next?

We will acknowledge all responses and give full consideration to the substance of arguments in the proposals; we may contact you again if, for example, we have a query in respect of your response.

Responses to this consultation document will be lodged in the Health and Safety Executive's Knowledge Centre after the close of the consultation period where they can be inspected by members of the public

HSE will also publish information concerning the consultation responses. We will provide a summary of those who responded to this consultation and we will produce a summary of the views expressed to each question; this information will be placed on the HSE's website.

The HSE will then decide on how best to take the proposals forward based on an interpretation and analysis of the consultation responses.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR)). Statutory Codes of Practice under the FOIA and EIR also deal with confidentiality obligations, among other things.

If you would like us to treat any of the information you provide, including personal information, as confidential, please explain your reasons for this in your response. If we receive a request under FOIA or EIR for the information you have provided, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will be disregarded for these purposes. Requests for confidentiality should be made explicit within the body of the response.

HSE will process all personal data in accordance with the DPA. This means that personal data will not normally be disclosed to third parties and any such disclosures will only be made in accordance with the Act.

Process queries and complaints

HSE is committed to best practice in consultation and to the Government's Consultation Principles <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>.

If you have any comments or complaints about the way this consultation has been conducted, please contact the HSE Consultation Coordinator by writing to:

Teresa Farnan
Health and Safety Executive
7th Floor Caxton House
6-12 Tothill Street
London SW1H 9NA

Or send an email to teresa.farnan@hse.gsi.gov.uk

We aim to reply to all complaints within 10 working days.

National Local Authority Enforcement Code

Health and Safety at Work

England, Scotland & Wales

Introduction

1. In his report "*Reclaiming health & safety for all: An independent review of health and safety legislation*", commissioned by the then Minister for Employment, Professor Ragnar Löfstedt recommended that HSE be given a stronger role in directing Local Authority (LA) health & safety inspection and enforcement activity.
2. This National Code has been developed in response to this recommendation and as an outcome of the Red Tape Challenge on Health and Safety. It is designed to ensure that LA health and safety regulators take a more consistent and proportionate approach to enforcement.
3. Whilst the primary responsibility for managing health and safety risks lies with the business who creates the risk, LA health & safety regulators have an important role in ensuring the effective and proportionate management of risks, supporting business, protecting their communities and contributing to a wider public health agenda.
4. LA regulators are competent professionals granted powers and duties to deliver proportionate and targeted enforcement. It is vital that LA regulatory resource is used consistently and to best effect by targeting specific risks or focussing on specific outcomes. LAs should use the full range of regulatory interventions available to influence behaviours and the management of risk with proactive inspection utilised **only** for premises with higher risks or where intelligence suggests that risks are not being effectively managed.
5. The Code provides direction to LAs on meeting these requirements, and reporting on compliance.
6. The Code is given legal effect as HSE guidance to LAs under section 18(4) (b) of Health and Safety at Work etc Act 1974 (HSWA) and applies to England, Wales and Scotland.

The National Code

Scope

7. This Code sets out what is meant by 'adequate arrangements for enforcement'. This Code replaces the existing S18 Standard and concentrates on the following four objectives:
 - a) Clarifying the **roles and responsibilities** of business, regulators and professional bodies to ensure a shared understanding on the management of risk;
 - b) Outlining the **risk-based regulatory approach** that LAs should adopt with reference to the Regulator's Compliance Code, HSE's Enforcement Policy Statement and the need to target relevant and effective interventions that focus on influencing behaviours and improving the management of risk;
 - c) Setting out the need for the **training and competence** of LA H&S regulators linked to the authorisation and use of HSWA powers; and
 - d) Explaining the arrangements for collection and publication of LA data and peer review to give an **assurance on meeting the requirements of this Code**.

Section 1: Roles and responsibilities

8. Businesses, regulators and professional bodies all have a role and responsibility to help prevent work place death, injury and ill health and to apply health and safety at work in a proportionate way.

Business

9. Health and Safety law in Great Britain clearly sets out that the primary responsibility for managing risks to workers and the public who might be affected by work activity lies with the business or organisation that creates the risks in the first place. This applies whether the organisation is an employer, self-employed, service provider or a manufacturer or supplier of articles or substances for use at work. Whilst the primary responsibility sits with the business, workers also have a responsibility to care for their own health and safety and others who may be affected by their actions.

Regulators

10. The role of the regulator is to support, encourage, advise and where necessary hold to account business to ensure that businesses effectively manage the occupational health and safety risks they create.
11. Regulators should ensure they make best use of their resource and help improve the effective management of health and safety risks in a proportionate way. This is achieved through choosing the most appropriate way of influencing risk creators and by targeting their interventions, including inspection, investigation and enforcement activity, on those businesses and sectors that represent a higher level of risk to the health and safety of workers and the public.
12. The focus of LAs may often be broader than specific health and safety outcomes as they can also have an impact on wider public health outcomes/ health inequalities. Additionally, LAs contribute to delivering the growth agenda and can provide invaluable advice to new business.
13. LAs as employers also have a responsibility to ensure that their regulatory staff are sufficiently competent and have sufficient management control/support to carry out the tasks that the LA requires them to undertake.
14. With its central health and safety policy role HSE will provide:
 - Authoritative health and safety advice and guidance for business;
 - Stakeholder engagement through involvement in industry liaison forums and other appropriate national forums;
 - Specialist health and safety support and advice to LAs;

- Specific sector strategies with associated national planning priorities to inform LA regulatory interventions;
- A list of those high risk sectors/activities appropriate to be targeted for proactive inspection by LAs;
- Support for Primary Authorities and their inspection plans;
- Support LA peer review of their enforcement decisions, intervention plans and professional competence; and
- Monitor and publish LA intervention data for benchmarking purposes via the LAE1 return (see paragraph 49 in Data Collection).

Professional bodies

15. The Chartered Institute of Environmental Health (CIEH) (covering England, and Wales) and the Royal Environmental Health Institute of Scotland (REHIS) (covering Scotland) are the two main professional bodies for LA Health and Safety regulators. They are responsible for setting standards for professional practise, promoting training, education and continuing professional development via accredited courses and qualifications for Environmental Health Officers.

Section 2: A risk-based approach to regulation

16. Business is responsible for managing the risks it creates to workers and the public who might be affected by its work activity. This applies to all businesses, no matter how large or small.
17. LAs regulators should use a range of interventions, by which we mean all available methods and techniques, to influence behavioural change in the way business manages or undertakes its work.
18. This Code seeks to provide advice and direction to LAs on using a risk-based, targeted and proportionate approach to their interventions and enforcement in accordance with the principles of good regulation which requires enforcement to be demonstrably targeted, proportionate, consistent, transparent and accountable.

Targeting

19. This means targeting interventions on those activities that give rise to the most serious risks or where the hazards are least well controlled.

LAs should achieve this by:

- Having a risk-based intervention plans focussed on tackling specific risks;
- Considering the risks that they need to address and using the whole range of interventions to target these specific risks,
- Reserving unannounced proactive inspection only for the activities and sectors published by HSE or where intelligence suggests risks are not being effectively managed;
- Using national and local intelligence to inform priorities.

20. There is already much 'targeting' of LA resource towards the more significant hazards and higher risk activities which are reflected in risk-based intervention plans. At the level of business sectors and nationally recognised specific hazards this is achieved through strategic programmes of work and specified national priorities.
21. At the individual business level, LAs should target their activity at specific risks which have informed the selection of the business. They should not invest limited resources on matters of comparatively low risk – unless, of course, they come across matters of evident concern.

22. LAs should use the whole range of regulatory interventions available based on the premises risk categorisation to ensure a business is managing its risks effectively.
23. Proactive inspection must only be used to target the high risk activities in those sectors specified by HSE or where intelligence suggests risks are not being effectively managed. For this purpose HSE will publish a list of high risk sectors (and the key activities that make them such) that are to be subject to proactive inspections by LAs¹.
24. The focus of LAs may often be broader than specific health and safety outcomes as they can also have an impact on wider public health outcomes/ health inequalities. By using the list of national priorities for proactive inspection as well as local information LAs can determine the key risks of serious workplace accidents, injuries and ill-health to develop local intervention plans for poorly performing businesses; they can then target their resources effectively using the whole range of available interventions to influence behaviours and improve the management of health and safety risks.
25. Where businesses participate in Primary Authority, there may be information available from the Primary Authority which can assist in targeting. For example, there may be an inspection plan or information on a company's compliance procedures and performance which can inform LAs about the agreed priorities and arrangements for addressing them by a particular business
26. Additionally, LAs contribute to delivering the growth agenda and can provide invaluable advice to new business start-ups. Using risk based targeting should free up resource and facilitate the provision of such advisory visits. Advisory visits are distinct from regulatory visits and should be made without recourse to the section 20 regulatory powers provided by the HSWA.

Proportionality

27. This means ensuring interventions and enforcement are related to the relative level of health and safety risks, including the potential or actual harm, or to the seriousness of any breach of the law.

LAs can achieve this by having trained and competent officers who can exercise professional judgement to:

- Differentiate between different levels of risk or harm;
- Decide how far short a business has fallen from managing the risks it creates effectively; and

¹ A list is attached at Annex A. This list will not form part of this code. It will be reviewed annually and amended as appropriate.

- Apply proportionate decision making in accordance with the LA's Enforcement Policy, HSE's Enforcement Policy Statement and Enforcement Management Model.

28. LAs can achieve this by carrying out enforcement in a proportionate manner in line with their enforcement policies, HSE's Enforcement Policy Statement² and the Enforcement Management Model. This will aid LAs in exercising professional judgement to differentiate between different levels of risk or harm and deciding how far short a business has fallen from managing the risks it creates.

29. The interventions available to regulators include reactive interventions such as responding to complaints, accidents and incidents. HSE has developed incident selection criteria and a risk based approach to complaint handling which LAs should consider adopting (see the section on consistency below).

30. Only where businesses have specific activities which fall in the specific sector categories set out at Annex A (and any subsequent revisions), or where intelligence suggests specific risks are not being effectively managed, should they be subject to proactive inspection (see paragraph 23).

31. LAs should maintain a strong deterrent against those businesses who fail to meet their health and safety obligations and put their employees at material risk thereby also deriving an unfair competitive advantage. LAs achieve this by continuing to take proportionate enforcement action in accordance with the Enforcement Management Model. LAs should publicise successful enforcement action to maintain a strong deterrent effect.

32. For training, competence and the exercise of professional judgement please refer to Section 3 of this Code.

Consistency

33. This means regulators taking a similar approach, in similar circumstances to achieve similar ends. For business this means they can expect to receive a consistent approach to targeting, enforcement, decisions to prosecute and response to incidents from each LA regulator.

LAs can achieve this by having management arrangements that:

- Ensure nationally published guidance is applied appropriately to address both

² HSE's Enforcement Policy Statement sets out the purpose, method and principles of enforcement; and explains role of investigation, prosecution and death at work.

- Take full account of Primary Authority;
- Promote a consistent approach to regulators competence;
- Set clear expectations for delivery; and
- Allow appropriate comparison and transparency, via publication annually of health and safety inspection data.

34. A consistency of approach can be achieved by following national procedures and guidance for targeting. LAs should consider and address local priorities by applying the same philosophy. Maintaining a consistency of approach when addressing both local and national priorities ensures best use of regulator resource and brings greater certainty to business that they are being treated consistently

Transparency

35. This means ensuring businesses are clear on what is and what is not expected of them and what they can expect from the regulator.

LAs can achieve this by:

- Having a clear and easily accessible enforcement policy;
- Following national guidance and restricting proactive inspection to only those specific activities/risks specified by HSE (see paragraph 23) or where intelligence suggests risks are not being effectively managed;
- Providing easily accessible information on the services and advice available to business including pointing to nationally available material on the HSE website e.g. Health and Safety Made Simple;
- Having arrangements for keeping employees, their representatives, and victims or their families informed; and,
- Regularly publishing data on their health and safety inspection records.

36. Transparency in the use of nationally available guidance material will assist in providing clarity and certainty for business that they are being treated

Accountability

37. This means LAs need to be accountable to the public and businesses for their actions.

LAs can achieve this by:

- Having publically available risk-based service plans and information on health and safety interventions, enforcement, and prosecution activity;
- Having easily accessible complaints procedures that clearly references the “Independent Regulatory Challenge Panel”
<http://www.hse.gov.uk/contact/challenge-panel.htm>; and
- Benchmarking their performance against other LAs via data returns to HSE and peer review.

38. To ensure they are accountable to their community, LA health and safety services and processes should be designed to meet the local needs of the public and businesses. This should be reflected in publically available risk based service plans and an easily accessible complaints procedure which references the Independent Regulatory Challenge Panel.

39. Being accountable also means being open about your activities and processes and sharing relevant information to allow benchmarking and peer review. See also Section 4 on *Assurance on meeting the requirements of the Code*.

Section 3: Training and Competence

40. LAs have a statutory duty to 'make adequate arrangements for enforcement' and to legally appoint suitably qualified inspectors to carry out the range of regulatory duties they have been appointed for³.
41. Using risk based interventions to help improve the effective management of health and safety risks requires LA inspectors to have the professional competence and discretion to differentiate between significant risks and trivial matters; and to intervene appropriately utilising the full range of regulatory interventions available to influence behaviours.
42. LAs should have procedures to legally authorise competent inspectors under HSWA Section 19 (See LAC 22/8 <http://www.hse.gov.uk/laU/lacs/22-8.htm> on appointments) and remove such authorisations where they are no longer valid.
43. LAs should ensure inspectors have suitable and ongoing competence in order to exercise the powers granted to them under the HSWA (e.g. by use of the Common Approach to Competency for Regulators which includes the Regulators Development Needs Assessment (RDNA) tool and Guidance to Regulator's Information Point (GRIP)).
44. RDNA establishes competencies and behaviours for a wide range of LA regulatory activity and sets specific competencies and behaviours for health and safety regulators. LA H&S regulators should assess themselves against the competencies at least annually to determine their development needs. The outcome of the self-assessment should be discussed with their line manager to allow a decision to be reached about their ongoing development needs and how they might be addressed.
45. The Independent Regulatory Challenge Panel <http://www.hse.gov.uk/contact/challenge-panel.htm> was set up to enable a business to challenge specific health and safety regulatory advice they believe to be unreasonable or disproportionate. LA should take into account competency and training needs when considering the outcome of any cases referred to this panel by a business.
46. In addition, LAs should find that regularly reviewing enforcement decisions (e.g. via a peer review process) provides a useful benchmark and reassurance.

³ See Health & Safety at Work etc Act 1974: section 18 (Authorities responsible for enforcement of the relevant statutory provisions); section 19 (Appointment of Inspectors); and Section 20 (Powers of Inspectors).

Section 4: Assurance on meeting the requirements of this Code

47. To provide assurance that the requirements of this Code are met HSE will put in place arrangements to monitor LA performance.

Data collection

48. LAs should ensure they have a means of monitoring, capturing and sharing health and safety intervention, enforcement, and prosecution activity.

49. LAs must make this information available to the public to encourage local accountability and share it with HSE via the LAE1 return to allow the preparation of national data which in turn will assist LAs to benchmark and peer review their work with other LAs. To encourage transparency and accountability, HSE will publish these data for all LAs annually. Where there is a lack of information or where the information prompts questions about compliance HSE will work with the LA in question to assist their implementation of the Code.

50. The information given to HSE will also be shared with The Chartered Institute of Public Finance and Accountancy (CIPFA) who would otherwise also collect this information but instead has agreed to use HSE's health and safety data to help reduce reporting burdens on LAs

Peer review

51. Inter-authority peer review e.g. those undertaken by neighbouring authorities, provides LAs with a tool that gives independent assurance that the requirements of the Code are being met. Peer review is not meant to be a formal inter-authority audit but it is expected that that LAs will support each other in implementing and complying with the Code and providing assurance that they have done so.

52. Peer review:

- a) Provides an opportunity to discuss, refresh and share best working practices through seeing the work of others, and hearing different views and approaches;
- b) Offers a means to instigate improvement in working practices. Ideas for improvement can be discussed, moderated, and developed during the peer review process;
- c) Can verify that key messages have been understood and necessary change properly embedded;

d) Raises confidence and competence (e.g. confirming good practice and providing reassurance).

53. Inter-authority peer review allows the consideration and discussion of any aspects of the Code by a small group of, ideally 6-8, peer LAs. The peer review can range from a short informal group discussion without papers, to a formal meeting involving prior consideration of cases and production of a written report.

54. LAs decide when to carry out a peer review, the subject and the approach. Peer review can be used for most aspects of the Code where there is a common business function undertaken by the LA peer group. For the purposes of monitoring LA's compliance with this code, any peer review should consider the following questions:

- a) Does the LA have a risk based approach to intervention planning for both local & national priorities?
- b) Do specific intervention plans meet the requirements of the Regulators Compliance Code (e.g. no inspection without a reason); and the Enforcement Management Model (e.g. was enforcement action proportional to risk)?
- c) Is there a published enforcement policy and is it being followed?
- d) Are there adequate arrangements to manage the appointment of suitably qualified inspectors?
- e) Is there a system for ensuring on-going Inspector competence?
- f) Do LAs benchmark their intervention activity?
- g) Do LAs peer review their enforcement decisions as part of their peer review process?

Annex A

List of activities/sectors for proactive inspection by LAs – only these activities falling within these sectors or types of organisation should be subject to proactive inspection

No	Hazards	High Risk Sectors	High Risk Activities
1	Legionella infection	Premises with cooling towers/evaporative condensers	Lack of suitable legionella control measures
2	Explosion caused by leaking LPG	Premises (including caravan parks) with buried metal LPG pipework	Buried metal LPG pipe work For caravan parks to communal/amenity blocks only)
3	e.coli/cryptosporidium infection esp. in children	Open Farms/Animal Visitor Attractions	Lack of suitable micro-organism control measures
4	Fatalities/injuries resulting from being struck by vehicles	Tyre fitters*/ MVR* (as part of Car Sales) High volume Warehousing/Distribution	Use of two-post vehicle lifts Workplace transport
5	Fatalities/injuries resulting from falls from height/ amputation and crushing injuries.	Industrial retail/wholesale premises e.g. steel stockholders, builders/timber merchants	Workplace transport/work at height/cutting machinery /lifting equipment.
6	Industrial diseases (occupational asthma/deafness	MVR* Industrial retail/wholesale premises e.g. steel stockholders, builders/timber merchants	Use of Isocyanate paints Noise and dust.
7	Falls from height	High volume Warehousing/Distribution	work at height
8	Crowd control & injuries/fatalities to the public	Large scale public events/sports/leisure facilities e.g. motorised leisure pursuits including off road vehicles and track days	Inadequate consideration of public safety e.g. poor organisation and/or supervision of high speed or off-road vehicle movements
9	Carbon monoxide poisoning and gas explosion	Commercial catering premises using solid fuel cooking equipment	Lack of suitable ventilation and/or unsafe appliances.
10	Violence at work	Premises with vulnerable working conditions (lone/night working/cash handling e.g. betting shops/off-licences/care settings.	Lack of suitable security measures/procedures

*(SMEs not National Chains)

National Local Authority Enforcement Code

Consultation Questions

1. Do you feel that the measures outlined in the Code and Annex will effectively deliver the Government's commitment to stop Local Authorities from proactively inspecting low risk businesses on health and safety grounds?
2. Is the scope of the National Code sufficiently defined?
3. What are your views on the risk based approach proposed?
4. What are your views on the proposal for HSE to publish a list of the higher risk sectors (and key activities) appropriate to be targeted for proactive inspection by LAs; (the list at annex A)?
5. What are your views on the contents of annex A?
6. What are your views on the assurance measures proposed for LAs on meeting the requirements of the Code?
7. Will the Code require regular review in the future?
8. If you have answered 'yes' to question 4, would five years be the right frequency or would you suggest an alternative frequency?

Questions 9 to 12 are targeted at Local Authority health and safety regulators and their representative bodies

9. Does the Code adequately set out how LAs can achieve a consistent approach to regulation via risk based targeting?
10. Does it provide for sufficient local flexibility?
11. Have we provided sufficient direction for LAs to target their resources based on risk?
12. Does the Code provide sufficient guidance on the management of regulator competence?

Questions 13 to 15 are targeted at businesses and their representative bodies

13. Is there more that the Code can say about ensuring that businesses take responsibility for managing the risks that they create?

14. The Code sets out how LAs can achieve a consistent approach to regulation via risk based targeting using specified guidance material. Will this bring about the desired consistency of approach?

15. If you have answered 'no' to question 14, what more is needed?

General

16. Do you have any other comments on the ideas and proposals explored in this document?

17. Is there anything you particularly like or dislike about this consultation? Please provide comments

Postal response- Information about you and your organisation

Please provide some background information about yourself and your organisation.		
Title:	Forename:	Surname:
Organisation:		
Address:		
Post Code:		
Email Address:		Telephone Number:
Please circle the most appropriate description of the sector you are from and the capacity you are answering in and complete the number of employed or represented field. Please include the additional information requested		
Which sector are you from?		What capacity are you answering in?
a) Business no. employees b) Local Government c) Member of the public d) National Government Department e) Professional Body f) Trade Association g) Trade Union h) Other please describe.....		i) An employer ii) An employee iii) Formal response on behalf of a local authority name of LA iv) Local authority health and safety liaison group name of group v) Manager of LA h&s regulatory services vi) LA h&s regulator (not manager) vii) H&S professional (non-regulator) viii) Trade Union official ix) Other please describe.....
Confidentiality:		
Please indicate below if you do not wish details of your comments to be available to the public. (NB if you do not put a cross in the box they will be made public)		
Please treat my response as confidential. <input type="checkbox"/> (cross means confidential)		

Consultation on proposals for a National Local Authority Enforcement Code – Health and Safety at Work, England, Scotland and Wales

The full text of this and other Consultative Documents can be viewed and downloaded from the Health and Safety Executive web site on the internet: www.hse.gov.uk/consult/index.htm

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