

Date of issue:	7 May 2002
Date of review:	7 May 2005
Author Section/Contact:	FOD FSU
Open Government Status:	Fully Open



# **ENFORCEMENT MANAGEMENT MODEL**

**Operational Version 3.0**

## CONTENTS

	<b>Para</b>
<b>EMM - Summary</b>	
What is the EMM?	1
What is the EMM used for?	2
When is it used?	4
What are its limitations	6
Review arrangements	9
<b>Chapter 1: EMM Overview</b>	
The purpose and process of enforcement	1
The purpose of EMM	6
<b>Chapter 2: EMM in Detail</b>	
Model Overview	1
Section 1 - Inputs	
Health and safety risks	2
Permissioning	3
Compliance and administrative arrangements	5
Priorities for action	6
Section 2 - Risk of Serious Injury	9
Section 3 - Gap Analysis	
Principles	13
Determining the risk gap	17
Risk tables	28
Permissioning	32
Compliance and administrative arrangements	33
Section 4 - Initial Enforcement Expectation	
Principles	34
Standards & benchmarks	35
Determining the IEE	38
Prosecution	40
Health and safety risks	51
Compliance and administrative arrangements	52
Permissioning	54
Section 5 - Outputs	
Principles	57
Dutyholder factors	59
Strategic factors	63
Enforcement conclusion	70
Form for recording formal application	Appendix
<b>Chapter 3 Quality Procedure for applying EMM</b>	
Overall Procedure and Principles	1
EMM arrangements for FOD	Appendix

## **THE ENFORCEMENT MANAGEMENT MODEL - SUMMARY**

### **WHAT IS THE ENFORCEMENT MANAGEMENT MODEL?**

1 The Enforcement Management Model (EMM) is a framework which helps inspectors make enforcement decisions in line with the Health and Safety Commission's (HSC) Enforcement Policy Statement (EPS). The EPS sets out the principles inspectors should apply when determining what enforcement action to take in response to breaches of health and safety legislation. Fundamental to this is the principle that enforcement action should be proportional to the health and safety risks and the seriousness of the breach.

### **WHAT IS THE EMM USED FOR?**

2 The EMM:

- (1) provides inspectors with a framework for making consistent enforcement decisions;
- (2) helps managers monitor the fairness and consistency of inspectors' enforcement decisions in line with the Commission's policy; and
- (3) assists less experienced inspectors in making enforcement decisions.

3 It can also assist others (eg those directly affected) in their understanding of the principles inspectors follow when deciding on a particular course of action.

### **WHEN IS IT USED?**

4 Inspectors apply the principles of the EMM in all their regulatory actions but they will only formally apply the EMM and record the outcome in certain circumstances, eg following the investigation of fatalities, to review decisions. (Enforcing authorities may develop procedures which specify the circumstances in which inspectors will formally apply the EMM.)

5 Inspectors' enforcement decisions are also sampled and reviewed using the EMM as part of routine monitoring by line managers. This, together with the uses described above, promotes increased consistency and fairness in enforcement.

### **WHAT ARE ITS LIMITATIONS?**

6 Inspectors are confronted by a myriad of unique variables when carrying out inspections, assessments and investigations: different work activities, sectors, organisational structures, contractual relationships etc. Assessing risk and compliance with the law therefore ranges from being relatively straightforward to extremely complex.

7 The EMM has been subject to an extensive two-year calibration exercise within HSE to ensure it is robust. But it is a simple two-dimensional linear model and so cannot truly capture all the nuances and complexities of discretionary decision-making in all circumstances. Whilst the EMM provides a framework for

improving consistency, it is crucial that inspectors' discretion is not fettered by artificially constraining all decisions to the Model.

8 The EMM is therefore supported by a management review process which requires inspectors and line managers to consider whether the proposed enforcement action meets HSC's Enforcement Policy Statement, the Code for Crown Prosecutors in England and Wales and the Prosecutors Code in Scotland. In the unusual circumstances that the review reaches an alternative enforcement conclusion, inspectors will record the final decision and the reasons. (All references to the CPS Code throughout this document should be read as including the Prosecutors Code in Scotland.)

## REVIEW ARRANGEMENTS

9 The EMM will be kept under review and revised as necessary. Formal review will follow any change to the Commission's enforcement policy and be at periods no greater than 3 years.

## **CHAPTER 1 - EMM OVERVIEW**

### **THE PURPOSE AND PROCESS OF ENFORCEMENT**

#### **The purpose of enforcement**

1 The Health and Safety Commission (HSC) believes in firm but fair enforcement of health and safety legislation. The purpose of enforcement is to:

- (1) ensure that dutyholders take action to deal immediately with serious risks;
- (2) promote and achieve sustained compliance;
- (3) ensure that dutyholders who breach health and safety requirements, and directors and managers who fail in their responsibilities, may be held to account. This may include bringing the alleged offenders before the courts in England and Wales, or recommending prosecution in Scotland, in the circumstances set out in HSC's Enforcement Policy Statement (EPS).

#### **The process of enforcement**

2 Inspectors use various enforcement techniques to deal with risks and secure compliance with the law, ranging from the provision of advice to enforcement notices. They can also initiate or recommend prosecution where the circumstances warrant punitive action. Making decisions about appropriate enforcement is fundamental to the role of an inspector.

3 Crown bodies are exempt from statutory enforcement but HSE can issue non-statutory improvement and prohibition notices, and censure Crown bodies in circumstances where, but for Crown immunity, prosecution would have been justified.

4 The process of making enforcement decisions is complex. Each duty holder is unique, and inspectors must have a thorough understanding of the hazards and control measures associated with each duty holder's activities. It is vital that inspectors have wide discretion to exercise their professional judgement, so that action appropriate to each situation can be taken. Further guidance may be found in the Treasury Solicitor's document, *The Judge Over Your Shoulder*.

5 Enforcement decisions must be impartial, justified and procedurally correct. The Health and Safety Commission's Enforcement Policy Statement (EPS) sets out the approach which enforcing authorities should follow. Enforcement action must also be taken in accordance with the aims of the Enforcement Concordat (subject file 130), administered by the Cabinet Office Better Regulation Unit (COBRU). As public regulators, HSE and Local Authorities are accountable for managing the enforcement process.

6 The EMM – together with the procedure for its application – provides HSE and LAs with a framework for making enforcement decisions that meet the principles

in the EPS. It captures the issues inspectors consider when exercising their professional judgement and reflects the process by which enforcement decisions are reached.

## THE PURPOSE OF THE EMM

7 The EMM is not a procedure in its own right. It is not intended to fetter inspectors' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:

- (1) promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
- (2) promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
- (3) be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and
- (4) help experienced inspectors assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee inspectors in making enforcement decisions.

8 The EMM and the associated procedures enable managers to review the decision making process and their inspectors' enforcement actions to ensure the purpose and expectations of the EPS have been met.

9 The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents. Its application also relies on guidance which provides inspectors with benchmarks (Chapter 2, para 13) which promote consistent use of the Model.

## CHAPTER 2

### MODEL OVERVIEW

1 Figure 1 provides an overview of the EMM and refers you to a detailed explanation of each element.

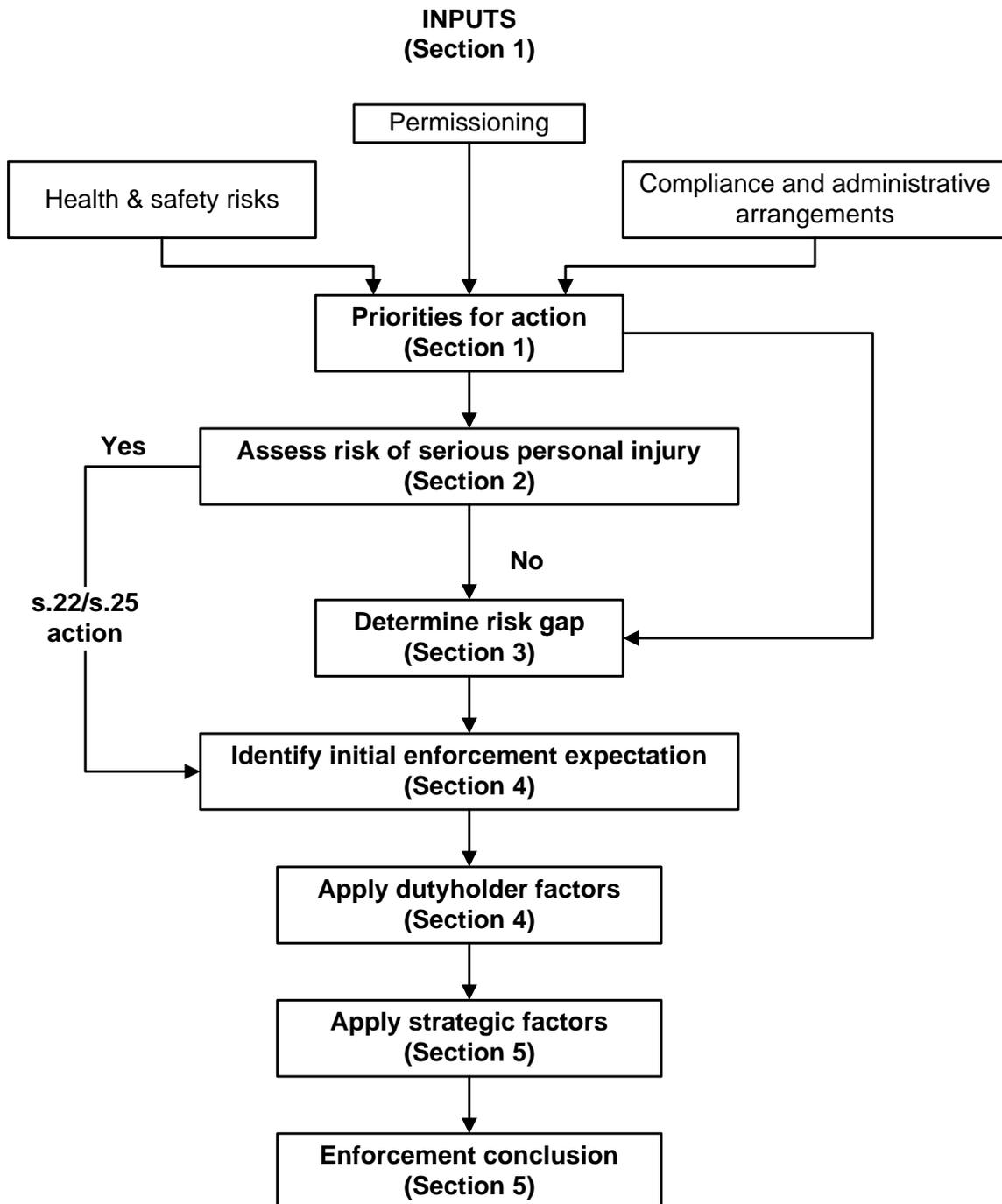


Figure 1 - Process of the EMM

## SECTION ONE: INPUTS

### Health and safety risks

2 Hazards (something with the potential to cause harm), may arise from various sources such as physical agents, hazardous substances, processes or activities. Control measures can take a variety of forms, eg workplace precautions, risk control systems, and management arrangements. The nature of the hazard and the potential consequences determine the type and extent of the precautions needed. Straightforward hazards, eg handling irritant substances, may only require substitution or simple safety precautions for control. More complex hazards, eg handling explosives, require a range of preventive and protective measures to ensure health and safety.

### Permissioning

3 In some circumstances, dutyholders are legally required to seek HSE's permission as a condition of undertaking specific work activities. Some health and safety legislation for high hazard industries require dutyholders to apply for licenses, approvals or certificates or to submit safety cases. Permissioning also covers situations where a dutyholder applies to HSE for an exemption from a legal requirement, eg to introduce new equipment or safer technologies not catered for by current health and safety legislation. Inspectors should consider any permissioning regimes relevant to a dutyholder's activities.

4 The terms and conditions of granting such permission are captured in permissioning documents. In such cases the inspector seeks information on compliance with the terms of these documents, as well as information on the hazards and safeguards associated with the activity, and any resultant risk.

### Compliance and administrative arrangements

5 Some legal duties do not directly result in control of risk, eg the requirements to **submit** safety cases, **assess** risks and **report** incidents but still demand compliance by the dutyholder. These are referred to here as compliance and administrative arrangements and are considered separately in the Model from risk-based issues. However, there is often a strong relationship between control of risk and failure to address compliance issues. In cases where both risk and compliance issues exist, inspectors should decide on action principally in relation to the control of risk.

### Priorities for action

6 Whilst intervention priorities are guided by the HSC's Strategic Plan, HSC's Priority Programmes and HSE and LA specific programmes, inspectors have discretion in deciding the priorities for enforcement action.

7 During regulatory contacts, inspectors collect information about hazards and control measures. From this, they make judgements about the health and safety risks associated with the activity under consideration. Inspectors should prioritise specific hazards and consider common root/underlying causes to ensure they deal

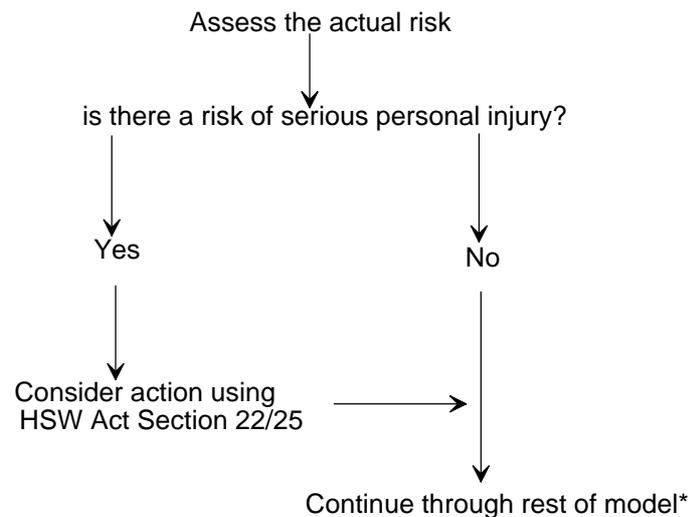
immediately with serious risks. They should consider how best to achieve sustained compliance with the law and whether any punitive action is required.

8 The priorities for action may involve a single issue or several issues, eg in the case of workplace transport where driver training, the segregation of pedestrians and vehicles, lighting, maintenance etc might be issues. When applying the EMM to a particular case it is important to bear in mind all the issues which make up the priority for action to ensure the right ones are assessed at the risk gap stage and the correct benchmark standards are used etc.

## SECTION TWO: RISK OF SERIOUS INJURY

9 Inspectors should always deal first with matters which give rise to risk of serious personal injury. They have the power to either prohibit the work activity, or seize and make safe the article or substances which are creating the risk. Sometimes they will do both. When considering the immediacy of risk, inspectors should use the principles of **'risk gap analysis'** described in Section 3. They must have an understanding of **'actual risk'**, and take account of any relevant benchmark standards when considering what can be done within the law to reduce the risk of serious personal injury.

10 The basic process of exercising these powers is shown in figure 2.



\* This includes considering risk gap and compliance issues, and dutyholder and strategic factors to determine if prosecution is appropriate

**Figure 2: Dealing with serious risk**

11 By using a prohibition notice, or seizing and making safe an article or substance, the inspector is likely to have controlled the risk to the extent that there is now negligible or no risk remaining. However, they will also need to determine:

- (1) whether they need to take further enforcement action to secure sustained compliance with the law in relation to that, and all other, priorities for action they have identified; and
- (2) whether punitive action is appropriate.

12 Inspectors should therefore proceed through the Model: considering risk gap and compliance issues; determining the initial enforcement expectation; and reaching a decision on enforcement after applying dutyholder and strategic factors (section five, paras 59, 63 and Figure 3).

## SECTION THREE: GAP ANALYSIS

### Principles

13 During a regulatory contact inspectors collect information about hazards and control measures. This is used to make an initial assessment of the health and safety risks posed by the various activities and determine the **actual risk** (where the dutyholder is). They should compare this to the risk accepted by the law or guidance and decide the **benchmark** (the level of risk remaining once the actions required of the dutyholder by the relevant standards, enforceable by law, are met). The difference between where the dutyholder is and where they should be is the **risk gap**.

14 The concept of risk gap is fundamental to the decision making process. **Risk gap analysis** is used in two ways: firstly, to assess what enforcement is necessary to secure compliance with the law; and secondly, to determine whether prosecution should be considered. Risk gap analysis is not appropriate for non-risk-based compliance or administrative arrangement issues - see para 33.

15 When using risk gap analysis in relation to securing compliance with the law, all of the issues which make up the priority for action are considered in turn. Where there is only a single issue, gap analysis is straightforward. Where there are several issues, each one is considered separately to determine its particular risk gap. This **individual risk gap** is used to arrive at the initial enforcement expectation (IEE) appropriate to secure compliance for that particular part of the priority for action.

16 When using gap analysis in relation to punitive action, the **overall risk gap** associated with the priority for action is considered. If the priority for action is a single issue, then the overall risk gap will be the same as the gap used when considering compliance with the law. However, where there are a number of issues, the cumulative effect is used to assess overall risk. It is this overall risk gap which is used (along with the 'authority' of the most relevant standard) when considering prosecution.

### Determining the risk gap

#### Actual risk

17 The first step in determining the risk gap is to assess the level(s) of actual risk arising from the dutyholder's activities. Inspectors should base this judgement on information about hazards and control measures informed by their training, experience, guidance and other relevant sources of information.

Example 1: a rotating stock bar.	Depending on the circumstances, the priority for action could be straightforward. The <b>actual risk</b> might be determined simply by considering whether the stock bar was adequately guarded to prevent access, and the foreseeability of approach.
Example 2: unsafe use of medical x-rays.	The <b>actual risk</b> is determined from an assessment of the x-ray operation - power, dosage, exposure periods, numbers of people exposed, working practices, maintenance and supervision regimes, staff training, etc. Each issue may be a priority for action and require enforcement to remedy it. The cumulative effect of these issues may mean that punitive action is also a proportionate response.

18 Whilst the risk gap principle can be used for events which have already happened, eg during investigation of an accident or dangerous occurrence (DO), **it is the potential for harm which should inform the decision: not what actually happened.** However, the occurrence of an accident or DO becomes relevant later when considering dutyholder factors.

### Benchmarking

19 The second step is to set the **benchmark**. Benchmarks describe the level of risk remaining once the actions required of the dutyholder by the relevant standards, enforceable by law, are met. This level may be nil or negligible when legislation requires risks to be eliminated or tightly controlled, or may be higher where some residual risk is allowed.

20 This permitted risk may be established by a number of relevant sources including specific legal requirements, ACoPs, British or European standards, or guidance (Table 3). Benchmarks are crucial in achieving a consistent approach to enforcement.

Example 3 - reconsider the use of medical x-rays.	The Ionising Radiation Regulations 2000, and the associated guidance set the standards against which the dutyholders performance can be compared - warning devices (workplace precautions), controlled areas, adequate maintenance and local rules (risk control systems), and the appointment of a radiation protection supervisor (management arrangements). The various standards complement each other so that exposure to x-rays is not eliminated, but the risk of exposure to harmful levels is properly controlled. This permitted risk is the <b>benchmark</b> .
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## Defining risk and benchmarks

21 Inspectors do not normally use detailed or quantitative assessment techniques to determine actual risk, or benchmarks. The more practical approach adopted in the EMM uses three risk **elements** subdivided into a number of **descriptors** reflecting a range of outcomes.

22 The risk elements are:

- w **Consequence:** the nature of the harm that could be reasonably expected to occur.
- w **Likelihood:** the probability of the event happening (event means the uncontrolled event which may lead to injury, not the activity, eg the dropping of a load, not the lifting operation).
- w **Extent:** the number of people likely to be affected.

23 **Consequence** is linked to levels of harm described in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), ie the definitions of serious, significant or minor in Table 1 below.

24 **Likelihood** can be a subjective assessment that varies both within and between industries. It is not something that can easily be tied to accident rates, or reported incidents of ill health. Instead, a combination of many factors are taken into account by inspectors, based on their knowledge of an industry/activity, and supported by HSE guidance. Inspectors should use their professional judgement, and any supporting guidance, to determine whether the likelihood is **probable, possible, remote, nil/negligible** (nil/negligible means, in practice, that the consequence shouldn't be realised).

25 **Extent** is taken into account by the use of two risk gap tables - one for single and low casualties (Table 2.1) and one for multiple casualties (Table 2.2).

## Health risks

26 In general, the EMM can be applied to enforcement decisions for health risks in the same way as safety risks. When considering the consequence of exposure to health risks and the likelihood that harm may occur, the most credible health effect arising from occupational exposure should be used. There may be instances where the actual health effect is different to that which could have been anticipated as the most credible. However, no account should be taken of an individual's resistance or susceptibility; the effect of exposure to a health risk should be determined by the likely response of the working population as a whole.

27 The nature of some health hazards and risks, and the hierarchical approach adopted by some health-related legislation, means that it is more difficult to derive consistent benchmarks, and to identify the general level of risk arising from particular circumstances. However, a number of general health risk benchmarks have been developed, and should be used where applicable in conjunction with sector specific guidance. Where there is no appropriate guidance, inspectors and line managers

should endeavour to use the principles in the EMM in coming to an enforcement decision.

TABLE 1 - CONSEQUENCE	
Descriptor	Definition
<b>What are the potential consequences of the event? CONSEQUENCE</b>	
Serious Personal Injury/ Serious Health Effect	It is credible that a fatal, or a major injury as defined by RIDDOR 1995 Reg. 2 could occur. It is credible that a health effect caused by certain diseases, a health effect which causes a permanent, progressive or irreversible condition, or causes permanent disabling leading to a lifelong restriction of work capability or a major reduction in quality of life, could occur
Significant Injury/ Significant Health Effect	It is credible that injury types not captured by the category above, but which would be reportable under RIDDOR if it happened to a person at work could occur. Also health effects that are caused by certain diseases, non-permanent or reversible health effects, non progressive conditions, or those which result in temporary disability
Minor Injury/Minor Health Effect	Injuries or conditions not included above

### Risk tables

28 The risk gap is determined by plotting the consequence and likelihood of the actual risk against the consequence and likelihood of the benchmark level of risk (Tables 2.1 and 2.2). The point of intersection represents the risk gap. The size of the risk gap can be **extreme, substantial, moderate, or nominal**. The area on the risk tables above the coloured squares represents circumstances where the dutyholder is complying with, or exceeding, the standard required by law.

29 Two **risk tables** are provided to address the issue of the extent of risk. In general Table 2.1 should be used for a single or small number of casualties.

Example 4 - a machine with unintentionally exposed and charged electrical conductors is located immediately adjacent to an employee's work station.	This would give <b>probable</b> likelihood of <b>serious personal injury</b> , on the vertical axis. The relevant standards require any such conductors to be protected so they cannot give rise to danger, ie a <b>benchmark of nil or negligible risk</b> , on the horizontal axis. Only a small number of employees are exposed to the danger, so Table 2.1 would be used.
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30 Table 2.2 should generally be used for major incidents/hazards with off-site risks where several members of the public may be at risk, or events affecting large numbers of employees.

31 The risk gap description (extreme, substantial, moderate, or nominal) in the **initial enforcement tables** (Tables 5.1 and 5.3) then provide an initial enforcement expectation (IEE).

### Permissioning

32 Gap analysis is also used when considering possible enforcement action where a dutyholder has failed to adhere to conditions set out in permissioning documents relevant to their activities. The actual risk created by deviations from the permissioning document is compared to the benchmark set by the permissioning document and associated guidance.

**Circumstances where risk gap analysis is inappropriate:  
compliance and administrative arrangements**

33 Gap analysis is not appropriate for compliance and administrative arrangements which do not directly result in control of risk (section one, para 5). Inspectors should use Table 5.2 in these circumstances. However, there are occasions where these arrangements do directly reduce health and safety risks, eg the provision of washing facilities to employees working with lead and gap analysis is appropriate in these circumstances.

## RISK GAP TABLE 2.1

### Single and low casualties

**MEASURE OF ACTUAL RISK (WHERE THE DUTYHOLDER IS)**

consequence	likelihood																								
NIL	NIL	Dutyholder complies with, or exceeds legal standard				Dutyholder complies with, or exceeds legal standard				Dutyholder complies with, or exceeds legal standard															
Minor Injury	Remote																								
	Possible																								
	Probable																								
Significant Injury	Remote																								
	Possible																								
	Probable																								
Serious Personal Injury	Remote																								
	Possible																								
	Probable																								
Likelihood														possible	remote	nil/neg	probable	possible	remote	nil/neg	probable	possible	remote	nil/neg	
consequence		serious personal injury				significant injury				minor injury															

**BENCHMARK (WHERE THE DUTYHOLDER SHOULD BE)**

RISK GAP:	EXTREME	SUBSTANTIAL	MODERATE	NOMINAL
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# RISK GAP TABLE 2.2

## Multiple casualties

MEASURE OF ACTUAL RISK (WHERE THE DUTYHOLDER IS)

consequence	likelihood																					
NIL	NIL	Dutyholder complies with, or exceeds legal standard				Dutyholder complies with, or exceeds legal standard				Dutyholder complies with, or exceeds legal standard												
Minor Injury	Remote													serious personal injury			significant injury			minor injury		
	Possible																					
	Probable																					
Significant Injury	Remote																					
	Possible																					
	Probable																					
Serious Personal Injury	Remote																					
	Possible																					
	Probable																					
Likelihood		possible	remote	nil/neg	probable	possible	remote	nil/neg	probable	possible	remote	nil/neg										
consequence																						

BENCHMARK ( WHERE THE DUTYHOLDER SHOULD BE)

RISK GAP:	EXTREME	SUBSTANTIAL	MODERATE	NOMINAL
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## SECTION FOUR: INITIAL ENFORCEMENT EXPECTATION

### Principles

34 The judgements about risk gap, compliance and administrative arrangements, and permissioning requirements are considered with the legal ‘authority’ of the standards which establish the benchmark to reach **the initial enforcement expectation**. This is the enforcement action solely reflecting, and proportionate to, the risk to health or safety, or the seriousness of any breach of the law.

### Standards and benchmarks

35 Benchmarks are derived from health and safety standards\* which come from various sources. These standards have differing ‘authorities’, eg they could be specified in law, or may be a reasoned description of what the law seeks to achieve set down in guidance. This influences the decision about the proportionate level of enforcement. A higher level of enforcement is expected where a dutyholder has failed to meet well known and established standards compared to situations where there is very little information or guidance available.

\* This refers to standards which are linked to the specific requirements of health and safety legislation. They should not be confused with other standards such as customer service or product quality.

36 Standards are divided into three categories to capture their broad range of authority. (Table 3).

TABLE 3 - Standards	
Descriptor	Definition
<b>What is the authority of the appropriate standard?</b>	
Defined standard	Minimum standard specified by Acts, Regulations, Orders and ACoPs. For example, defined standards of edge protection, requirement to fit safe load indicators to cranes, prohibitions of certain work activities, requirement to have a licence for certain asbestos work, licence conditions.
Established Standard	Codes of Practice and other standards linked to legislation, eg CEN standards, providing specific standards of health, safety and welfare. Also published or commonly known standards of performance interpreted by Sectors, TD, SG or other specialists, industry or other organisations as levels of performance needed to meet a general or qualified duty under health and safety law.
Interpretative Standard	Standards put forward by Sectors, TD and SG or other HSE specialists, which are not published or available generally, but are examples of the performance needed to meet a general or qualified duty. Also standards interpreted by inspectors from first principles.

37 The appropriate standard is the one which best describes what the dutyholder needs to do to address the priorities for action. If an ACoP provides sufficient

information then that is the standard which provides the level of 'authority' (ie defined). If the dutyholder needs to turn to industry guidance documents they would be the standards which provide the level of authority (ie established). Where multiple issues are being considered, different standards may be relevant to each (section three, paras 19-20).

### **Determining the initial enforcement expectation**

38 The risk gap is considered with the authority of the benchmark standard to give an initial enforcement expectation. This is shown in Table 5.1 for health and safety risks and Table 5.3 for risks associated with permissioning activities. Table 5.2 refers to compliance and administrative arrangements. Table 5.2 is used in conjunction with Table 4 below which contains the descriptors used to assess the level of non-compliance. More information on compliance and administrative arrangements is in section four, paras 51-52.

<b>TABLE 4 - Compliance and administrative arrangements</b>	
<b>Descriptor</b>	<b>Definition</b>
<b>How well are the standards for compliance or administrative arrangements complied with?</b>	
Absent	Total absence, appreciation or implementation of compliance or administrative arrangements. For example, safety case not submitted, assessment of risk not done, requirements of Working Time regulations not complied with, toilets not provided, or accidents not reported. Also the failure to provide information required by permissioning regimes.
Inadequate	Only rudimentary observance with standards or inadequate compliance, where such failures are of a substantial or material nature. For example washing facilities not provided with hot water, only fatal or 'major injuries' reported. Also poor quality submissions required for permissioning.
Minor	Deficiencies or inadequacies are minor, have little material impact and can be remedied easily. Also minor defects in the information supplied for permissioning.

39 Tables 5.1 and 5.3 have two columns for enforcement expectations, the first relating to compliance with the law, and the second relating to prosecution. It is not usually appropriate to prosecute in relation to compliance and administrative arrangements that do not in themselves give rise to risks, unless there are relevant dutyholder and/or strategic factors or the matter is specified in the EPS. Hence Table 5.2 is only concerned with action necessary to secure compliance. However, in all cases, inspectors should consider whether the enforcement action meets the principles and expectations of the EPS before reaching a final conclusion.

## Prosecution

40 The EMM captures the principles of the EPS by providing a framework in which enforcement action is proportional to the breach of the law or permissioning documents and the associated risks.

41 Where the circumstances warrant it, the EPS states that prosecution may go ahead without recourse to previous advice or alternative sanctions. In practice, this will involve a combination of high risk and extreme failure to meet an explicit or clearly defined standard, which is well known and obvious. This is not affected by factors such as the dutyholder's previous record, or other moderating dutyholder factors specific to the circumstances of a case.

42 The EMM reflects this in the initial enforcement expectation in Tables 5.1 and 5.3, where the term 'prosecution' means that HSE or the local authority would normally prosecute, subject to the tests set down in the Code for Crown Prosecutors.

43 The EPS identifies specific circumstances when HSC expects enforcing authorities to normally prosecute or recommend prosecution. Inspectors should be particularly careful when considering cases where:

- (1) death results from a breach of the legislation;
- (2) 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 formal caution;
- (3) false information has been supplied wilfully, or with an intent to deceive, in a matter which gives rise to significant risk;
- (4) inspectors have been intentionally obstructed in the lawful course of their duties.

44 In addition to the above, prosecution should normally be considered where it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law, or conviction may deter others from similar failures to comply with the law.

45 Sometimes, the EMM may not indicate prosecution in these circumstances because of the emphasis it gives to the seriousness of the breach and the risk arising from it. In these cases inspectors should review their decision against the EPS before reaching any final conclusion.

46 Although the initial enforcement expectation might not indicate prosecution, there may be factors particular to the individual dutyholder which aggravate the situation, such that prosecution should be considered (section 5, para 59).

## Prosecution of individuals

47 The above applies to all principal dutyholders under health and safety legislation, including individuals such as individual employers, directors, managers, self-employed persons and employees. Inspectors should apply the principles of EMM as far as possible to the prosecution of individuals.

48 When considering prosecution of employees, inspectors should also take account of the role that the individual employees played in the commission of the offence, and any relevant actions by their employer.

49 Directors or managers may only be prosecuted under HSW Act, s.37, if the body corporate has committed an offence. Prosecutors must then be able to prove the offence was committed through the consent, connivance or neglect of the director or manager in question. When considering the prosecution of such persons, inspectors should seek to apply the principles in the EMM wherever possible and, in particular, should consider the management chain and the role played by individual directors and managers. These additional elements are addressed in guidance, not the EMM itself.

## Formal cautions

50 There may be rare instances where, due to the exceptional circumstances of a case, a formal caution is an appropriate alternative to prosecution. This option is outside the framework of EMM; reference should be made to the relevant guidance on use of formal cautions.

## Health and safety risks

51 Table 5.1 identifies the initial enforcement expectation for health and safety risks.

<b>Table 5.1 Health and safety initial enforcement expectation</b>			
<b>Risk Gap</b>	<b>Standards</b>	<b>Initial Enforcement Expectation* (to secure compliance with the law)</b>	<b>Prosecution</b>
Extreme	Defined	Improvement Notice	Yes
	Established	Improvement Notice	Yes
	Interpretative	Improvement Notice	
Substantial	Defined	Improvement Notice	
	Established	Improvement Notice	
	Interpretative	Letter/inspection form	
Moderate	Defined	Improvement Notice	
	Established	Letter/inspection form	
	Interpretative	Letter/inspection form	
Nominal	Defined	Letter/inspection form	
	Established	Letter/inspection form/Verbal warning	
	Interpretative	Verbal warning	

\*Immediate risk of serious personal injury has already been considered and dealt with where appropriate

## Compliance and administrative arrangements

52 The term compliance and administrative arrangements is used to describe legal requirements which are not in themselves risk based. These arrangements are generally defined by law or supporting ACoPs. Whilst they may not be risk control measures, their absence can undermine the workings of an efficient health and safety system or be evidence of poor health and safety management. When considering compliance and administrative arrangements, inspectors should use Table 4 to assess the level of non-compliance. This table may also be used when considering the provision of certain information required by permissioning regimes.

53 The level of non-compliance should then be combined with the authority of the benchmark standard to produce the initial enforcement expectation (Table 5.2).

<b>TABLE 5.2 - COMPLIANCE &amp; ADMINISTRATIVE ARRANGEMENTS INITIAL ENFORCEMENT EXPECTATION</b>		
Descriptor	Standard	Initial Enforcement Expectation
<b>Absent</b>	<b>Defined</b>	<b>Improvement Notice</b>
	<b>Established</b>	<b>Improvement Notice</b>
	<b>Interpretative</b>	<b>Letter</b>
<b>Inadequate</b>	<b>Defined</b>	<b>Improvement Notice</b>
	<b>Established</b>	<b>Letter</b>
	<b>Interpretative</b>	<b>Verbal warning</b>
<b>Minor</b>	<b>Defined</b>	<b>Letter</b>
	<b>Established</b>	<b>Verbal warning</b>
	<b>Interpretative</b>	<b>Verbal warning</b>

### Permissioning

54 The enforcement action necessary to close the risk gap in permissioning regimes is usually achieved through the permissioning document. This may be through its modification, including re-issue, its revocation/refusal or use of a specific enforcement power permissioning may provide, eg a direction. The extent of deviation from the permissioning document is considered along with the risk gap it generates in order to identify an initial enforcement expectation (Table 5.3).

55 In some circumstances there may be risk arising out of the dutyholder's activity which cannot be dealt with through the permissioning document. In these cases table 5.1 should be used to indicate the appropriate level of enforcement. There may also be compliance or administrative matters associated with permissioning, for example the requirement to notify the relevant authority of a permissioned activity. Table 5.2 can be used where the matter cannot be dealt with adequately through the permissioning regime.

56 In some circumstances for example where new applicants, new proposals or modifications are being considered then there is no actual risk because the activity has yet to take place. In such cases the potential risk should be considered based upon the information made available to inspectors and then compared to the relevant benchmark, to compute the risk gap in the usual way. This can be used to arrive at an initial enforcement expectation.

<b>TABLE 5.3 - PERMISSIONING INITIAL ENFORCEMENT EXPECTATION</b>			
<b>Deviation From Permissioning Document</b>	<b>Risk Gap</b>	<b>Initial Enforcement Expectation*</b>	
		<b>Permissioning Document</b>	<b>Prosecution?</b>
<b>Contravention</b>	<b>Extreme</b>	<b>Revocation/Refusal/Direction</b>	<b>Yes</b>
	<b>Substantial</b>	<b>Revocation/Refusal/Direction</b>	
	<b>Moderate</b>	<b>Amendment/Refusal/Variation</b>	
	<b>Nominal</b>	<b>Amendment</b>	
	<b>Nil/negligible</b>	<b>Amendment</b>	
<b>Irregularities</b>	<b>Extreme</b>	<b>Amendment/Refusal/Variation</b>	<b>Yes</b>
	<b>Substantial</b>	<b>Amendment/Refusal/Variation</b>	
	<b>Moderate</b>	<b>Amendment</b>	
	<b>Nominal</b>	<b>Letter</b>	
	<b>Nil/negligible</b>	<b>Letter/Verbal warning</b>	
<b>None</b>	<b>Any</b>	<b>Nil**</b>	
* Immediate risk of serious personal injury has already been considered and dealt with where appropriate			
** This is included because it is possible to have full compliance with the permissioning requirements but still identify a 'risk gap' that may require action to rectify. However, although the EMM predicts a 'nil' action through the permissioning regime, it may be that the permissioning document should be reviewed.			

## SECTION FIVE: OUTPUTS

### Principles

57 This section considers the factors specific to a particular case which may vary the initial enforcement expectation. While enforcement action should secure compliance with the law, it should also be fair and equitable and have regard for the wider socio-economic factors relevant to local and national business environments. Inspectors' effort and enforcement action has to be effectively targeted to achieve the maximum impact given finite resources.

58 Inspectors should consider first **dutyholder factors** which vary the initial enforcement expectation, and then **strategic factors** which influence the final enforcement conclusion. Whenever the proposed enforcement action does not fully address the strategic factors, or the outcome does not accord with the principles in EPS, the inspector should carry out a management review with their line manager and record the final enforcement decision.

### Dutyholder factors

59 Dutyholder factors are, on the whole, specific to the dutyholder and their activities and usually confirm the IEE or alter the action up or down the hierarchy by one level, eg from an improvement notice to an improvement notice plus prosecution, or from an improvement notice to a letter.

60 Table 6 lists a series of dutyholder factors which may influence the enforcement decision. The way these elements are applied to the initial enforcement expectation is represented in flow charts (Figures 3 - 6). The elements in each flowchart vary because different enforcement expectations have different dutyholder factors influencing them.

61 When considering what enforcement action is appropriate for permissioning requirements, the **dutyholder factors** in Table 6 should be applied, where relevant, to the **initial enforcement expectation** derived from Table 5.3.

62 Inspectors should go through the same process when a prohibition notice has been served to allow local factors to determine whether prosecution should be considered (Figure 3).

TABLE 6 - DUTYHOLDER FACTORS	
Descriptor	Definition
<b>Does the dutyholder have a history of relevant, written enforcement being taken against them?</b>	
Yes	Enforcement action has been taken against the dutyholder on the same or similar issues, by notices, prosecutions or letter requiring action.
No	No written enforcement action against the dutyholder on the same or similar issues.
<b>Does the dutyholder have a history of relevant verbal enforcement being given to them?</b>	

**TABLE 6 - DUTYHOLDER FACTORS**

<b>Descriptor</b>	<b>Definition</b>
Yes	Enforcement action has been taken against the dutyholder on the same or similar issues, by verbally telling them what they have to do in order to comply with the law.
No	The dutyholder has not been told previously what they have to do in order to comply with the law on the same or similar issues.
<b>Is there a relevant incident history?</b>	
Yes	The dutyholder has a history of related incidents, or that there is evidence of related incidents, eg accidents, cases of ill health, dangerous occurrences.
No	No previous history or evidence of related accidents, ill health, or dangerous occurrences
<b>What is the intention of the dutyholder in non-compliance?</b>	
Deliberate economic advantage sought	The dutyholder is deliberately avoiding minimum legal requirements for commercial gain. (For example failing to price for or provide scaffolding for high roof work)
No economic advantage sought	Failure to comply is not commercially motivated.
<b>What is the level of actual harm?</b>	
Serious	A 'serious personal injury' or 'serious health effect' has occurred as a result of the matter under consideration
Not serious	There has been no actual harm, or the harm has been no greater than a 'significant personal injury' or a 'significant health effect'.
<b>What is the standard of general conditions?</b>	
Poor	There is a general failure of compliance across a range of issues, including those matters related to the activity being considered through the EMM. For example, failure to address risks arising from hazardous substances, machinery, transport, vibration, noise etc, or inadequate welfare facilities.
Reasonable	The majority of issues are adequately addressed, with only minor omissions.
Good general compliance	Full compliance across the whole range of indicators with no notable omissions.
<b>What is the Inspection history of the dutyholder?</b>	
Poor	The dutyholder has an inspection history of significant problems, copious advice and poor inspection ratings.
Reasonable	The dutyholder has an inspection history of nominal or piecemeal problems, where non-compliance has been related to new or obscure duties and where the rating history is in the average range.
Good	The dutyholder has an inspection history of good compliance, effective response to advice, consistently high standards and a low rating.

**TABLE 6 - DUTYHOLDER FACTORS**

<b>Descriptor</b>	<b>Definition</b>
<b>What is the attitude of the dutyholder?</b>	
Hostile/indifferent	The dutyholder is actively antagonistic, or completely uninterested in health and safety issues. Impossible to establish an effective relationship.
Reasonable	The dutyholder is open to discussion and reasoned persuasion and effective communications can be established.
Positive	The dutyholder is enthusiastic and proactive towards health and safety issues, actively seeking advice and pursuing solutions.



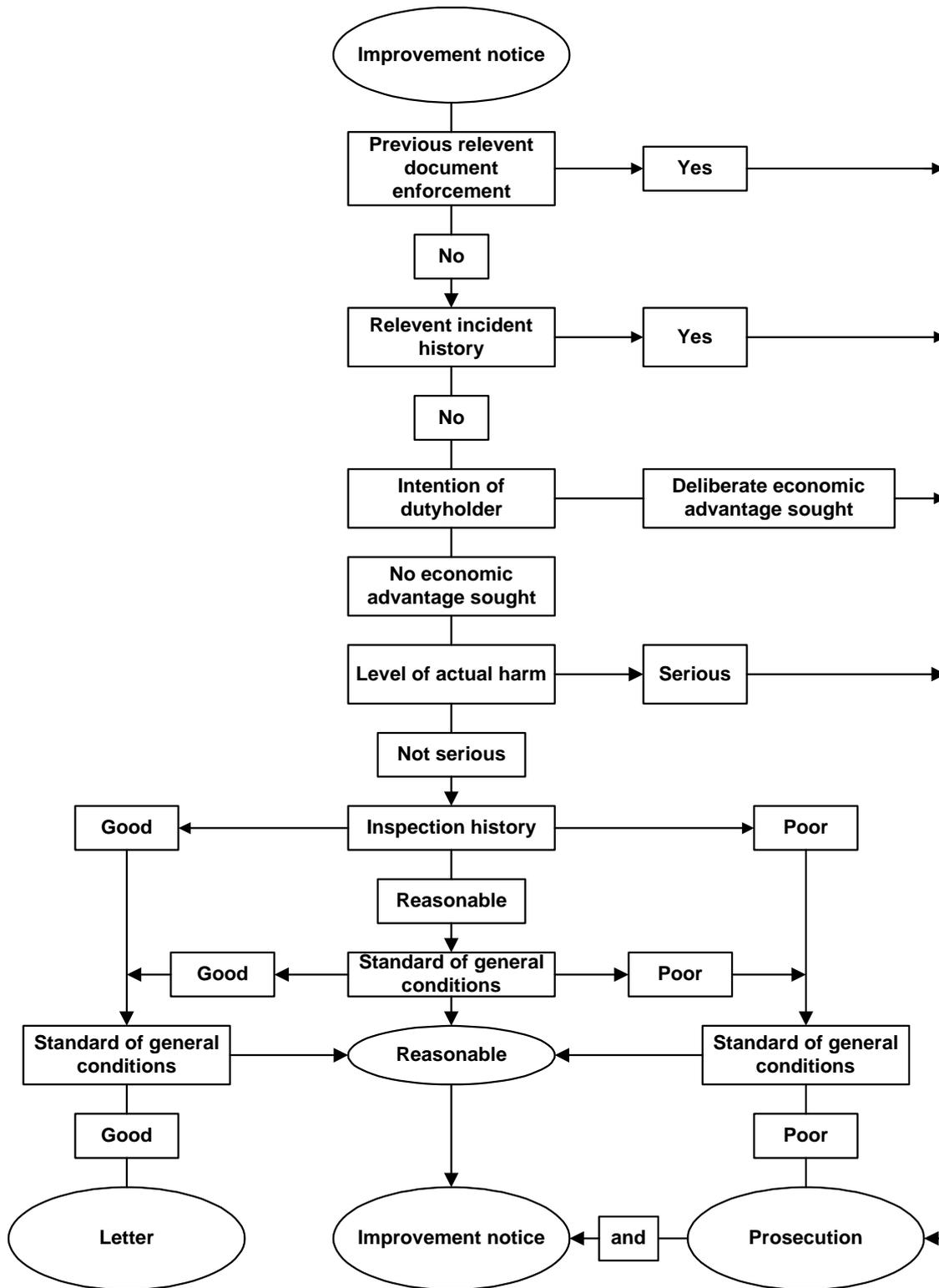


Figure 4: dutyholder factors: improvement notice

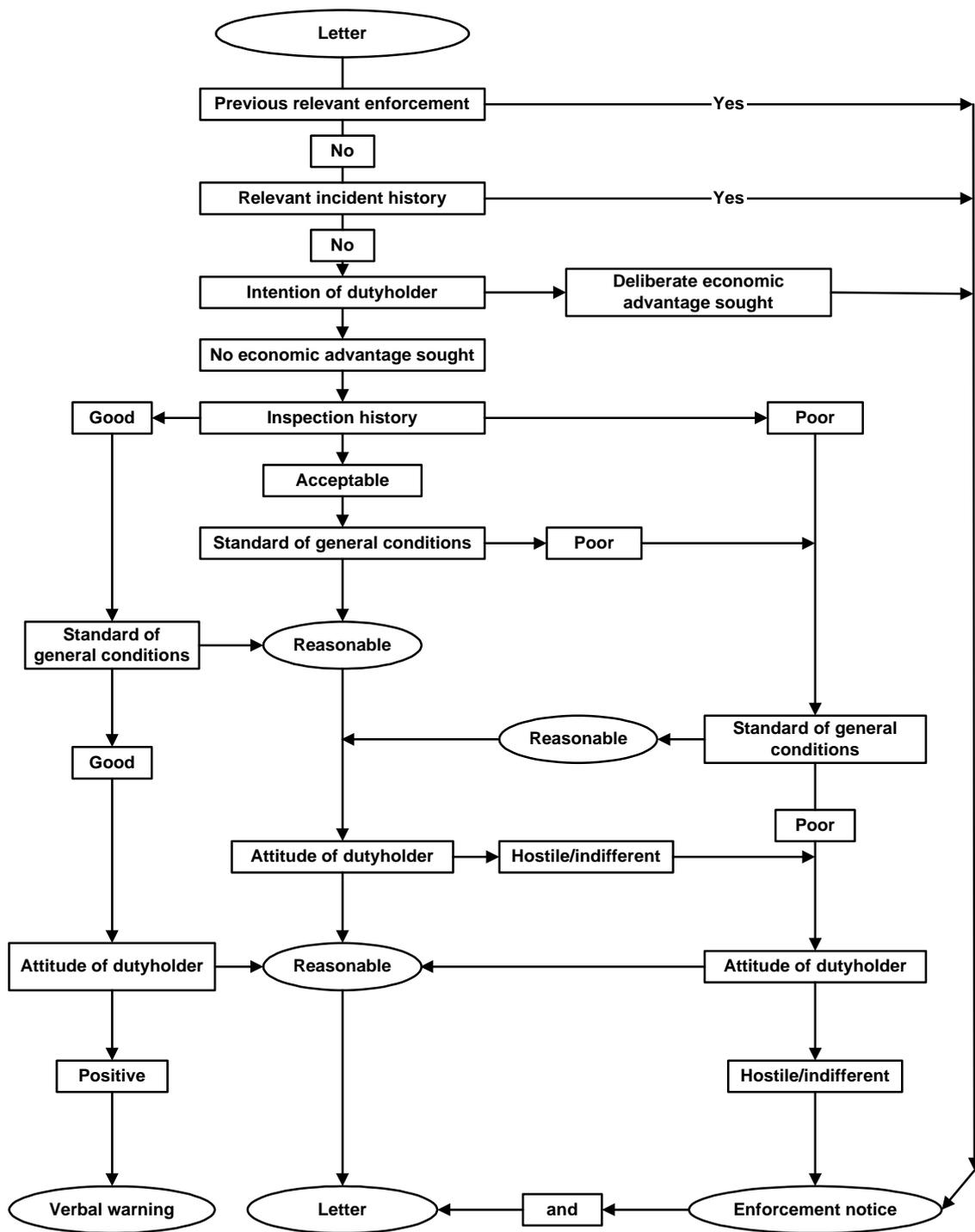


Figure 5: dutyholder factors: letter

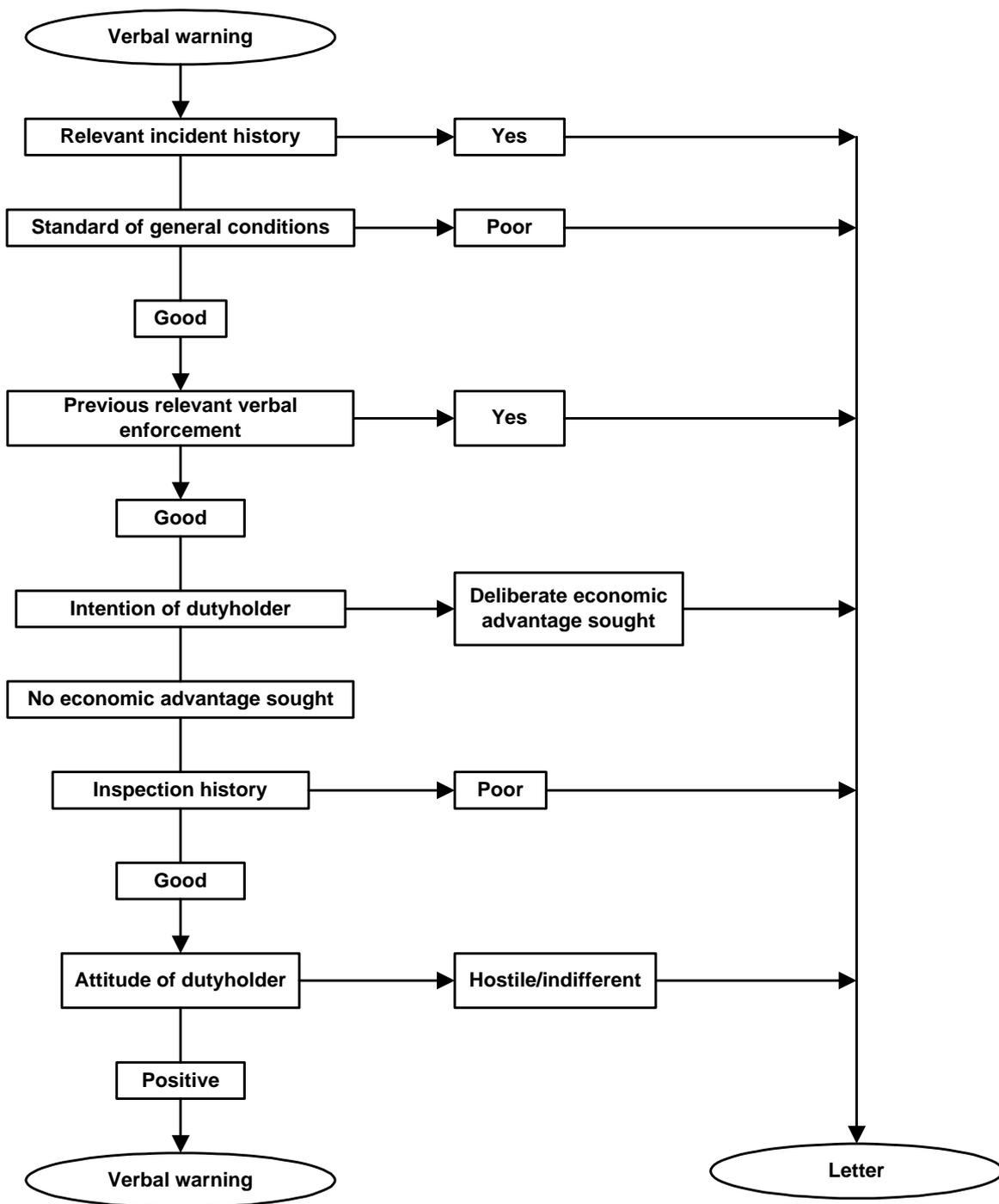


Figure 6: dutyholder factors: verbal warning

## Strategic factors

63 There is a range of **strategic factors** which may impact on the final enforcement decision. Inspectors have to ensure that public interest and vulnerable groups (eg children and patients) are considered, and that the broader socio-political impact of the enforcement action is taken into account. Strategic factors qualify the decision, they do not determine it.

### Public interest

64 As well as providing guidance on the evidential tests, the Code for Crown Prosecutors also applies the **public interest** test to prosecution decisions. The same principles of evidential sufficiency and public interest apply to all inspectors' enforcement activities.

65 There are competing demands on the finite resources available to HSE, and a balance has to be achieved based upon risk, potential outcomes and public expectations. When considering **public interest**, inspectors are looking to satisfy themselves that the proposed action will produce a net benefit to the wider community in terms of reducing risks, targeting public resources on the most serious risks, and in the costs of pursuing a particular course of action.

66 Certain issues may have a significant bearing on public expectation, for example, fatal accidents, and accidents involving vulnerable groups such as children or customers of leisure activities. While public expectation must be carefully considered, it should not determine the action taken. The public will not have possession of all the facts in any particular case, or indeed the professional training, experience or organisational support which inspectors draw upon when making decisions.

67 Public interest is a difficult issue to assess. Inspectors should ask themselves: what would a reasonable person expect from HSE in the circumstances? A further test is whether the particular decision could be justified in any public forum or inquiry.

### Process

68 The process is illustrated in Table 7. The proposed enforcement actions are tested against the strategic factors - see also Figure 7. The flow chart leads to a confirmed enforcement action which should be subject to **management review where it does not address all the strategic factors or accord with EPS**. There is no ranking of importance implied in the progression through the strategic factors. However, the final question the inspector and their manager must ask is: does the proposed action meet the principles and expectations captured in the HSC Enforcement Policy Statement?

**TABLE 7 - Strategic Factors**

<b>Does the action coincide with the Public Interest?</b>	
Yes	The action results in a net benefit to the wider community in terms of targeting resources on risk and meeting public expectations of HSE
No	The action results in a net disadvantage to the wider community in terms of addressing risk, targeting resources on risk and failing to meet public expectations of HSE.
<b>Are vulnerable groups protected?</b>	
Yes	The action results in control of risks to vulnerable groups, eg children, members of the public, patients etc
No	The action does not result in control of risks to vulnerable groups.
<b>What is the long-term impact of the action?</b>	
Sustained compliance	The action is sufficient to achieve sustained compliance across the range of risks associated with the dutyholder
No long-term impact	The action is insufficient to secure sustained improvements and that problems may be expected at subsequent visits.
<b>What is the effect of the action on other dutyholders?</b>	
Positive Effect	Other dutyholders within the same industry, geographical location or wider business community are deterred from committing similar offences or encouraged to adopt a more favourable view of health and safety requirements. In effect, the action taken broadcasts a positive message about HSE
Negative Effect	The course of action undermines both positive dutyholders' perceptions of HSE and the wider appreciation of the standards of health and safety required. For example, failure to prohibit construction work causing a danger to the public.
<b>What is the initial effect of action?</b>	
Benchmark achieved	The action secures compliance with the relevant benchmark, eg COSHH assessment completed, access to dangerous parts of machinery prevented etc.
Incomplete compliance with Benchmark	The action does not secure full compliance with the benchmark.
<b>What is the functional impact of the action?</b>	
Acceptable	There is a net benefit to the employees, and others who might be affected. Please note that risk is the overriding concern, and that the wider impact may be a qualifying issue, but is not definitive. To illustrate: where risk gap is nominal or moderate and the strict application of the law would result in closure of the workplace or unemployment, then all of the ramifications of the action should be taken into account. The net benefit of the enforcement action in this situation is for the inspector to judge.
Unacceptable	There is a net disadvantage to employees and other who might be affected, from the action taken. Please note that risk is the overriding concern, and that the wider impact may be a qualifying issue, but is not definitive.
<b>Have the principles and expectations of the Enforcement Policy been met?</b>	
Yes	The policy has been followed
No	The policy has not been followed

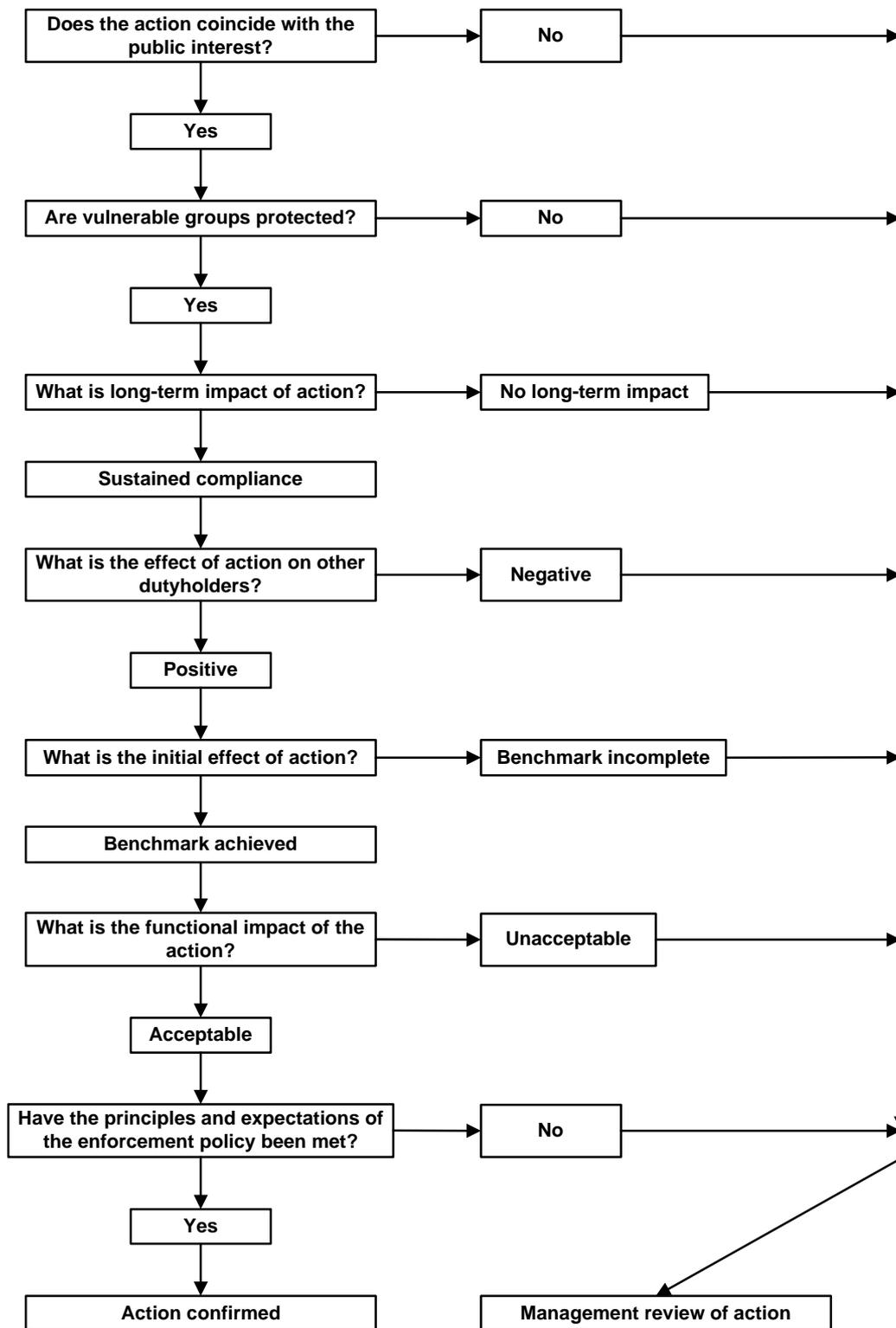


Figure 7: strategic factors

## Management review of action

69 If the proposed enforcement action does not fully address one or more of the strategic factors, the inspector should complete the form at the appendix and use this to review the circumstances with their line manager. This allows them to review the conclusions reached at each stage and, if appropriate, agree an alternative enforcement approach. Decisions made in the management review should also be recorded on this form in sufficient detail to make it clear how the final enforcement decision was reached.

## ENFORCEMENT CONCLUSION

70 **Enforcement conclusion** is used to check the level of enforcement and also that the **focus** of the enforcement is appropriate. Whilst this is not part of the framework of the EMM, it is a necessary part of any enforcement action, in that it ensures that the action is targeted.

71 The following principles should be addressed.

### Priorities for action:

- w Does the enforcement action deal with the most serious risks in order of priority, and in appropriate timescales?
- w Has the cause of the risk been addressed?
- w Are immediate failures to control risk or comply with the law dealt with?
- w Are the underlying problems addressed?

### Targets for action:

Does the enforcement action

- w take account of the scale of the failures, eg simple or multiple failures?
- w deal with the fundamental cause of the problem(s), eg workplace precautions, risk control systems or management arrangements?

### Timescales:

Do the timescales for action reflect:

- w the nature of the risk gap, and the imminence of risk?
- w the resource impact to the dutyholder?

w the resource impact on the operational unit?

**Finally:**

Will the enforcement action deal with all the serious risks; is it likely to secure sustained compliance; and have the principles and expectations of the EPS been met?

Can the evidence be obtained to support the enforcement action?

APPENDIX  
(Chapter 2, para 69)



## ENFORCEMENT ASSESSMENT RECORD

Circle or highlight choices as appropriate

Duty holder	Client No.	
Site/Premises	Location No.	
	Event No.	

Brief description of circumstances

### Section 2: Imminent risk of serious personal injury

Prohibition notice	Yes	No
Section 25 powers	Yes	No

### Section 3: Risk gap (From Table 1 and Figures 2.1 or 2.2)

<b>Actual risk</b>	Consequence		Serious	Significant	Minor
	Likelihood	Probable	Possible	Remote	nil/negligible
<b>Benchmark</b>	Consequence		Serious	Significant	Minor
	Likelihood	Probable	Possible	Remote	nil/negligible
<b>Risk gap (and table used)</b>	<b>Table 2.1</b>	Extreme	Substantial	Moderate	Nominal
	<b>Table 2.2</b>	Extreme	Substantial	Moderate	Nominal

### Section 4: Initial Enforcement Expectation (Tables 5.1, 5.2 or 5.3)

<b>Benchmark standard (table 3)</b>		Defined	Established	Interpretative	
<b>compliance/ admin descriptor (Table 4)</b>		Absent	Inadequate	Minor	
<b>Compliance with permissioning document</b>		Contravention	Irregularities	Compliance	
<b>Initial Enforcement Expectation</b>		Prosecution	I/N	letter	Verbal warning
<b>Permissioning document impact (Table 5.3 only)</b>	revocation/ refusal/direction	Amendment/ refusal/ variation	Amendment	letter	letter/verbal warning

### Section 5: Dutyholder factors (all elements do not always apply)

Is there a record of previous relevant written enforcement action, such as notices, prosecutions, or letters requiring action?	Yes	No	
Is there a history of related incidents, accidents, ill health etc?	Yes	No	

Is there a history of previous relevant verbal enforcement	Yes	No	
Did the dutyholder gain or deliberately seek economic advantage from non-compliance ?	Yes	No	
Level of actual harm arising from the matter under consideration	Serious personal injury or serious health effect	No serious harm	
What is the standard of general conditions ?	Poor	Reasonable or N/A	Good
What is the inspection history of the dutyholder ?	Poor	Reasonable or N/A	Good
What is the attitude of the dutyholder to H&S issues ?	Hostile/indifferent	Reasonable	Positive

**Indicated enforcement action** (after considering local factors)

<b>Enforcement</b>	Prosecution	I/N	Letter	Verbal warning	
<b>Permissioning</b>	revocation/ refusal/direction	Amendment/ refusal/variation	Amendment	Letter	Verbal warning

**Strategic factors**

Does action coincide with public interest ?	Yes	No
Are vulnerable groups protected by the action ?	Yes	No
What is the long-term impact of the action ?	Sustained	None
What is the effect of the action on other duty holders	Positive	Negative
What is the initial effect of action on compliance with benchmark ?	Achieved	Incomplete
What is the functional impact of the action ?	Acceptable	Unacceptable
Have the principles and expectations of the Enforcement policy been met?	Yes	No

**Outcome of management review**

--

**Enforcement action plan** (Priorities for action, and timescales)

--

Name of inspector

Date completed

**Line manager's assessment**

--

Name of line manager

Date

## CHAPTER 3

### QUALITY PROCEDURE FOR APPLYING THE ENFORCEMENT MANAGEMENT MODEL TO ENFORCEMENT ACTION

#### Purpose and scope

1 The purpose of this procedure is to ensure that the Enforcement Management Model (EMM) is applied **formally** to enforcement action taken by inspectors following the investigation of all fatalities, prior to enforcement action being taken in all decisions to prosecute and in other circumstances defined in each Directorate's procedures. The procedure also describes the circumstances in which the **principles** of the EMM should be applied.

2 This procedure and the EMM process begin with the information on which inspectors base an enforcement decision. The collection and assessment of this information is the subject of separate core quality processes, eg inspection, investigation. This procedure does not cover the taking of enforcement action established by the EMM. That is subject to other quality procedures, or guidance elsewhere.

#### Policy

3 HSE will ensure the effective management of the enforcement process. Enforcement decisions, and action taken will be informed by the principles of proportionality, consistency, targeting and transparency set out in the Health and Safety Commission's enforcement policy statement. Accountabilities for the enforcement decision and action will also be established.

4 HSE will apply the principles of the EMM to all regulatory contacts, and will apply the EMM formally in specified circumstances.

#### Definitions

5 For the purposes of this procedure:

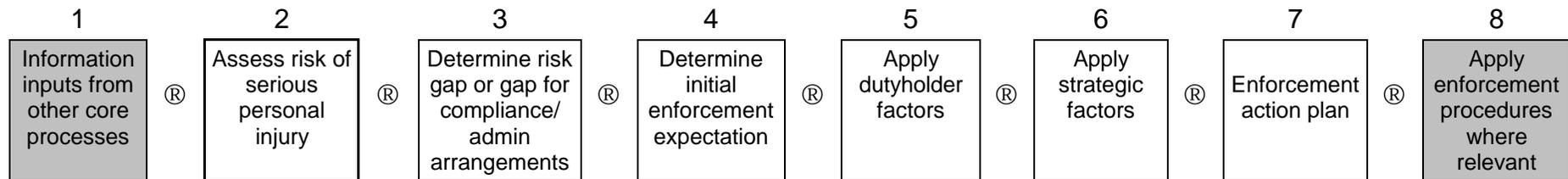
- (1) **Benchmark:** the permitted level of risk, determined by relevant legal requirements and, where necessary, interpreted by sector guidance, industry standards, etc.
- (2) **Enforcement:** the term 'enforcement' is used in its widest sense and covers all activities which fall within the scope of the HSC Enforcement Policy. It includes all dealings with dutyholders which result in the service of notices; withdrawal of approvals; variation of licences or conditions, or of exemptions; or prosecution. It also extends to the provision of information and advice, either verbally or in writing.
- (3) **Dutyholder factors:** aggravating and mitigating issues such as previous enforcement action, general conditions, inspection history,

accident/ill health/dangerous occurrence records, intentions and attitude of duty holder.

- (4) **Major incident:** a significant event which demands a response beyond the routine. Significance is determined by the severity of the incident, the degree of public concern and the nature and extent of HSE's previous involvement with the duty holder(s); though the nature of previous involvement would not alone trigger a major incident investigation. For incidents which are not subject to HSW Act s.14(2)(a) investigation, the decision to designate an incident as major rests with the Executive and the Executive decides whether to invoke all or part of the investigation arrangements in the *HSE Major Incident Response and Investigation Policy and Procedures*.
- (5) **Initial enforcement expectation (IEE):** the anticipated level of enforcement (eg prosecution consideration, prohibition notice, improvement notice, letter or advice) which solely reflects the levels of risk to health and safety, or the seriousness of any breach of the law.
- (6) **Risk gap:** the difference between the level of risk or compliance 'measured' on site, and the appropriate benchmark. The term 'risk gap' is used in relation to health and safety risks.
- (7) **Strategic factors:** considerations such as whether the proposed action is in the public interest, whether vulnerable groups will be protected, whether the action proposed will result in sustained compliance and will have a positive effect on other duty holders and whether the benchmark will be achieved are described as strategic factors.

## Method

6 The detailed EMM methodology is set out in the separate EMM document. The process is outlined as follows.



7 The key stages are:

- (1) Information (eg observation, statements, measurements, forensics) from other 'core' processes and strategies (eg investigation, inspection). Assessment of 'priorities for action' for health and safety risks, compliance and administrative arrangements, and permissioned activities.
- (2) Determine actual risk, and assess risk of serious personal injury, and availability of evidence to support the opinion. Consider HSW Act s.22/s.25 powers as appropriate.
- (3) Plot measures of actual risk against benchmark on appropriate risk table (Table 2.1 for single and low casualties or Table 2.2 for multiple casualties).
- (4) Locate risk gap and standards on Initial Enforcement Table (Table 5.1). Tables 5.2 is used for compliance and administrative arrangements, and 5.3 for permissioning. Read off IEE.
- (5) Apply dutyholder factors by following flow chart corresponding to IEE (Figures 3-6).
- (6) Apply strategic factors (Figure 7) to confirm that proposed action is appropriate and/or identify any shortcomings. Reassess anticipated action where necessary in light of the principles and expectations of the HSC Enforcement Policy Statement. Where deficiencies come to light, discuss necessary action with line manager to ensure all immediate risks will be controlled and sustained compliance will be achieved.

- (7) Enforcement Conclusion specifying priorities for action, targets for action, time scales, supporting evidence and the object of the action (ie the person to be held responsible).
- (8) Apply relevant enforcement quality procedures, or other process.

### **Roles and Responsibilities**

10 Individual directorates will establish roles, responsibilities, and monitoring arrangements which reflect their own management and control structure. Each directorate's details are found as separate appendices to this procedure.

### **Application, performance standards, monitoring and review**

11 The principles of the EMM should be applied in all regulatory contacts when considering enforcement action.

12 The EMM should be applied formally by inspectors when considering enforcement action in all fatal accidents and be applied prior to enforcement action being taken in all decisions to prosecute. Individual directorates may also make their own arrangements for the formal application of the EMM in other circumstances.

13 Where the EMM has been applied formally, or when its use is reviewed, the information found in Chapter 2 appendix should be recorded and held on the appropriate file.

14 The operation of the EMM will be reviewed by HSE.

APPENDIX  
(Chapter 3, paras 8 & 10)

ENFORCEMENT MANAGEMENT ARRANGEMENTS FOR FOD

**Note: these arrangements will be reviewed and may be subject to change.**

**Roles and responsibilities**

1 Heads of Operations are ultimately responsible for the application of this procedure by their staff. They should ensure that available resources are deployed in such a way that field units in their commands are able to implement this procedure. The broader roles and responsibilities of FOD senior management in relation to FOD's Quality System are set out in the FOD Quality Manual (Section 2, 'System Overview', and Section 4 'Organising').

2 Band 2 Principal Inspectors are responsible and accountable to the Band 1 Head of Operations for operation and compliance with this procedure, by their field unit staff to the relevant performance standards.

3 Band 1 Heads of Operations and Band 2, 3 and 4 inspectors should apply this procedure in accordance with the performance standards set out in Part 2 below.

4 Band 0, 1 and 2 line managers should monitor compliance with this procedure.

**Arrangements for formal application of the model**

5 The table following para 14 summarises the formal application of the EMM.

Fatal and major incident investigations

6 The EMM document should be used to assess the circumstances of the investigation to determine appropriate enforcement action. The outcome of key decision points should be recorded using the form in Chapter 2, appendix and kept with investigation papers. **(Note: 'Major incident' means an incident designated by HSE as a major incident in accordance with the *HSE Major Incident Response and Investigation Policy Procedures*, and also includes those incidents subject to a direction by the HSC under HSW Act section 14(2).)**

7 Line managers should assess and ensure compliance with this procedure during case conferences with investigating inspectors, and prior to any approval of enforcement decisions.

## Prosecution

8 The EMM should be applied formally by inspectors, prior to taking prosecution action, to confirm their enforcement decision.

## Other incidents

9 The EMM should be applied formally by all inspectors when investigating major injuries (as defined in RIDDOR). It should also be applied formally by Band 4 inspectors when investigating any accident, case of ill health or dangerous occurrence (as defined in RIDDOR).

10 Line managers may require formal application of the EMM in other cases, eg:

- (1) when improvement notices are proposed to be served by Band 4 inspectors;
- (2) when improvement notices are proposed to be served by band 3 inspectors who are newly promoted or new to an industry group and require line management approval before service of an IN;
- (3) as a sample of an inspector's work as part of performance assessment;
- (4) as required by DDMs for the purpose of training and competence assessment.

11 Criteria for selection are at the discretion of line managers.

12 Information about the key decisions from the EMM, (detailed in Chapter 2, appendix), should be recorded and included in the prosecution report, or attached to a copy of the enforcement notice, or kept with the investigation papers, as appropriate.

13 Line managers should assess inspector's assessments and decisions when the model has been applied formally and recorded on the form in Chapter 2, appendix. This includes when approving all prosecutions, when approving enforcement notices prior to service (as in para 10 above), or when reviewing inspectors' investigation reports.

14 The line manager should discuss the circumstances of the decisions of the inspector, and assess their decision against the EMM criteria. The line manager should state whether they agree with the inspector's assessment and proposed action. Any variance, or a decision to refer the proposed action for management review (with reasons for taking different action), should also be recorded. Where prosecution is being considered, the form in Chapter 2, appendix may record whether the proposed course of action is in accordance with the *CPS Code for Crown Prosecutors*.

**TYPE AND RANGE OF ENFORCEMENT DECISIONS TO WHICH THE EMM SHOULD BE APPLIED FORMALLY**

	Band 1	Band 2	Band 3	Band 4
Fatal accidents	All	All	All	All
Major incidents	All	All	All	All
Prosecutions	All	All	All	All
Investigations - major injuries	All	All	All	All
Investigations - all RIDDOR	-	-	-	All
Other	As required - see paras 10 and 11			

Note: Line managers may require formal application in other circumstances (see paras 10 and 11 of this appendix).