

CCA PROPOSED ENFORCEMENT POLICY STATEMENT

This contains most of the CCA's proposed changes to HSC Revised Statement. Changes are made in bold

Footnote references refer to paragraphs of CCA response

INTRODUCTION

Para 1 Unchanged

Para 2 The Health and Safety Commission's aims are to protect the health, safety and welfare of people at work, and to safeguard others, principally members of the public, who may be exposed to risks from the way that work is carried out. The appropriate use of enforcement powers, including prosecution, is an important means of both securing compliance with the law **and ensuring that companies and individuals are held accountable for safety failures.**¹

Para 4 **DELETE**

PURPOSE AND METHOD OF ENFORCEMENT

Para 1 The Purpose of enforcement is to:

- prevent **injuries, ill health and other unsafe conditions**,²
- deal immediately with serious risks
- promote and achieve sustained compliance with the law;
- **respond to the commission of criminal offences which may include the prosecution of companies and individuals where the circumstances justify it.**³
- enable the Courts to uphold the law by punishing offenders and deterring others.

Enforcement is distinct from civil claims for compensation and is not undertaken in all circumstances where civil claims may be appropriate, not to assist such claims.

Para 2 **The enforcing authorities have a range of powers at their disposal whose overall purpose is to secure compliance with the law and ensure accountability when criminal offences have been committed. Generally these powers fall into two broad categories; those for the prevention of harm and those providing a response to a criminal offence.**

¹ See Para 2.11

² See Para 2.11

³ See Para 2.11

The following powers are used by the enforcing authorities in order to prevent harm occurring or to prevent it re-occurring: they may provide information, advice and support, both face to face and in writing, as well as serve improvement and prohibition notices, withdrawal approval or vary license conditions of exemptions.

The following powers are used by the enforcing authorities as a response to the commission of a criminal offence; written warnings, formal cautions and prosecutions.⁴

Para 2a In the course of either a preventative inspection or an investigation into a reported incident, the enforcing authorities must give consideration to whether they should use any of their preventative/remedial powers to stop harm from occurring or to prevent any future harm if it has already occurred.

Where a criminal offence has also been committed, then in addition to any preventative action, the enforcing authorities **must consider whether to prosecute, issue a formal caution or issue a written warning.**⁵

Para 3 Unchanged

Para 4 Unchanged

PRINCIPLES OF ENFORCEMENT

Para 6 Unchanged

Proportionality

Para 7 The Enforcing Authorities first response is to prevent harm to human safety and health from occurring or continuing. Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom its places duties (duty holders) expect that action taken by enforcing authorities to achieve compliance should be **proportionate to any risks to health and safety, to the extent of harm that has been caused, to the safety history of the duty holder and to the seriousness of any breach.**⁶

Para 8 Unchanged

⁴ See Paras 2 to 2.9

⁵ See Paras 3 to 3.6

⁶ See Para 8.7 and 8.8

Para 9	Unchanged
Para 10	Unchanged
Para 11	<u>Targeting</u> Unchanged
Para 12	Unchanged
Para 13	Unchanged
Para 14	<u>Consistency</u> Unchanged
Para 15	Duty holders managing similar risks expect a consistent approach from enforcing authorities in the advice tendered; the use of enforcement notices, approvals etc.; decisions on whether to prosecute; and in the response to injuries and other reported incidents.
Para 16	The Commission recognises that in practice consistency is not a simple matter. HSE Inspectors and local authority enforcing officers are faced with many variables: the severity and scale of injury , the severity of hazard, the attitude and competence of management, the duty holders history of previous incidents or breaches. ⁷
Para 17	Transparency means helping duty-holders to understand what is expected of them and what they should expect from the enforcing authorities. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they don't. That means distinguishing between statutory requirement and advice or guidance about what is desirable but not compulsory. In addition, it also means ensuring that those affected by the activities of duty holders are informed about the decisions made by the enforcing authorities when it affect them.
Para 18	Unchanged
Para 18b	<ul style="list-style-type: none"> • In cases where the enforcing authority has been contacted by a worker/trade union representative/safety representative with a complaint about an incident, the safety of a particular workplace, or the conduct of an employer/duty holder, the HSE should provide the duty holder, the complainant and the complainant's trade union with written notification of either: <ul style="list-style-type: none"> - the decision to investigate; or - the reason for not proceeding with an investigation

⁷ See Para 8.9

- **In cases where the enforcing authority has been notified of the occurrence of a major injury under RIDDOR, it should provide the injured party and the duty holder with written notification of either:**
 - **the decision to investigate; or**
 - **the reason for not proceeding with an investigation**
- **In cases where an investigation takes place and no further action is taken, it is in the interests of transparency and accountability that employees and employers are informed of the reasons for this decision.**
- **In cases where informal enforcement action is taken, copies of advice given to duty holders in writing should be made available to safety representatives and trade union representatives at the site.**
- **In cases where enforcement notices are imposed, copies should be made available to safety representatives and trade union representatives at the site.⁸**

Para 19 Accountability
 Unchanged

Para 20 Unchanged

INVESTIGATION

Para 21 Delete

Para 22 **The purpose of an investigation into a death, injury or dangerous occurrence which has been reported to the authorities, is to**

- **determine the cause of the incident;**
- **determine whether action needs to be taken to remedy the situation and, if an injury has taken place, to make sure it does not recur;**
- **determine whether a criminal offence has been committed and whether a warning, caution or prosecution should be issued or undertaken.⁹**

Para 23 Unchanged

Para 24 **All Injuries should be investigated where it appears from the RIDDOR report that:**

- **it is likely to give rise to serious public concern, or**

⁸ See Paras 8.2 to 8.7

⁹ See Para 9 to 9.4

- it is likely that upon investigation, an improvement or prohibition notice is likely to be imposed.
- where the duty holder has a poor record of compliance with health and safety law;
- it involves an asphyxiation

An incident gives rise to serious public concern when it involves children, vulnerable adults, multiple casualties and whether also the outcome, potential outcome, or breach is serious “

In addition, a major injury should also be investigated if it falls within the categories contained in the Criteria list attached to this document.

Para 24b All dangerous occurrences should be investigated where it appears from the RIDDOR report that:

- it is likely to give rise to serious public concern, or
- it is likely that, upon investigation, an improvement or prohibition notice is likely to be imposed. or
- where the duty holder has a poor record of compliance with health and safety law;

Para 24c When inadequate resources prevents the investigation of a reported incident that should be investigated, the incident must be referred to a Band 1 Head of Operations.¹⁰

Para 24d When a reported incident does not come within one of the above criteria, the following factors should be taken into account in deciding whether to investigate it:

- the severity and scale of actual or potential harm, or the high potential for harm arising from an event;
- the seriousness of the duty holder;
- the enforcement priorities
- the practicality of achieving results
- the wider relevance of the event including serious public concern

Para 24e In the course of conducting an investigation, the inspector should consider the management chain and the role played by individual directors and managers and what improvements they need to make in their management of safety and whether they have committed an offence.

¹⁰ See Para 11.18

NEW SECTION: USE OF PREVENTATIVE POWERS

If during the course of an inspection or an investigation into a reported incident, an inspector neither discovers contraventions of health and safety law nor circumstances which involve a risk of serious injury, but still considers that the duty holder could gain from further guidance on best health and safety practice, an inspector should provide the employer advice orally or/and in writing. Any oral advice should be followed up in writing.

If an inspector does identify a breach of health and safety law, the inspector should impose an improvement notice unless the inspector is of the view that the breach is a minor infringement of health and safety law which does not pose a risk to the health and safety of a worker or member of the public.

Oral or written advice in such circumstances is not enough. However, an inspector as well as imposing an improvement notice can in addition provide any oral or written advice the inspector considers necessary.

If an inspector believes the activities of the duty holder pose “a risk of serious personal injury” then the inspector should always impose a prohibition notice.¹¹

RESPONDING TO A CRIMINAL OFFENCE

Para 25 **Unchanged**

Para 26 **Where a criminal offence has been committed the enforcing authorities must either prosecute, issue a formal caution or issue a written warning.**

Para 26a **Prosecution aims to punish wrongdoing, to bring to account those who have committed a criminal offence and to act as a deterrent to the offender as well as to others that may offend.**

Para 27 **Unchanged**

Para 28 **The Commission expects that enforcing authorities will normally prosecute, or recommend prosecution, where following an investigation or other regulatory contact, the following circumstances apply:**

- death or serious injury or disease was a result of a breach of the legislation;**

¹¹ See Paras 4.1 to 4.6

- there has been a serious breach of health and safety law falling far below what could reasonably be expected;
- there has been reckless disregard of health and safety requirements;
- there have been repeated breaches or persistent poor compliance indicated, amongst other things, by previous written warnings or formal cautions
- there has been a failure to comply with a written warning or an improvement or prohibition notice
- work has been carried out without or in serious breach of an appropriate license.¹²

Para 28b Where the duty holder is responsible for a number of sites or operations, then the previous safety history for one site will be relevant to the decision-making process for the others if the circumstances are such that the operator should have learnt from previous enforcement action.¹³

Para 29 The Commission also expects that enforcing authorities will consider prosecution or consider recommending prosecution where following an investigation or other regulatory contact:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law and conviction may deter others from similar failures to comply with the law;¹⁴

Para 29a Where an offence has been committed, and the enforcing authorities decide not to prosecute, they should issue a formal caution or a written warning unless it is of the view of an inspector that the breach is a minor infringement of health and safety law which does not pose a risk to the health and safety of a worker or a member of the public.. A Formal Caution is more serious than a written warning. In deciding which of these two should be issued, the enforcing authorities should consider the following factors:

- the safety record of the company;
- the level of any harm that has been caused, and
- the seriousness of the breach.¹⁵

¹² See Paras 5.8 to 5.28

¹³ See Paras 5.22 to 5.24

¹⁴ See Para 5.28

¹⁵ See Paras 5.29 to 5.32

PROSECUTION OF INDIVIDUALS

Para 30 Unchanged

PUBLICITY

Para 31 Unchanged

ENCOURAGING ACTION BY THE COURTS

Para 32 Unchanged

Para 33 Unchanged

Para 34 Unchanged

Para 35 In cases involving:

- a death or major injury; or
- a company whose profits/turnover are considered by the enforcing authority to be so high that a magistrate court will not have enough powers to impose a sentence with appropriate punitive and deterrent impact; or
- a serious breach of safety law

the enforcing authority should indicate to the Magistrates that they should consider referring the case to be heard or sentenced in the higher court where higher penalties can be imposed.¹⁶

Para 35b Following Conviction, the enforcing authorities shall inform the court of all previous relevant enforcement action.¹⁷

DEATH AT WORK

Para 36 Unchanged

Para 37 Unchanged

¹⁶ See Paras 6 to 6.6

¹⁷ See Para 6.6